RAGHAV ACADEMY

CMA INTER GR-I

LAW & ETHICS

CONCEPTS & QA

BY

CA RAGHAV GOEL

Dedicated to My Father

Late Shri JagMohanGoel

His eternal soul
is always with me.

ALL ENERGY IS WITHIN.

ALL POWERS IS INSIDE.

TAKE IT OUT.

DON'T LET OTHERS WRITE YOUR DESTINY.

COME AND CREATE THE DIFFERENCE.

BE YOURSELF.

BEHAVE YOURSELF.*Raghav Goel*

Lehron se Darkar nauka par nahin hoti,
koshish karne walon ki haar nahin hoti

Nanhi cheenti jab daana lekar chalti hai,
chadhti deewaron par, sau bar phisalti hai.
Man ka vishwas ragon mein saahas bharta hai,
chadhkar girna, girkar chadhna na akharta hai.
Akhir uski mehnat bekar nahin hoti,
koshish karne walon ki haar nahin hoti.

Dubkiyan sindhu mein gotakhor lagata hai,
ja ja kar khali haath lautkar aata hai
Milte nahi sahaj hi moti gehre paani mein,
badhta dugna utsah isi hairani mein.
Muthi uski khali har bar nahin hoti,
koshish karne walon ki haar nahi hoti.

Asaflta ek chunauti hai, ise sweekar karo,
kya kami reh gayi, dekho aur sudhar karo.

Jab tak na safal ho, neend chain ko tyago tum,
Sangharsh ka maidan chhodkar mat bhago tum.
Kuch kiye bina hi jai jaikar nahin hoti,
koshish karne walon ki haar nahin hoti.

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INDIAN CONTRACT ACT, 1872

Introduction	The law relating to contracts in India is contained in **INDIAN CONTRACT ACT,** 1872. The Act was passed by British India and is based on the principles of English Common Law. It extends to the whole of India except the State of Jammu and Kashmir. It determines the circumstances in which promises made by the parties to a contract shall be legally binding on them. All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some rights and duties on the contracting parties. Hence this legislation, Indian Contract Act of 1872, being of skeletal nature, deals with the enforcement of these rights and duties on the parties in India.
Commencement of Act	The Act came into effect from 1st September, 1872 and applies to all contracts in India.
Proposal	According to Section 2(a) of Act, when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
Acceptance	As per Section 2(b), when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. Section 2(c) defines that the person making the proposal is called the "promise", and the person accepting the proposal is called the "promise.
Agreement	According to Section 2(e), every promise and every set of promises, forming the consideration for each other, is an agreement. As per Section 2(f) promises which form the consideration or part of the consideration for each other are called reciprocal promises.
Void Agreement	According to Section 2(g) an agreement not enforceable by law is said to be void.
Contract	Section 2(h) defines the term 'contract ' as an agreement enforceable by law. As per Section 2(j), a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
Voidable Contract	Section 2(i) defines a voidable contract as an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others.
Essentials of a valid contract	Section 10 provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not otherwise expressly declared to be void. The following are the requirements for a valid contract- • There shall be an offer or proposal by one party and acceptance of the proposal by the other party which results in an agreement; • There shall be an intention to create legal relations or an intent to legal consequences; • The agreement shall be supported by lawful consideration;

	• The parties to the contract shall be competent to contract; • There shall be free consent between the parties to the contract; • The object and consideration of the contract shall be legal and the same shall not be opposed to public policy; • The terms of the consent shall be certain; • The agreement is capable of being performed i.e., it is not impossible of being performed.
OFFER AND ACCEPTANCE **Offer**	The term 'proposal' is otherwise called as 'offer'. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for promise, act or forbearance. Section 2(a) of the Act defines 'proposal' or offer as when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence. The person making the proposal is called as 'offeror' or proposer' and the person the proposal is made is called as 'offeree. The offer must be a valid one. The following points are to be taken into account for a valid offer- • The offer must be in clear, definite, complete and final in terms. It should not be vague in terms; • The offer must be communicated to the offeree. The offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the offer; • The communication may be in writing or oral; • The communication may be in expressed terms or in implied terms; • The offer may be general or specific – if an offer is made to a specific person it is called specific offer. Such offer can be accepted by such specific person; if an offer is made to the world at large, it is a general offer. It can be accepted by any member of the general public by fulfilling the condition laid down in the offer; • Communication of offer is complete when it comes to the knowledge of the person to whom it is made. (Section 4) An offer which has been communicated properly continues as such until it lapses or revoked by the offeror or rejected or accepted by the offeree. An ideal offer should have all the essentials of a valid contract as once it is accepted by the offeree, it becomes a contract.
Revocation of offer	Section 5 provides that a proposal may be revoked at any time before the communication of acceptance is complete as against the proposer but not afterwards. **Example –** A proposes, by a letter sent by post, to sell his house to B; B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before

	or at the moment when B posts his letter of acceptance, but not afterwards. Section 4 provides that the communication of a revocation is complete- • as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; • as against the person to whom it is made, when it comes to his knowledge. **Example –** A revokes his proposal by telegram. The revocation is complete as against A when the telegram is dispatched. It is complete as against B when B receives it. As per Section 6, a proposal is revoked— (1) by the communication of notice of revocation by the proposer to the other party; (2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance; (3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance. A proposal also stands revoked if – • It is not accepted in the prescribed mode and if no mode is prescribed , in some usual and reasonable manner or • The offered makes a counter offer.
Acceptance	To constitute a promise, the intention of the parties must be communicated. One cannot accept an offer which had not been communicated to him. In general, uncommunicated offer cannot result in a promise. The term 'acceptance' means admitting and agreeing to something to accede to something or to accept something. An offer to enter into legal relations, upon definite terms, to create legal relations, must be followed by an intention of the offeree to accept that offer. In 'Thawardar Pherumal V. Union of India' – AIR 1955 SC 468 the Supreme Court held that before an offer can become a binding promise and result in an agreement it must be accepted, either by words or acts. A person cannot be bound by a one sided offer which is never accepted particularly when the parties intended that the contract should be reduced in writing. A promise cannot bind its make unless the promise has assented to it. Section 4 provides that the communication of an acceptance is complete-

	• as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; • as against the acceptor, when it comes to the knowledge of the proposer. **Example** A proposes, by letter, to sell a house to B at a certain price. B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete, as against A when the letter is posted and as against B, when the letter is received by A. The following points shall be taken into account in the case of acceptance- • Acceptance may be oral or in writing; • It may be expressed or implied; • If a particular method of acceptance is prescribed, the offer must be accepted in the prescribed manner; • It must be unqualified and absolute and must correspond with all terms of the offer; • The conditional acceptance will amount to rejection of offer; • A counter offer for acceptance will also amount to reject of offer but the counter offer may be accepted or rejected by the other party; • It must be communicated to the officer, since acceptance is completed the moment it is communication; • Mere silence on the part of the offeree does not amount to acceptance; • The acceptance should be given if there is a time limit is fixed or otherwise at a reasonable time and before he offer lapses or is revoked.
Revocation of acceptance	Section 5 provides that an acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor but not afterwards. A proposes, by a letter sent by post, to sell his house to B; B accepts the proposal by a letter sent by post; B may revoke his acceptance at any time before or at the moment when the letter communication it reaches A, but not afterwards. Section 4 provides that the communication of a revocation is complete as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it and as against the person to whom it is made, when it comes to his knowledge. **Example** – B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is dispatched and as against A when it reaches him.

Void agreement	The following agreements are considered to be void- • If considerations and objects are unlawful in part – Section – 24; • Agreements without consideration – Section 25; • Agreement in restraint of marriage – Section 26; • Agreement in restraint of trade – Section 27; • Agreements in restraint of legal proceedings – Section 28; • Agreements void for uncertainty – Section 29; • Agreements by way of wager – Section 30;
Considerations and objects unlawful in part	Section 24 provides that if any part of a single consideration for one or more objects or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void. **Example –** A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles, B promises to pay to A salary of `10,000/- a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful. This section has no application to a contract which is a single contract and has no contingent part.
Agreement without consideration	Section 25 provides that an agreement made without consideration is void unless- (1) it is in writing and registered – It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other; or unless (2) if is a promise to compensate for something done – It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless (3) it is a promise to pay a debt, barred by limitation law – It is a promise, made in writing and signed by the person to be charged herewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract. **Explanation 1 –** to this Section provides that nothing in this section shall affect the validity, as between the donor and done of any gift actually made. **Explanation 2 –** to this Section provides that an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account, by the Court in determining the question whether the consent of the promisor was

	freely given. **Examples –** • A promises, for no consideration, to give B `1,000/-. This is a void agreement;  • A, for the natural love and affection, promises to give his son B, `1,000/-. A put his promise to B into writing and registers it. This is a contract. • A finds B's purse and gives it to him. B promises to give A `50/-. This is a contract;  • A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract;  • A owes B `1,000/- but the debt is barred by the Limitation Act. A signs written promises to pay B `500 on account of the debt. This is a contract;  • A agrees to sell a horse worth of `1,000/- for `10/-. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration;  • A agrees to sell a horse worth of `1,000/- for `10/-. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.
Agreement in restrain of marriage	Minor, is void.
Agreement in restraint of trade	Section 27 provides that every agreement by which any one is restrained from exercising a lawful possession, trade or business of any kind, is to that extent void. The exception to this section is saving of agreement not to carry on business of which goodwill is sold. One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein. Provide that such limits appear to the Court reasonable, regard being had to the nature of business.
Agreements in restraint of legal proceedings	Section 28 provides that every agreement- (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent. **Exceptions –** The following are the exceptions to this Section-

	• **Saving of contract to refer to arbitration dispute that may arise –** This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration and that only the amounts awarded in such arbitration shall be recoverable in respect of the dispute so referred; • **Saving of contract to refer questions that have already arisen –** Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration. • **Saving of a guarantee agreement of a bank or a financial institution –** This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or no occurring of a specified event for extinguishment or discharge of such party from the said liability.
Agreements void for uncertainty	Section 29 provides that agreements, the meaning of which is not certain, or capable of being made certain are void. **Examples –** (a) A agrees to sell to B, 'a hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty; (b) A agrees to sell to B, 'One hundred tons of oil of specified description known as an article of commerce. There is no uncertainty here to make to agreement void; (c) A who is a dealer in coconut oil only, agrees to sell to B 'One hundred tons of oil'. The nature of A's trade affords an indication of the meanings of the words, and A has entered into a contract for the sale of one hundred tons of coconut oil. (d) A agrees to sell to B, 'all the grain in my granary at Ramnagar'. There is no uncertainty here to make the agreement void; (e) A agrees to sell to B 'One thousand maunds of rice at a price to be fixed by C'. As the price is capable of being made certain, there is no uncertainty here to make the agreement void; (f) A agrees to sell to B' 'my white horse for `500/- or `1000/-. There is nothing to show which of the two prices was to be given. The agreement is void.
Agreement by way of wager	Section 30 provides that agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. **Exception in favor of certain prizes for horse-racing –** This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to

	subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of `500/- or upwards, to be awarded to the winner or winners of any horse-race. Section 294A of the Indian Penal Code not affected – Nothing in this section shall be deemed to legalize any transaction connected with horse-racing to which the provisions of Section 294A of the Indian Penal Code, apply.
CONSIDERATION	Section 2(d) of the Act defines the term 'consideration' as, when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. Consideration is essential for every contract. The following are the fundamental principles for consideration- • Consideration must be at the desire of the promisor; • Consideration may move from the promise or any other person; In 'Chinnaya V. Ramaya' – (1882) Mad. 137 it was held that a lady by a deed of gift made over certain property to her daughter directing her to pay an annuity to the donors brothers as had been done by the donor herself before she gifted the property. On the same day her daughter executed in writing in favor of the donors' brother agreeing to pay the annuity. Afterwards the done declined to fulfill her promise to pay her uncle saying that no consideration had moved from him. The court held that the uncle could sue even though no part of the consideration received by the niece moved from him. The consideration from her mother was sufficient consideration.
Types of consideration	Consideration may be of the following types- • Executory or future – it means it makes the form of promise to be performed in the future; Example – A makes an engagement with B to marry her in future. • Executed or present – it is an act or forbearance made or suffered for a promise. • Past – it means a past act or forbearance, that is to say, an act constituting consideration, took place and is complete before the promise is made.
Legal Rules Regarding Consideration:	1. It must move at the desire of the promisor. 2. It may move from the promisee or any other person. 3. Consideration must be something of value. 4. It may be an act, abstinence or forbearance or a return promise. 5. It may be past, present or future which the promisor is already not bound to do. 6. It must not be unlawful. 7. Consideration need not be adequate. 8. It must not be illusory.

	9. It must not be opposed to public policy. 10. Pre-existing obligations.
NO CONSIDERATION – NO CONTRACT: [Sec. 25]	The general rule is ex-nudopacto non oritur action i.e. an agreement made without consideration is void. For example if A promises to pay B ` 1000 without any obligation from B, this is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in section 25 itself. As per section 25, an agreement made without consideration is not void in the following circumstances: 1. Promise made on account of natural love and affection. 2. Promise to compensate for voluntary services. 3. Promise made to pay a time barred debt. Also, an agreement without consideration is not voild in the following cases:- 1. Gift actually made. 2. Creation of agency. 3. Charitable subscription.
STRANGER TO CONTRACT / DOCTRINE OF PRIVITY OF CONTRACT:	The doctrine of privityof contract means that a contract is between the parties only and no third person can sue upon it. It means that a stranger to contract cannot sue upon it. The Supreme Court of India recognized this rule in MC Chacko v State Bank of Travancore. It is settled law that a person not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract. Under the English Common law, only a person who is party to a contract can sue upon it. In India, the common law doctrine of privity of contract is applicable. In the course of time, the courts have introduced a number of exceptions to rule of privity of contract. The Indian Contract Act, 1872 is silent about the right of a stranger to contract to sue or not to sue but the Privity Council extended the Principal of English Common law to India in its decision in Jamna DasV Ram Avtar Pandy which was affirmed by the Honourable Supreme Court of India in the case of MC Chako v State Bank of Travancore. Accordingly, in the following circumstances a stranger to contract can sue: 1. Beneficiaries under trust or charge. 2. Marriage settlement, partition or other family arrangements. 3. Acknowledgement or estoppels. 4. Agency. 5. Assignee in case of insurance policy.
LEGALITY OF	The object of the contract is the ultimate purpose which the contract sub serves. In

OBJECT	contract the subject matter or the agreement is its object. Section 23 discusses about the legality of the object or consideration. The said section provides that the consideration or object of an agreement is lawful, unless- • it is forbidden by law; or • is of such nature that, if permitted, it would defeat the provisions of any law; or • is fraudulent; or • involves or implies, injury to the person or property of another; or • the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. **Examples –** (a) A agrees to sell his house to B for `10,000/-. Here B's promise to pay the sum of `10,000/- is the consideration for A's promise to sell the house and A's promise to sell the house is the consideration for B's promise to pay `10,000/-. These are lawful considerations;  (b) A promises to pay B `1,000/- at the end of six months, if C who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful considerations; (c) A promises for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment and B's payment is the consideration for A's promise, and these are lawful considerations; (d) A promises to maintain B's child and B promises to pay A `1,000/- yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations; (e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful; (f) A promises to obtain for B an employment in the public service, and B promises to pay `1,000/- to A. The agreement is void, as the consideration for its unlawful; (g) A being agent for a landed proprietor, agrees for money, without the knowledge of his principal to obtain for B a lease of land belonging to the principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal; (h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is

	void, as its object is unlawful; (i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void as it renders the transaction in effect, a purchase by the defaulter and would so defeat the object of the law; (j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favor of C and C promises to pay `1000/- to A. The agreement is void, because it is immortal; (k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.
E-CONTRACTS	Electronic contracts are paperless contracts and are in electronic form. It is the change of technology and legal requirements lead the contract to be in electronic form. E-contract is a contract modeled, specified, executed and deployed by a software system. They are conceptually very similar to traditional commercial contracts. E-contract also requires the basic elements of a contract. The following are ingredients of the E-contracts- • An offer is to be made; • Offer is to be accepted; • There shall be a lawful consideration; • There shall be an intention to create legal relations; • The parties must be competent to contract; • There must be free and genuine consent; • The object of the contract must be lawful; • There must be certainty and possibility of performance. The main feature of this type of contract is speed, accurate and reliable. The parties to the contract have to obtain digital signature from the competent authority and they have to affix the digital signature instead of manual signing. The Information Technology Act, 2000 regulates such e-contracts. In this type of contract the web site of the offeror acts as a display to the world at large. E-mails are used to negotiate and agree on contract terms and to send and agree to the final contract. An email contract is enforceable if the requirements of the contract are fulfilled. Electronically signed contracts cannot be denied because they are in electronic form and delivered electronically.

CONTRAINTS TO ENFORCE CONTRACTUAL OBLIGATIONS	**CAPACITY OF CONTRACT** **Who are Competent to Contract? (Section 11)** As per Section 11 every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. From the above provisions of the section, it means the following types of persons are not competent to contract: (a) A person who has not attained the age of majority, i.e. minor. (b) A person of unsound mind (c) A person who is disqualified from contracting by some law. **(a) MINOR:** As per section 3 of the Indian Majority Act of 1875, every person in India is a minor if he has not attained the age of 18 years of age. However in case of a minor of whose person or property or both a guardian has been appointed under the Guardian and Wards Act, 1890 or whose property is under the superintendence of any court of wards before he attains 18 years of age is 21 years. The position of Minor's agreement and effect thereof is as under: 1. An agreement with a minor is void ab-initio. 2. The law of estoppel does not apply against a minor. It means a minor can always plead his minority despite earlier misrepresenting to be a major. In other words, he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority. 3. Doctrine of Restitution does not apply against a minor. In India, the rules of restitution by minor are similar to those found in English laws. The scope of restitution of contract by minor was examined by the Privy Council in Mohiri Bibi case when it has held that the restitution of money under section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void ab-initio. Similarly no relief can be granted under section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void. 4. No Ratification on Attaining Majority - Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required. 5. Contract beneficial to Minor - A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties. 6. Minor as an agent - A minor can be appointed an agent, but he is not personally

liable for any of his acts.

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

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

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

(b) SOUND MIND PERSON:

What is a Sound Mind for the Purposes of Contracting? (Section 12)

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

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

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

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

Going by the spirit of the section, it is clear that a person is of sound mind if he fulfils the two conditions at the time when he makes it namely:-

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

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

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

(c) OTHER DISQUALIFIED PERSONS:

The persons who are disqualified from entering into contract due to certain other reasons may be from legal status, political status or corporate status. Some of such categories of persons are given below:

(i) Alien Enemy: An agreement with an Alien Enemy is void. But agreement with an Alien friend is perfectly valid and enforceable. When the Government of an Alien is at war with the Government of India, the alien is called Alien enemy, who

	cannot enter into any contract with any Indian citizen without the permission of Government of India as the same is against the public policy. Contract entered into with an alien before war is put into suspension during the duration of war. **(ii) Foreign Sovereign and Ambassadors**: Foreign sovereigns and their representatives enjoy certain privileges and immunities in every country. They cannot enter into contract except through their agents residing in India. They can sue the Indian citizen but an Indian citizen cannot sue them. **(iii) Convicts:** A convict cannot enter into a contract while he is undergoing imprisonment. **(iv) Insolvents:** An insolvent person is one who is unable to discharge his liabilities and therefore has applied for being adjudged insolvent or such proceedings have been initiated by any of his creditors. An insolvent person cannot enter into any contract relating to his property. **(v) Company or Statutory bodies:** A contract entered into by a corporate body or statutory body will be valid only to the extent it is within its Memorandum of Association.
FREE CONSENT	**Consent:** 'Two or more persons are said to consent when they agree upon the same thing in the same sense.' - [Sec 13]. If the parties have not agreed upon the same thing in the same sense, there is no real consent and hence no contract is formed. As per section 14 of the Indian Contract Act, 1872 consent is said to be free when it is not caused by— (1) Coercion (Sec 15), or (2) Undue influence (Sec 16), or (3) Fraud (Sec 17), or (4) Misrepresentation (Sec 18), or (5) Mistake, subject to the provisions of Sec 20, 21 and 22.

COERCION: [Sec. 15]	The term "Coercion" has been defined in Section 15 of the Act as the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. **Explanation:** It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed. From the above definition of coercion given in section 15, consent is said to be caused by coercion, when it is obtained by any one of the following; (i) Committing or threatening to commit any act forbidden by Indian Penal Code; (ii) Unlawful detaining or threatening to detain the property of another person. Coercion may come from a person party to the contract or even third person not connected with the contract directly. **Unlawful detaining also amounts to coercion:** If a person unlawfully detains or gives a threat to detain any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement amounts to coercion.
Effect of coercion:	According to section 19 when the consent is caused by coercion, fraud, misrepresentation, the agreement is avoidable at the option of the party whose consent was so caused. The aggrieved party may opt to rescind the contract. If the aggrieved party seeks to rescind the contract, he must restore the benefit so obtained under the contract from other party. **It should be noted that threat to commit suicide also amounts to coercion.** Some special cases which are prone to be construed cases of coercion are discussed as under; **1. Prosecution:** A mere threat to prosecute a man or file suit against him does not constitute coercion. In the case of Andhra Sugar Lts V State of AP AIR 1968 SC 599, it was held that compulsion of law is not a coercion, fraud, misrepresentation, mistake or even undue-influence. **2 High prices and high interest Rates:** Charging high interest rate, high price etc is not coercion as the same is not prohibited under the Indian Penal code. **3. A threat to commit suicide:** Consent to an agreement may at times be obtained by threatening to commit suicide. The Madras High court has held that threat to commit suicide amounts to coercion. In Amraju v Seshamma 1917 41 Mad 33 it was argued by Oldfield J, one of the judge of the Bench which decided this case, that section 15 of the Indian Contract Act, must be construed strictly and that an act which is not punishable under the Indian Penal Code cannot be said to be forbidden by it. Suicide is not punishable by the Indian Penal Code, only the attempt to suicide is punishable.

UNDUE INFLUENCE: [Sec. 16]	Section 16 of the Indian Contract Act defines undue influence as under: (i) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. (ii) In particular and without prejudice to the generality of the forgoing principle, a person is deemed to be in a position to dominate the will of another— (a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or (b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress. (iii) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. **Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).** There is presumption of undue influence in the following relationships: (i) Parent and child (ii) Guardian and ward (iii) Doctor and patient (iv) Solicitor and client (v) Trustee and beneficiary (vi) Religious advisor and disciple (vii) Fiancé and fiancée There is however no presumption of undue influence in case of relationship of — (i) Landlord and tenant (ii) Debtor and creditor (iii) Husband and wife. The wife has to be pardanashin for such presumption. In these relationships undue influence has to be proved. Going through the definition of undue influence in section 16 we find that two elements are found in undue influence:

(i) The relationship subsisting between the parties is such that one party is in a position to dominate the will of other and

(ii) He uses that position to obtain an unfair advantage over the other. The person intending to avoid the contract on the ground of undue influence must prove both the above two elements.

Examples

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services, B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

Effect of undue influence: Section 19 A provides that when the consent is caused by undue influence, the agreement is voidable at the option of the party whose consent was so caused. The aggrieved party may opt to rescind the contract. If the aggrieved party seeks to rescind the contract, he must restore the benefit so obtained under the contract from other party, upon such terms and conditions as to the court may seem just. The following illustrations are appended to the section.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a moneylender, advances `100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for ` 200 with interest at 6 per cent per month. The Court may set the bond aside; ordering B to repay ` 100 with such interest as may seem just.

The court has discretion to direct the aggrieved party for giving back the benefit whether in whole or in part or set aside the contract without any direction for refund of benefit.

In a case for avoiding a contract on the ground of undue influence, the plaintiff has to prove that:

(i) the other party was in a position to dominate the will; and

(ii) he actually used his influence to obtain the plaintiff's consent to the contract; it will be then for the defendant to show that the plaintiff freely consented.

	The presumption is raised at least in the following cases: (a) Unconscionable bargains (b) Contracts with pardanashin women
FRAUD: [Sec. 17]	As per section 17 of the Indian Contract Act: "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: (i) The suggestion, as a fact, of that which is not true by one who does not believe it to be true; (ii) The active concealment of a fact by one having knowledge or belief of the fact; (iii) A promise made without any intention of performing it; (iv) Any other act fitted to deceive; (v) Any such act or omission as the law specially declares to be fraudulent. **Explanation:** Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.
Does silence amount to fraud?	At times one of the parties to a contract makes silence to some of the facts relating to the subject matter of contract. The matter on which silence is maintained by party may be material fact. Does this amount to passive fraud under the Indian Contract Act or not depends upon various factors? Explanation to Section 17 of the Indian Contract Act provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of case are such that having regard to them, it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech. Thus. we can say that there is exception to the rule that mere silence does not amount to silence. These two exceptions are provided in explanation to section 17 and these are as under. (i) When there is a duty to speak. (ii) Where silence is equivalent to speech. However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases: **(a) Where there is change in circumstances-** A representation may be true when made but with the passage of time or changed circumstances it may become false.

	Accordingly, this must be communicated to other party otherwise it amount to fraud. **(b) When there is half-truth-** Even when a person is not bound to disclose a fact, he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false. **Examples:** (a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A. (b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound. (c) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech. (d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B. **Effect of Fraud:** According to section 19 when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true. However, there is one exception to the rule of voidability of contract at the option of aggrieved party. If such consent was caused by misrepresentation, or by silence, fraudulent within the meaning of section 17, the contact, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.
MISREPRESENTATION: [Sec. 18]	A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties. A representation when wrongly made either innocently or unintentionally is a misrepresentation. When it is made innocently or unintentionally, it is misrepresentation and when made intentionally or wilfully it is fraud. Misrepresentation has been defined in **section 18** of the Act as under: "Misrepresentation" means and includes— (1) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

	(2) Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him ; (3) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement. From the above definition of the term Misrepresentation, the following two types of misrepresentations are noticed: **(a) Unwarranted statements:** When a person positively asserts, makes an absolute and explicit statement of facts, that fact is true, though he has no reliable source to form this opinion, but he believe it to be true. This is one type of misrepresentation. **(b) Breach of duty:** Any breach of duty which brings advantages to the person committing it by misleading the other to his prejudice is a misrepresentation.
Effect of Misrepresentation:	As per section 19 when consent to an agreement is caused by misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true. **Exception:** If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. **Explanation:** A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable. **Examples:** (a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B. (b) A, by a misrepresentation, leads B erroneously to believe that, five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation. (c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed. (d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option

	of A. (e) A is entitled to succeed to an estate at the death of B, B dies: C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.
MISTAKE: [Sec. 20, 21 and 22]	Mistake means an erroneous belief about something. It has not been defined in the Indian Contract Act. Mistake can be – (A) Mistake of law, or (Sec 21) (B) Mistake of fact (Sec 20) **(A) Mistake of law may be:** **(i) mistake of law of the country** **(ii) mistake of law of a foreign country** **(i) Mistake of law of the country:** When a party enters into a contract, without the knowledge of law in the country, the contract is affected by such mistake but it is not void. A contract is not voidable because it was caused by a mistake as to any law in force in India. The reason here is that ignorance of law is not an excuse at all. However, if a party is induced to enter into a contract by the mistake of law, then such a contract may be avoided. **(ii) Mistake of law of foreign country:** Such a mistake is treated as mistake of fact and agreement is such case is void. **(B) Mistake of fact may be:** **(I) Bilateral mistake, or** **(II) Unilateral mistake** **(I) Bilateral mistake** Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. Explanation: An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact. In order to render an agreement void due to bilateral mistake, the following two conditions must be met:- **(a) Mistake must be mutual:** Both the parties must misunderstand each other and should be at cross purpose.

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

The various types of mistakes falling under bilateral mistakes are as under:
(i) Mistake as to subject matter covers following cases:

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

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

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

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

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

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

(ii) Mistake as to possibility of performance of Contract

Impossibility may be:

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

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

Examples:

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the these facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

(II) Unilateral Mistake as to fact:

	As per section 22, a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A unilateral mistake is not allowed as a defence in avoiding a contract unless brought about by another party's fraud or misrepresentation.
QUASI CONTRACTS	Sometimes the law implies a promise imposing obligations on one party and conferring the right in favor of the other even when there is no offer, no acceptance, no consensus ad idem, and in fact, there is neither agreement nor promise. Such cases are not contracts but the court recognizes them as relations resembling those of contracts and enforces them as if they were contracts. Such is called as a quasi contract. This type of contract rests on the equitable principle that a person shall not be allowed to enrich himself unjustly in the experience of another. It is obligation which the law creates in the absence of any agreement, when any person is in the possession of one person's money or its equivalent under such circumstances that in equity and good conscience, he ought not to retain it and which in justice and fairness belongs to another. It is the duty and not an agreement or intention which defines it. In the Act, the following type of quasi contracts are discussed- • Section 68 – **Claim for necessaries supplied to person incapable of contracting, or on his account -** This section provides that if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied with another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. **Examples:** (a) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property. (b) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property. • Section 69 – **Reimbursement of persons paying money due by another, in payment of which he is interested –** This section provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. **Examples:** B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment oflease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid. • Section 70 **– Obligation of person enjoying benefit of non-gratuitous act** – This section provides that where a person lawfully does anything for another

	person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered – it is otherwise called as quantum meruit. **Examples:** (a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them. (b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously. • Section 71 – **Responsibility of finder of goods –** This section provides that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee. • Section 72 – **Liability of person to whom money is paid or thing delivered, by mistake or under coercion –** This section provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. **Examples :** (a) A and B jointly owe 100 rupees to C, A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B. (b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.
CONTINGENT CONTRACTS	Section 31 defines 'contingent contract' as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. The following are the essentials of contingent contract- **Example:** A contracts to pay B ` 10,000 if B's house is burnt. This is a contingent contract. The following are the essentials of a contingent contract. • Uncertainty and futurity of the event to which it is related; • Uncertain future event must be collateral to the contract. An agreement to sell unspecified half share in the property is not contingent contract as held in 'Harbakhash Singh Gill V. Ram Rattan' AIR 1988 P&H 60. In 'Bhairon Prasad Chaurasiya V. Smt. Tara Devi' – AIR 1980 All. 36 it was held that an agreement to sell a house is by no means a 'contingent contract'. An agreement to purchase a property is neither a contingent contract nor can it be characterized as a mere possible right or interest. It was contended that the contract is a 'contingent contract' because of either of the parties to the contract

	may refuse to perform his part on the contract. The Court held that the argument is fallacious. Such a contingency would not be a collateral to a contract. An agreement to purchase a property is neither a 'contingent contract' nor can it be characterized as a mere possible right of interest Reciprocal promises are not contingent contracts as they cannot be said to be collateral to each other. The law allows the enforcement of a contingent contract after the event upon which it was contingent has happened. The contingency which is the essence of a condition must be distinguished from mere futurity. An obligation is not to be classified as conditional because its performance is not yet due. A contingent contract need not necessarily be independent on any external event. It may be conditional on the voluntary act or the future conduct of one of the parties or a third person.
Enforcement of contingent contract	Section 32 provides that contingent contracts to do or not to do anything, if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void. **Examples –** (a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced in law unless and until C dies in A's lifetime. (b) A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refused to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse. (c) A contract to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void. Section 33 provides for enforcement of contacts contingent on an event not happening. This section provides that contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before. **Explanation** – A agrees to pay B a sum of money, if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks. Section 34 discusses about deemed impossible contract. The said section provides that if the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies. **Example** – A agrees to pay B a sum of money if B marries C, C marries D. The marriage of B to C must now be considered impossible; although it is possible that D may die and that C may afterwards marry B. Section 35 provides for the contracts which are contingent on happening of specified event within fixed time. The said section provides that contingent

	contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible. Contingent contracts to or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed has expired, if it becomes certain that such event will not happen. **Examples –** (a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year and becomes void if the ship is burnt within the year; (b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.
Agreements contingent on impossible event void	Section 36 provides that contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of th event is known or not to the parties to the agreement at the time when it is made. **Example –** (a) A agrees to pay B `1,000/- if two straight lines should enclose a space. This agreement is void.  (b) A agrees to pay B `1,000/- if B will marry A's daughter C. C, was dead at the time of the agreement. The agreement is void.
DISCHARGE OF CONTRACTS	When the rights and obligations created by a contract come to an end, the contract is said to be discharged or terminated. In other words, discharge of contract means termination of contractual relationship between the parties.
Modes of discharge of contracts:	The following are the various modes or methods by which a contract is discharged. Discharge amounts to end of a contract. 1. Discharge by performance 2. Discharge by agreement 3. Discharge by lapse of time 4. Discharge by operation of law 5. Discharge by impossibility of performance 6. Discharge by breach of contract **1. Discharge by performance:** Performance is the usual mode of discharge of a contract. Performance may be (a) actual performance (b) attempted performance.

Actual performance is the fulfilment of the obligations arising from a contract by the parties to it, in accordance with the terms of the contract.

Offer of performance is also known as attempted performance or tender of performance. A valid tender of performance is equivalent to performance.

2. Discharge by agreement:

The parties may agree to terminate the existence of the contract by any of the following ways:

(a) Novation.

(b) Alteration

(c) Rescission

(d) Remission

(e) Waiver

a. Novation:

Substitution of a new contract in place of the existing contract is known as "Novation of Contract". It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties.

Example: A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.

b. Alteration: Alteration means change in one or more of the terms of the contract. In case of novation, there may be a change of the parties, while in the case of alteration, the parties remain the same. But there is a change in the terms of the contract.

c. Rescission: Rescission means "cancellation". All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.

Example: A promises to deliver certain goods to B at a certain date. Before the date of performance A and B mutually agree that the contract need not be

performed. The contract stands discharged by rescission.

d. Remission:

Remission means acceptance of a lesser performance that what is actually due under the contract. There is no need of any consideration for remission.

Example: A has borrowed Rs. 500 from B. A agrees to accept Rs. 250 from B in satisfaction of the whole debt. The whole debt is discharged.

e. Waiver:

Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged.

Example: A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

3. Discharge by lapse of time:

Every contract must be performed within a fixed or reasonable period. Lapse of time discharges the contract. The Indian Limitation Act has prescribed the period within which the existing rights can be enforced in courts of law.

Example: If a creditor does not file a suit within three years of debt, the debt becomes time-barred. He is deprived of his legal remedy.

4**. Discharge by operation of law:**

Every contract must be performed within a fixed or reasonable period. Lapse of time discharges the contract. The Indian Limitation Act has prescribed the period within which the existing rights can be enforced in courts of law.

Example: If a creditor does not file a suit within three years of debt, the debt becomes time-barred. He is deprived of his legal remedy.

4. Discharge by operation of law:

A contract may be discharged by operation of law in the following cases.

(a) Death

(b) Insolvency

(c) Unauthorized material alteration.

(d) Merger

a. Death: In contracts involving personal skill or ability, death terminates the contracts. In other cases, the rights and liabilities of the deceased person will pass on to his legal representatives.

b. Insolvency: The insolvency of the promisor discharges the contract. The promisor is discharged from all liabilities incurred prior to his adjudication.

	c. Unauthorized material alteration: Material alteration in the terms of the contract without the consent of the other party discharges the contract. Change in the amount of money to be paid, date of payment, place of payment etc. are examples of material alteration. **d. Merger:** When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end. **Example:** Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part-time lectureship.
	5. Discharge by impossibility of performance: Impossibility of performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible things. **6. Discharge by breach:** Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract. **Example:** A and B wanted to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.
TERMINATION OF CONTRACT	The proper way, in which the agreement could have been terminated by issuing of a notice to the plaintiff, calling upon to complete the transaction within a particular time, failing which the contract will be treated as cancelled. That this is the proper way of terminating the contract is cleared from what has been observed in ''Narayana Swami PillaiV. Dhanakodi Ammal' – (1971) 1 Mys. L.J., 245 that when the contract is for the sale of immovable property the vendor must given reasonable notice requiring the performance within a definite time.
CONTRACT OF INDEMNITY AND GUARANTEE	Chapter VIII of the Act deals with the contract of indemnity and guarantee. Sections 124 and 125 deal with the contract of indemnity. The other provisions deal with the contract of guarantee.
Contract of Indemnity	Section 124 of the Act defines the expression 'contract of indemnity' as a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. **Example** – A contracts to indemnify B against the consequences of the proceedings which C may take against B in respect of a certain sum of `2 lakhs. This is a contract of indemnity. This contract includes indemnifier and indemnity holder. A person who promises to indemnify from losses is called as indemnifier and the person whose loss is made good is called as indemnity holder. To indemnify does not merely means to reimburse in respect of moneys paid, but to save from loss in respect of the liability for which the indemnity has been given. A contract of indemnity may be either expressed or implied. In 'Kuppan Chettiar V. Ramaswami Chettiar' – ILR (1947) Mad.58 it was held that there is implied by law a contract by the person making the request to keep indemnified the person

	having the duty against any liability which may result from such exercise of the supposed duty. In 'The New India Assurance Co. Limited V. State Trading Corporation of India' – AIR 2007 (NOC) 517 (Guj) it was held that almost all insurance other than life and personal accident insurances are contracts of indemnity. In 'National Overseas V. Export Credit Guarantee Corporation of India Limited' Air 2008 All 18 it was held that where export risk policy issued by Export Credit Guarantee Corporation and exporter had consigned shipments to buyer at his own risk without resorting to terms of policy, the corporation is not liable to indemnify loss caused to exporter. **Rights of indemnity holder when sued** Section 125 provides the rights of indemnity holder when sued. This section provides that the promise, in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor- • all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies; • all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit; • all the sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit. This section is not exhaustive and does not set out all the reliefs which an indemnity holder who has been sued may get. It leaves untouched certain equitable reliefs which he may get. The rights of the indemnity holder are not confined to those mentioned in this section. Even before damage is incurred, it is open to him to sue for the specific performance of the contract of indemnity, provided that it is show, that an absolute liability has been incurred by him and that the contract of indemnity covers the said liability. In 'Pepin V. Chandra Seekur' – ILR 5 Cal. 811 it was held that in the case of contract of indemnity, the liability of the party indemnified to a third person is not only contemplated at the time of indemnity, but is the very moving cause of that contract and in case of such a nature, the costs reasonably incurred in resisting or reducing or ascertaining the claim may be recovered.
Contract of Guarantee	Section 126 defines the expression 'the contract of guarantee' as a contract to perform the promise, or discharge the liability of a third person in case of his default. The components of this contract consist of- • surety – the person who gives the guarantee is called as the 'surety'; • principal debtor – the person in respect of whose default the guarantee is given is

	called the 'principal debtor'; • creditor – the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written. It is a tripartite agreement which contemplates the principal debtor, the creditor and the surety.
Consideration for guarantee	Section 127 provides that anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving guarantee. **Examples –** (a) 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. This is sufficient consideration for C's promise (b) A sells 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 (c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void. This section takes into its fold past consideration also. Like any other contract, a contract of guarantee must be supported by consideration. It is not necessary that the consideration should be received by the surety. Consideration between the principal debtor and the creditor is good consideration for the guarantee given by the surety. In 'Rajemdra V. Mahila Chandrabai' – 2012 (1) MPLJ 164 the case is within the purview of example (c). Merely because the appellant made promise to the plaintiff that in this case first and second defendants who were required to pay the sale price to her, fail to pay the same, he would pay the sale price, that promise was without consideration and therefore the said agreement between the plaintiff and third defendant was void. Needless to say that a void agreement cannot be enforced by law and therefore, since the status of the appellant (third defendant) is that of a guarantor, his case is covered under the ambit of example © to Section 127 of the Act and he is not liable to pay the sale consideration or any other amount to the plaintiff on account of the failure in making the payment by first and second defendants. In 'United Breweries (Holding) Limited V. K.S.I.I. & D.C. Limited' – AIR 2012 (NOC) 154 (Cal.) it was held that it is clear that the question as to whether the deed in question is a deed of guarantee or not depends upon the terms under which the guarantor binds himself. Under law, he cannot be made liable for more than what he has undertaken. There is no ambiguity that the appellant has not undertaken that he would repay the loans of respondent No. 2, in case if respondent No.2 fails to discharge its liability. Therefore the appellant cannot be made liable for more than what it has undertaken.

Distinction between Indemnity and Guarantee

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

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

Liability of surety

The liability of surety arises only when the principal debtor fails to pay the debt to the creditor. Section 128 provides for the liability of surety. The said section provides that the liability of the surety is coextensive with that of the principal debtor, unless it is otherwise provided by the contract.

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

The liability of the surety is co-extensive with that of the principal debtor and the surety is liable to pay the entire amount his liability being immediate as held in 'Gouri Prasad V. Rabo India Finance Limited' – 2013 (2) Mh.L.,J. 195. In 'Swaminatha Pillai V. Lakshman Ayya' – AIR 1935 Mad 748 it was held that there is no authority for the general proposition that a creditor cannot proceed against the surety unless he has first exhausted all his remedies against the principal debtor.

Where the letter of guarantee issued by a guarantor, guarantees repayment of only the principal sum and does not guarantee the payment of any interest, he could not be made liable for the payment of interest as held in 'S.N. Prasad V. Monnet Finance Limited' – (2011) SCC 320 .

Continuing Guarantee

Section 129 of the Act defines the expression 'continuing guarantee' as a guarantee which extends to a series of transactions.

Examples –

• A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of `5,000/- for the due collection and payment by C of those rents. This is a continuing guarantee.

• 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.

	• A guarantees payment to B of the price of five sacks of flour to be delivered to 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 four sacks. A guarantee for a future performance may either be restricted to a debtor or liability of a certain amount to be incurred once for all, or it may be continuing. If the liability extends to a single transaction, it is specific. In case it extends to a series of transactions it is continuing. In 'Gopinathan V. Nedungadi Bank Limited' – 2013 (3) KLT 115 it was held that on the strength of continuing guarantee, liability of the guarantors continued not withstanding that the personal remedy against the second respondent stood discharged.
Revocation of continuing guarantee	A continuing guarantee can be revoked by two ways- • Revocation by surety; • Revocation on the death of surety. Revocation of continuing guarantee by surety Section 130 provides that a continuing guarantee may at any time revoked by the surety, as to future transactions, by notice to the creditor. **Example –** • A, in consideration of B's discounting at A's request, bills of exchange for C, guarantees to B, for 12 months, the due payment of all such bills to the extent of `5000. B discounts bill for C to the extent of `2000/-. Afterwards, at the end of three months, A revokes guarantee. The revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for `2000/- on default of C.  • A guarantees to B, to the extent of `10,000/- that C shall pay all the bills that B shall draw upon C. C accepts the bill. A gives notice of revocation. C dishonors the bill at maturity. A is liable upon his guarantee.
Revocation of continuing guarantee by surety's death	Section 131 provides that the death of the surety operates, in the absence of any contract to the contrary, as a revocation of continuing guarantee, so far as regards future transactions.
Discharge of surety	The liability of the surety is discharged under the following circumstances- • By giving notice to the creditor – Section 130; • By the death of the surety – Section 131; • By variance in terms of contract – Section 133; • By release or discharge of principal debtor – Section 134; • When creditor compounds with the principal debtor by giving time to, or agrees not to sue principal debtor – Section 135;

	• By creditor' act or omission impairing surety's eventual remedy – Section 139;
Which will not discharge the surety?	In the following circumstances the liability of the surety is not considered to be discharged- • Section 136 – Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged; • Section 137 - Mere forbearance on the part of the creditor to sue the principal debtor or to enforce the other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety; **Example –** 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.
Rights of surety	The following are the rights available to the surety under this Act • Section 140 – **Right of surety on payment or performance** – Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor; • Section 141 – **Surety's right to benefit of creditor's securities** – A surety is entitled to the benefit of every security which the creditor had against the principal debtor at the time when the contract of surety ship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security. **Examples –** • C advances to B, his tenant `20000/- on the guarantee of A. C has also a further security for `20,000/- by a mortgage of B's vehicle. 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; • 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; • 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 up further security. A is not discharged. Section 140 provides for subrogation where the guarantor clears his liability by payment. He is invested with all rights which the creditor had with the principal debtor. The section enacts that in order that the surety may be invested with all the rights which the creditor had against the principal debtor, the following conditions be fulfilled, namely-

	• the guaranteed debt must have become due, or the principal debtor must have made default in performing the guaranteed duty; and • the surety must have paid the debt, that is, the whole debt, or the surety must have performed all that is liable for. Unless the said two conditions have been fulfilled, the surety cannot call upon the creditor to invest him with all the rights which he had against the principal debtor.
Invalid guarantee	The following are considered as invalid guarantee- • **Guarantee obtained by misrepresentation** – Section 142 provides that any guarantee which has been obtained by means of misrepresentation made by the creditor or with his knowledge and assent, concerning a material part of the transaction is invalid; • **Guarantee obtained by concealment** – Section 143 provides that any guarantee within the creditor has obtained by means of keeping silence as to material circumstances is invalid. **Examples –** • 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 B's previous conduct. B afterwards makes default. The guarantee is invalid; • A guarantees to C payment for iron to be supplied by him to B to the amount of 2000 tons. B and C have privately agreed that B should pay `5/- 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 surety.
Co-surety	Section 144 provides that where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join. Section 146 provides that the co-sureties are liable to contribute equally. This section provides that where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor. Section 147 of the Act provides that co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit. **Examples –** (a) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of each 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay

	10,000 rupees. (b) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each. (c) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.
Implied promise to indemnify surety	Section 145 provides that in every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he had paid wrongly. **Examples –** (a) 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. (b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A and on A's refusal to pay, sues him upon the bill, A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B and the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action; (c) A guarantees to C, to the extent of `2000/- payment for rice to be supplied by C to B. C supplies to B rice to a less amount, than `2000-, but obtains from A payment of the sum of `2000/- in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied. **BAILMENT AND PLEDGE** Chapter IX of the Act deals with bailment and pledge. **Bailment** Section 148 defines the term 'bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The bailment consists of- • Bailor – the person delivering the goods is called the 'bailor'; and • Bailee – the person to whom the goods are delivered is called the 'bailee'.

	If a person, already in possession of the goods of other contracts to hold them as a bailee, he thereby becomes the bailee and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment. The following are ingredients of the bailment- • There must be a delivery of specific goods by one person to another; • The delivery must be for some purpose; • The delivery must be upon a contract that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the bailor. Bailments may be classified into voluntary and involuntary. Voluntary bailments are the outcome of an express contract between the parties. Instances of involuntary bailments are found in cases of finders of good or of goods sent to a wrong place, or in excess of the quantity ordered, or in cases where the bailee dies and the subject of bailment comes into the hands of the bailee's heirs. Where there is no obligation to return the identical article, either in its original or in an altered form, there is no contract of bailment.
Delivery to bailee how made	Section 149 provides that the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or any persons authorized to hold them on his behalf.
Bailor's duty	Section 150 lays down three duties, namely- • It is the duty of the bailor to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interferen with the use of them, or expose the bailee to extraordinary risks; • If the bailor does not make such disclosure and some loss or damage results, he is responsible for so much of it as arises to the bailee directly from such faults; • If the goods are bailed for hire, the bailor is responsible for damage arising to the bailee directly from such faults, whether he was or was not aware of the existence of such faults in the goods bailed. **Examples –** • 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 damages sustained. • 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.
Care to be taken by bailee	Section151 provides that in all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

	In 'Nagalinga Chettiyar V. Kayarebana Chettiyar' –AIR 1915 Mad.80 it was held that where the standard of care prescribed by Section151 is not observed the bailee cannot be exonerated from his liability simply because the bailee's goods were also lost along with the goods bailed. In 'Sirmour Truck Operators Union V. National Insurance Co. Limited' AIR 2011 (NOC) 389 (HP) it was held that the carrier cannot be exempted from its own negligence or negligence by his agent where goods carried at 'owner's risk' and cannot escape from the liability to make good loss.
Bailee when not liable	Section 152 provides that the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care described in Section 151.
Termination of bailment	Section 153 provides that a contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment. **Example –** A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is at the option of A, a termination of the bailment. In 'Neekram V. Bank of Bengal' – ILR 19 Cal. 322 (PV) it was held that this section is intended for the protection of the bailor whose goods are being used by the bailee in a manner inconsistent with the conditions of the bailment. The bailor may put an end to the bailment although it was created for a specified purpose which has not been accomplished or for a prescribed which has not expired. But merely exercising his rights irregularly by the bailee, e.g., a sub pledge or a premature sale by a pledge will not attract the application of the section.
Liability for unauthorized use of bailed goods	Section 154 provides that if the bailee makes any use of goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them. **Example –** (a) A lends a horse to B for his own riding only. B allows is, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and injured. B is liable to make compensation to A for the injury done to the horse. (b) A hires a horse in Calcutta from B expressly to march to Benaras. 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. In 'Hafizullah V. Montague' – 165 IC 354 it was held that where a car was entrusted to the defendant as a bailee and the evidence establishes that he was using the car for his private purposes in contravention of his agreement with the plaintiff, the bailor, it was held that the defendant was liable for the damages arising from such use.
Mixing of the goods	The goods of the bailor may be mixed with the goods of the bailee. This mixing may be done with or without the consent to the bailor. What would be the effect in such cases? Section 155 provides the solution for the same. This section provides that if the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to

	their respective shares, in the mixture thus produced. What would be the effect if the goods of the bailor are mixed with the goods of the bailee without the consent of the bailor? Section 156 and 157 provide the solution for the same. Section 156 provides the effect of mixture, without bailor's consent, when the goods can be separated. Section 157 provides the effect of mixture, without bailor's consent, when the goods cannot be separated. Section 156 provides that if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods and the goods can be separated or divided, the property in the goods remains in the parties, respectively, but the bailee is bound to bear the expenses of separation or division, and any damage arising from the mixture. **Example –** A bails 100 bales of cotton marked with 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. Section157 provides that if the bailee, without the consent of the bailor, mixed the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods. **Example –** A bails a barrel of Cap flour worth `45 to B. B without A's consent, mixes the flour with country flour of his own, worth only `25 a barrel. B must compensate A for the loss of his flour.
Bailor's obligation	Section 158 and 164 impose obligation on the bailor. Section 158 provides that where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment. Section 164 provides that the bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.
Restoration of goods	The bailed goods should be returned after the bailment is over. Section 159 provides for the restoration of goods lent gratuitously and Section 160 provides for return of goods bailed on expiration of time or accomplishment of purpose. Section 161 provides for the responsibility of the bailee when goods are not duly returned. Section 159 provides that the lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by

	him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived. Section 160 provides that it is the duty of the bailee to return, or deliver, according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed has expired, or for the purpose for which they were bailed has been accomplished. Non delivery of the goods would amount to breach of contract. This section is silent as to the remedies open to a bailor when the bailee has failed to return the goods on his demand. In 'Dhian Singh Sobha Singh V. Union of India' – AIR 1958 SC 274 the Supreme Court held that a bailor in the event of non delivery of the goods by the bailee on demand made by him in that behalf was entitled at his election to sue the bailee either for wrongful conversion of the goods or the wrongful detention thereof. Section 161 provides that if by default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. Section 163 provides that in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed. **Example –** A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A. Section 165 provides that if several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary. Section 166 provides that if the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.
Termination of gratuitous bailment by death	Section 162 provides that a gratuitous bailment is terminated by the death either of the bailor or of the bailee.
Right of third person	Section 167 provides that if a person, other than the bailor, claims goods bailed he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.
Right of finder of goods	Section 168 provides that the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it. Section 169 provides that when a thing which is commonly the subject of sale is lost, if the owner cannot, with reasonable diligence, be found or if he refuses, upon

	demand, to pay the lawful charges of the finder, the finder may sell it- • when the thing is in danger of perishing by or of losing the greater part of its value; or • when the lawful charges of the finder, in respect of the thing found, amount to two thirds of its value. In 'MJR Steels (P) Limited V. Chrisomar Corporation' –AIR 2007 (NOC) 234 (Cal.) it was held that it is not always necessary that sale should be by owner himself; sale by agent or anyone with the consent of owner is valid. Finder of asset can also sale and give good title. There can also sale by estoppels.
Bailee's lien	Section 170 provides that when the bailee has in accordance with the purpose of the bailment, rendered any service involving the exercise of labor or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the service he has rendered in respect of them. **Examples –** (a) 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. (b) 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.
PLEDGE	Section 172 of the Act provides that the bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The pledge constitutes- • 'Pawner' – The bailor in this case is called as pawner; • Pawnee – the bailee in this case is called as pawnee. A pledge is a bailment of moveable property by way of security. The concept of pledge under this Act is dealt with under Sections 172 to 179. In 'Maharastra State Co-operative Bank Limited V. Assistant Provident Fund Commissioner' – (2009) 10 SCC 123 it was held that in a pledge the pledge is in possession of and has a special property in the goods which he is entitled to detain to secure repayment. Unlike a mortgage, a pledge does not have the effect of transferring any interest in the property in favor of the pledge. Delivery of goods is necessary to complete a pledge.
Difference between pledge and bailment	Section 172 of the Act define s a pledge to be the bailment of goods as security for payment of debt or performance of a promise whereas Section 148 provides that a bailment is the delivery of goods by one person to another person for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them.
Rights of pawnee	The rights of the pawnee are described in Section 173, 175 and 176. Section173

	provides that the pawnee may retain the goods pledged, not only for the payment of the debt or the performance of the promise, but for the interest of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. Section175 provides that the pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. Section 176 provides that if the pawnor makes default in payment of the debt, or performance at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawner upon the debt or promise and retain the goods pledged as a collateral security, or he may sell the things pledged, on giving the pawner a reasonable notice of the sale. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawner is still liable to pay the balance. If the proceeds of the sale are greater than the amounts so due, the pawnee shall pay over the surplus to the pawner.
Retaining of the goods by pawnee	Section174 provides that the pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.
Pledge by Mercantile Agent	Section 178 provides that where a mercantile agent is, with the consent of the owner, in possession or goods or the documents of the title of goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same, provided the pawnee acts in good faith and has not at the time of the pledge notice that the pawner has no authority to pledge. The term 'mercantile agent' is defined under Section 2(2) of Sale of Goods Act as an agent having in the course of ordinary business having authority, either to sell goods or to consign goods for the purposes of sale or to buy goods or to raise money on the security of the money.
Pledge in a voidable contract	Section178A provides that when the pawner has obtained possession of the goods pledged by him under a contract voidable under Section 19 or Section19A, but the contract has not been rescinded at the time of pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawner's defect of title.
Limited interest of pawner	Section 179 provides that where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.
Suit against wrong doers	Section 180 provides that if a third person wrongfully deprives the bailee of the use of possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailer or the bailee may bring a suit against a third person for such deprivation or injury.
Apportionment of relief	Section 181 provides that whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and bailee, be dealt with according to

	their respective interests.
AGENCY	Chapter-X of the Act deals with Agency. Section 182 provides that an 'agent' is a person employed to do any act for another or to represent another in dealing with the third person.
Principal	The person for whom such act is done, or who is so represented is called the 'principal'.
Provisions regarding to Agent	• A person may become an agent- • if he is of the age of majority according to the law to which he is subject; • he is of sound mind; • no consideration is necessary for the appointment of agent; • the authority of an agent may be expressed or implied; Section187 defines the terms 'expressed authority' and implied authority. An authority is said to be express, when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case. **Example –** A owns a shop in Serampur, himself living in Calcutta, 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 implied authority from A to order goods from C in the name of A for purposes of the shop. Section 184 provides that as between the principal and third persons, any person may become agent, but no person who is not of the age of the majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf. Section 185 provides that no consideration is necessary to create an agency Section 188 provides that an agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business. **Examples –** (a) A is employed by B, residing in London to recover at Bombay 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; (b) A constitutes B his agent to carry on his business of a ship builder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on his business.

	Section 189 provides the agent's authority in an emergency. According to this section, an agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. **Examples –** (a) An agent for sale may have goods repaired if it be necessary; (b) A consigns provisions to B at Calcutta, with direction to send them immediately to C at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling. Section 190 provides that when agent cannot delegate his authority. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of a trade a sub-agent may, or from the nature of the agency, a sub-agent must, be employed.
Sub agent	Section 191 defines the term 'sub-agent' as a person employed by, and acting under the control of, the original agent in the business of the agency. Section 192 provides that where a sub agent is properly appointed, the principal is, so far as regard third persons, represented by the sub agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub agent. The sub agent is responsible for his acts to the agent, but not to the principal except in cases of fraud or wilful wrong. Section 193 provides for the responsibility of the agent for sub agent appointed without authority. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by, or responsible for, the acts of the person so employed, nor is that person responsible to the principal. Section 194 provides that where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent but an agent of the principal for such part of the business of the agency as is entrusted to him. **Examples –** (a) 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 A's agent for the conduct of the sale. (b) A authorizes B, a merchant in Calcutta, to recover the money 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.

Agent's duty	Section 195 provides that in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected. **Example –** (a) 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. (b) 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.
Ratification	Section 196 provides for right of person as to acts done for him without his authority. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by this authority. Section 197 provides that the ratification may be expressed or implied in the conduct of the person on whose behalf the acts are done. **Examples –** (a) A, without the authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification on the purchase made for him by A; (b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan. Section 198 provides that no valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. Section 199 prescribes the effect of ratifying any unauthorized act forming part of a transaction. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part. Section 200 provides that ratification of unauthorized act cannot injure third person. An act done by one person on behalf of another, without such other person's authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest which, if done with authority, of a third person, cannot, by ratification, be made to have such effect. **Example –** (a) 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;

	(b) 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.
Termination of Agency	Section 201 provides for the termination of agency. An agency is terminated by the principal- • revoking his authority; or • by the agent renouncing the business of the agency; or' • by the business of the agency being completed; or • by either the principal or agent dying or becoming of unsound mind; or • by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. Section 202 provides that where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. **Examples –** (a) A gives authority to B to sell A's land and to pay himself, out of the proceeds, the debts due to him. A cannot revoke his authority, nor can it be terminated by his insanity or death; (b) 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 the price, the amount of his own advances. A cannot revoke the authority nor is it terminated by his insanity or death. Section 208 provides as to the time at which the agent's authority is terminated as to agent and as to third persons. The termination of the authority of an agent does not, so for as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them. **Example –** (a) A directs B to sell goods for him and agrees to give B 5% 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 `100/-. The sale is binding on A and is entitled to ` 5/- as his commission; (b) A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows 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. (c) 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.
Revocation of agent's authority	Section 203 provides for the revocation of agent's authority. The principal may, save as is otherwise provided by Section 202, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal. Section 204 provides that the principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency. **Examples –** (a) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys 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. (b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys 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.
Compensation	Section 205 provides for the provision of compensation for revocation by principal or renunciation by agent. When there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.
Notice of revocation	Section 206 provides that reasonable notice must be given before revocation or renunciation of the agency. Otherwise, the damage thereby resulting to the principal or the agent, as the case may be must be made good to the one by the other. Section 207 provides that revocation and renunciation may be expressed or implied in the conduct of the principal or agent respectively. **Example –** A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.
Agent's duty on termination of agency	Section 209 provides that when an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of interests entrusted to him.
Termination of sub-agent's authority	Section 210 provides that the termination of the authority of an agent causes the termination of the authority of all sub agents appointed by him.
Agent's duty	• Section 211 provides that an agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conduct such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal and if any profit accrues, he must account for it.

	Examples – (a) A, an agent engaged in carrying on for B a business, in which it is the customs to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments; (b) B, a broker in whose business it is not the custom to sell on credit, sell goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A. • Section 212 provides that an agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct. **Examples –** (a) A, a merchant in Calcutta, 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 consideration 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 any further direct loss – as e.g., by variation of rate of exchange – but not further; (b) 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 make compensation to his principal in respect of any loss thereby sustained; (c) A, an insurance broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B. (d) A, a merchant in England, directs B, his agent at Bombay, 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. • Section 213 provides that an agent is bound to render proper accounts to his principal on demand. • Section 214 provides that it is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal and in seeking to obtain his instructions;
Right of principal	The rights of principal are described in Sections 215 and 216.

	• Section 215 provides that if an agent deals on his own account in the business of the agency, without first obtaining the consent of the principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him. **Examples –** (a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material act, or that the sale has been disadvantageous to him; (b) A directs B, to sell A's estate. B on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option. • Section 216 provides that if an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction. Example – A direct B, his agent, to buy a certain house for him. B tells A that it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.
Agent's right	The rights of agents are prescribed in Section 217 and 219. • Section 217 provides that an agent may, retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business and also such remuneration as may be payable to him for acting as agent. • Section 218 provides that subject to such deductions, the agent is bound to pay to his principal all sums received on his account; • Section 219 provides that in the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act, but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.
Misconduct of agent	Section 220 provides that an agent, who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which he has been misconducted.
Examples –	(a) A employs B to recover ` 1 lakh from C, and to lay it out on good security. B recovers ` 1 lakh and lays out `90,000/- on good security, but lays out `10,000/- on

	security which he ought to have known to be bad, whereby A loses `2,000/-. B is entitled to remuneration for recovering `1,00,000/- and for investing `90,000/- . He is not entitled to any remuneration for investing `10,000/- and he must make good the `2000/- to A;  (b) A employs B to recover `1,000/- from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.
Agent's lien	Section 221 provides that in the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or account for to him.
Obligation of principal to agent	• Section 222 provides that the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agents in exercise of the authority conferred upon him. **Examples –** (a) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit and A authorizes him to defend the suit. B defends the suit and is compelled to pay damages and costs and incur expenses. A is liable to B for such damages, costs and expenses. (b) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purpose of 10 casks of oil for A. Afterwards A refuses to receive the oil and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incur expenses. A is liable to B for such damages, costs and expenses. • Section 223 provides that where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons. **Examples –** (a) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The Officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions; (b) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses. • Section 225 provides that the principal must make compensation to his agent in

	respect of injury caused to such agent by the principal's neglect or want of skill.
Non-liability of principal to agent	Section 224 provides that where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or implied promise to indemnify him against the consequences of that act. **Example –** (a) 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 losses. (b) 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 B upon the indemnity.
Agency with third persons	Section 226 provides for the enforcement and consequences of agent's contracts. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into, and the acts done by the principal in person. **Examples –** (a) 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; (b) 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. Section 227 provides that when an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority, is binding as between him and his principal. **Example –** A being owner of a ship and cargo, authorizes B to procure an insurance for `4,000/- on the ship. B procures a policy for `4,000/- 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. Section 228 provides that principal is not bound when excess of agent's authority is not separable. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction. **Example –** A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of `6000/-. A may repudiate the whole transaction.

Notice to agent	Section 229 provides that any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal. **Examples –** (a) 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; (b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.
Enforcement of contract by agent on behalf of principal	Section 230 provides that in the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal nor is he personally bound by him. Such a contract shall be presumed to exist in the following cases- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad; (2) where the agent does not disclose the name of his principal; (3) where the principal, though disclosed, cannot be sued.
Right of parties to a contract made by agent	Section 231 provides the right of parties to a contract made by agent not disclosed. If an agent makes a contract with person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal the same rights as he would have had as against the agent if the agent had been principal. If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfill the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract. Section 232 provides that where one man makes a contract with another, neither he knowing, nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract. **Example –** A, who owes `500/- to B, sells `1000/- worth of rice to B. A is acting as agent for C in the transaction, but B has neither 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. Section 233 provides that in cases where the agent is personally liable, a person

	dealing with him may hold either him or his principal, or both of them liable. **Example –** 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. Section 234 provides that when a person who has made a contract with an gent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterward hold liable the agent or principal respectively.
Liability of a pretended agent	Section 235 provides that a person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing. Section 236 provides that a person, with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his account. Section 237 provides that when an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts of obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority. **Example –** (a) A consigns goods for 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. (b) A entrusts B with negotiable instruments in blank. B sells them to C in violation of private orders from A. The sale is good.
Effect of misrepresentation or fraud by agent	Section 238 provides that misrepresentation made or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if sum misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents in matters which do not fall within their authority, do not affect their principals. **Examples –** (a) A, being B's agent to 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. (b) 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 pretended consignor.

PRACTICE MANUAL

Fill in the blanks:

1. Proposal is other called as_____.

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

3. Agreements of wagers are_____.

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

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

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

7. No consideration is necessary to create_____.

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

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

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

Choose the correct answer

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

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

2. The breach of contract may be-

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

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

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

4. A person may not become an agent-

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

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

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

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

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

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

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

State whether TRUE or FALSE

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

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

3. Electronic contracts are paperless contracts.

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

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

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

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

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

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

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

Model Questions

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

7. Write short notes on –

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

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

Answer:

Fill in the blanks

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

Choose the correct answer

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

State whether TRUE or FALSE

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

MTP Question:

MTP June 2019

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

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

Answer:

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

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

(i) When there is a duty to speak.

(ii) Where silence is equivalent to speech.

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

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

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

2(b)

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

MTP June 2019

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

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

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

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

MTP June 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

MTP June 2019

4. Write short notes any three of the following:

E contract

Answer:

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

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

MTP Dec 2018

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

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

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

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

Answer:

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfil the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisees, the representatives of all jointly must fulfil the promise. Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but ―joint and several‖. Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel anyone or more of the joint promisors to perform the whole of the promise. Section 43 deals with the contribution among joint promisors. The promisors may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares. As per the provisions of above sections,

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

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

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

MTP Dec 2018

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

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

Answer:

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

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

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

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

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

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

MTP June 2018

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

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

Answer:

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

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

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

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

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

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

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

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

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

MTP Jun 2018

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

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

Answer:

(i) Restoration of Goods

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

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

Section 160 provides that it is the duty of the bailee to return, or deliver, according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed has expired, or for the purpose for which they were bailed has been accomplished.

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

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

Section 163 provides that in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

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

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

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

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

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

MTP Jun 2017

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

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

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

Answer:

(A) (i) Discharge of a Surety

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

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

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

B. By conduct of creditor –

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

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

(iii) When creditor compounds with, gives time to, or agrees not to sue, principal debtor (Section 135)
A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

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

C. By invalidation of contract:
(i) Guarantee Obtained by Misrepresentation Invalid (Section 142) — Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid and thus discharge the surety to that extent.

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

(iii) Guarantee on Contract that Creditor shall not Act on it until Co-Surety joins (Section 144) — Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

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

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

MTP Jun 2017

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

Answer:

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

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

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

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

(2) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years.

(3) and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

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

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

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

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

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

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

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

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

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

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

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

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

MTP Dec 2017

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

Answer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MTP Dec 2017

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

Answer:

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

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

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

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

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

MTP June 2017

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

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of

the death of all promisees, the representatives of all jointly must fulfill the promise. Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but ―joint and several‖. Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel anyone or more of the joint promisors to perform the whole of the promise. Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisors to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares. As per the provisions of above sections,

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

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

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

MTP June 2017

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

Answer:

Under the following circumstances an agent is personally liable.

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

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

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

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

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

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

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

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

MTP June 2017

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

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

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

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

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

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

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

Revisionary Question

Revisionary Dec 2018

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

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

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

Answer:

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

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

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

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

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

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

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

Answer:

According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and credit or without surety‘s consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Thus, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Rajeev is liable as a surety for the loss suffered by the bank due to misappropriation of cash by Sudarshan during the first nine months but not for misappropriations committed after the reduction in salary.

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

Answer:

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

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

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

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

4. Remission means waiver: Section 63 of the Act deals with remission. It provides that ―every promisee may dispense with or remit wholly or in part, the performance of the promise made to him or may extend the time for such performance or may accept instead of it any satisfaction which it thinks fit. Thus the promisee can waive either in full or in part the obligation of the promisor or extend the time for performance.

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

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

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

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

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

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

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

Circumstances identified as quasi-contracts:

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

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

3. Obligation of person enjoying benefits of non-gratuitous act: Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.

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

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

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

Answer:

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

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

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

Answer:

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

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

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

Answer:

Restoration of Goods

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

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

Section 160 provides that it is the duty of the bailee to return, or deliver, according to the bailor‘s directions, the goods bailed without demand, as soon as the time for which they were bailed has expired, or for the purpose for which they were bailed has been accomplished.

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

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

Section 163 provides that in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

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

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

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

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

Answer:

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

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

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

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

Answer:

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

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

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

1. Beneficiaries under trust or charge

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

4. Agency

5. Assignee in case of insurance policy

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

Answer:

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

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

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

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

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

Revisionary June 2018

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

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

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

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

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

Effect of communication of acceptance:

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

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

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

Answer:

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

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

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

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

Answer:

Yes, Palash is bound to make good to Sanjay the amount so paid. Section 69 of the Indian Contract Act, 1872, provides that "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. In the given case Sanjay has made the payment of lawful dues of Palash in which Sanjay had an interest. Therefore, Sanjay is entitled to get the reimbursement from Palash.

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

Answer:

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

1. Agreement for trading with enemy

2. Agreement interfering with personal liberty

3. Agreement interfering with parental duties

4. Agreement interfering with marital duties

5. Agreement interfering with course of justice

6. Agreement for improper promotion or litigation

7. Agreement for suppressing prosecution

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

9. Marriage brokerage agreement

10. Agreement not to bid

11. Agreement to create monopolies or reduce competition

12. Agreement for sale of public offices or titles.

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

Answer:

The general rule states that:

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

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

The following are the exceptions to the above rule:

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

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

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

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

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

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

7. When he acts as a pretended agent

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

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

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

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

Answer:

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

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

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

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

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

31. Comment on the following:

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

Answer:

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

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

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

Answer:

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

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

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

Answer:

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

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

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

Answer:

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

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

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

Workbook Question

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

Answer:

The following are the requirements for a valid contract-

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

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

Answer.

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

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

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

Answer:

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

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

Types of consideration

Consideration may be of the following types-

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

Legal Rules Regarding Consideration:

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

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

Answer:

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

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

4. Gift actually made:

5. Creation of agency:

6. Charitable subscription

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

Answer:

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

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

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

1. Beneficiaries under trust or charge

2. Marriage settlement, partition or other family arrangements

3. Acknowledgement or estoppel.

4. Agency

5. Assignee in case of insurance policy

[b] Lapse of offer

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

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

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

Answer:

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

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

The following are ingredients of the e-contracts-

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

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

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

Answer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Answer:

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

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

Examples:

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

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

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

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

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

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

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

Answer:

As per section 17 of the Contract Act: "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

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

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

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

(iv) Any other act fitted to deceive;

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

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Does silence amount to fraud?

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

(i) When there is a duty to speak.

(ii) Where silence is equivalent to speech.

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

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

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

Effect of Fraud: According to section 19 when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true.

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

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

Answer:

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

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

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

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

• Section 68 – **Claim for necessaries supplied to person incapable of contracting, or on his account -** This section provides that if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied with another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person;

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

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

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

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

45. Explain the concept of Contract of Guarantee

Answer:

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

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

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

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

46. Explain the Difference between Indemnity and Guarantee

Answer:

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

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

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

Answer:

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

Modes of discharge of contracts:

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

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

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

Answer:

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

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

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

Difference between pledge and bailment

Section 172 of the Act define s a pledge to be the bailment of goods as security for payment of debt or performance of a promise whereas Section 148 provides that a bailment is the delivery of goods by one person to another person for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them.

49. Elucidate the Rights of principal with suitable example.

Answer:

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

Example –

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

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

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

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

Suggested Question

Suggested Dec 2018

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

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

Circumstances identified as quasi-contracts:

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

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

3. Sec-70-Obligation of person enjoying benefits of non-gratuitous act: Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.

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

5. Sec-72- Liability for money paid or thing delivered by mistake or by coercion: A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. In all the above cases contractual liability arises without any agreement between the parties.

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

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

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

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

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

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

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

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

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

Scanner Question:

53. Write explanatory notes on: 2008 - Dec

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

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

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

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

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

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

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

Answer:

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

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

Answer:
Undue Influence:

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

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

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

(ii) He holds some control over the other person

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

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

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

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

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

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

Answer:

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

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

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

• Offer is to be accepted;

• There shall be a lawful consideration;

• There shall an intention to create legal relations;

• The parties must be competent to contract;

• There must be free and genuine consent;

• The object ol the contract must be lawful;

• There must be certainty and possibility of performance.

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

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

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

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

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

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

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

Answer:
(i) Section 11 of the Contract Act reads "Every person is competent to contract who attains age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any Law to which he is subject."

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

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

(2 marks)

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

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

2. Active concealment of a fact by one having knowledge or belief of the fact.

3. A promise made without any intention of performing it.

4. Any other act fitted to deceive.

5. Any such act or omission as the law specially declares to be fraudulent.

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

(2 marks)

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

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

(2 marks)

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

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

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

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

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

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

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

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

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

68. 2010- Dec
(i) A counter offer constitutes an acceptance of an offer. **(2 marks)**

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

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

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

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

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

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

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

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

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

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

3. It is fraudulent;

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

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

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

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

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

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

74. 2011 - Dec

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

Answer:

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

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

A contract becomes void due to

(i) impossibility of performance

(ii) change *o*\ law or

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

75. 2012 - **June**

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

Answer:

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

Space to wrife important points for revision

76. 2012 - June

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

Answer:

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

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

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

77. 2012 - **Dec**

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

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

78. 2012- Dec

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

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

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

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

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

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

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

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

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

79. 2013- **June**

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

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

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

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

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

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

(In the following cases silence will amount to fraud)

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

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

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

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

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

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

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

83. 2017 - **June**

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

Answer:

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

(i) When there is a duty to speak.

(ii) Where silence is equivalent to speech.

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

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

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

84. 2017 - Dec

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

Answer:

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

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

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

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

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

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

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

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

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

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

85. 2008- Dec

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

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

Answer:

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

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

86. 2008- Dec

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

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

Answer:

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

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

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

87. 2009- June

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

Answer:

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

88. 2009- Dec

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

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

Answer:

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

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

89. 2009 - Dec

(i) On 30.11.09 Mr. Sham agrees to sell a painting to Mr. Ram4or ` 5,000/- but Mr. Sham died on 8.12.09. Mr. Sham's son claimed ` 10,00G/-. Can Mr. Ram obtain the painting at ` 5,000/-which was agreed to by Mr. Sham? (2 marks)

(ii) Mr. Sham informs Mr. Ram that Mr. Sham's estate is free from encumbrances. Mr. Ram buys the property fully relying on Mr. Sham. Subsequently it revealed that the estate was mortgaged. What will be the position of Mr. Ram? (2 marks)

Answer:

(i) The validity period of contract is not mentioned in the question. If Sham dies after the validity of contract period, no question of painting to Mr. Ram because the contract was already over during Sham's life time. Assuming that the contract was alive at the time of death of Sham, Mr. Ram can force the legal heirs of Sham to respect the contract and sell the painting at ` 5,000 as agreed to by Mr. Sham.

(ii) Mr. Ram can file suit against Mr. Sham for misinformation, fraud and cheating. He can obtain mortgage free estate from Mr. Sham. It is also questionable how could original registry be available with Mr. Sham because the authority keeps the original registry with him at the time of mortgage. Mr. Ram should have taken due care and diligence before relying on Sham's statement.

90. 2010- June
Mr. Roy sells by auction, to Mr. Paul a cow which Mr. Roy knows to be unsound. Mr. Roy says nothing to Mr. Paul about the cow's unsoundness. This is a clear case of fraud by Mr. Roy. (2 marks)

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

91. 2010- June
Mr. 'A' agrees that Mr. A shall sell Mr. B a house for ` 1,00,000 but if Mr. B uses the house for 'Gambling House' then Mr. B shall pay ` 1,50,000 for the same. Explain the legality. (2 **marks)**

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

92. 2010- **June**
A saved life of 'B', when 'B' was drowning. Later 'A' sued 'B' for remuneration/reward because saving life was the consideration received by 'B'. State based on Rules whether 'A' would succeed? (2 marks)

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

93. 2010 - Dec
Mr. X buys a ring from Mr. Y at a low price employing 'undue influence' and sells the ring to Mr. Z who purchased against consideration and without knowing of Mr. X's 'undue influence'. Can Mr. Y recover the ring-from Z? (2 marks)

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

94. 2010 - **Dec**
A. Das entered into contract to sing for B. Roy at a concert for `10,000/- which was received in advance. A. Das being too ill could not sing. B. Roy demanded compensation for loss of profit which he would have made if A. Das had been able to sing. State B. Roy's right. (2 marks)

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

95. 2011- **June**
Mr. Sadhu offers to sell his house to Mr. Sarkar at ` 221 lakh but by mistake makes the offer in writing for ` 212 lakh which was accepted by Mr. Sarkar. Can Mr. Sadhu plead the mistake as defence? (2 marks)

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

96. 2011- **June**
(i) Mr. Adarsh was due to perform on 20th February but on 17th February 2011 repudiated his obligation. On 25th February the Contract become illegal through a change in Law. Mr. Vasant the other Party requested you to give advice on action against Mr. Adarsh. (2 marks)

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

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

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

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

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

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

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

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

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

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

Answer:
The original proposal of A was altered by B. This amounts to death of original proposal. B's proposal is a counter offer which is to be treated as a fresh proposal. This is not a valid contract even if B agrees to accept the original terms because the original contract was dead when its terms were first altered.

101. 2013- June

Referring to a quarrel and disagreement between husband and wife, the husband agreed to execute and register a document in favour of his wife to transfer one of his properties to his wife. Later on husband refused. Whether wife can enforce? (3 marks)

Answer:

The wife will not succeed because the contract is without consideration. If the transfer is without consideration but there is an existence of mutual love and affection, such transfer is valid in the eyes of law. In the present case the transfer is due to quarrel and arguments and is without consideration, this does not fulfil the essentials of a valid contract.

102. 2013- Dec

Arun, Varun and Tarun are partners of software business and jointly promise to pay INR 60,000 to Karun. Over a period of time, Varun becomes insolvent, but his assets are sufficient to pay one-fourth of his debts. Tarun is compelled to pay the whole. Decide whether Tarun is required to pay whole amount to Karun in discharging joint promise? (3 marks)

Answer:

According to Section 43 of Indian Contract Act,1872 when two or more persons make a joint promise, promisee may, in absence of express agreement to the contrary compel any one or more for such joint promisors to perform the whole of the promise. Further, if any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in this case, Tarun is entitled to receive INR 5000 (one fourth of Varun share of debt) from Varun's assets and balance INR 27500 from Arun.

103. 2014- June

W offered to sell his house to M for ` 40 lakhs. Mreplied purporting to accept the offer and enclosed a cheque for ` 20 lakhs. He also promised to pay the balance amount in twenty equal installments. Examine the validity of the contract. (2 marks)

Answer:

Conditional acceptance is no acceptance at all. Acceptance of an offer must be absolute and unqualified i.e., it must conform to the offer. An acceptance, in order to be binding, must be absolute and unqualified [Sec. 7(1)] in respect of all terms of the offer, whether material or immaterial, major or minor. In the case provided, the acceptance is a qualified acceptance; hence it would not result in a valid contract.

104. 2014- Dec

W, the wife of H, who is lunatic, purchases a diamond set of` 10 lacs from a jeweller on credit. Referring to the provisions of the Indian Contract Act, 1872, decide whether the jeweller is entitled to claim the above amount from the property of H. (4 marks)

Answer:

• The problem relates to the provisions of quasi-contract. It is to be noted that minors, persons of unsound mind or lunatics and other disqualified persons are incompetent to contrac

• But, under the provisions of Section 68 of Indian Contract Act, 1872

"if necessaries are supplied to a person, who is incompetent to contract, the supplier is entitled to claim the reimbursement from the estate of such person".

• A supplier would also be entitled to recover the price of necessaries supplied to wives or minor child of the incompetent person, as he is legally bound to support them.

• Also necessaries would mean 'goods suitable to the condition in the life of such person' and not luxuries.

• Again person liability is not accrued for minors and lunatics; it is only their estate that would be liable. If there is no property nothing would be realizable.

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

• it is also to be noted that a person of unsound mind, who has intervals of sound mind can enter into a contract during such period.

• Thus the burden to prove that H is lunatic and he was of unsound mind when entered into the contract lies on the seller.

• In the given problem, the jeweler would not be entitled for the claim, as a diamond set worth `10 lakhs for the wife of H, is not a necessity and is surely a luxury.

105. 2015 - June

Abhay, UG degree student was induced by his lecturer to sell his brand new car to the later at less the purchase price to secure more marks in the University examination. Accordingly the car was sold. However, the father of Abhay persuaded him to sue his lecturer. State whether Abhay can sue against the lecturer? (3 marks)

(i) Anita and Binita are friends, Binita treats Anita during Anita's illness.
Binita does not accept payment from Anita for treatment and Anita promises Binita's son Sunit to pay him ` 12,000. Anita being in poor circumstances is unable to pay. Sunit sues Anita for the money. Can Sunit recover? (3 marks)

(i) Arvinda took a bet of 20,000 with Bannerjee that a certain horse would win the race. Arvinda and Bannerjee both residents of Kolkata. Arvinda borrowed ` 20,000 from his friend Chatterjee for this purpose. Arvinda lost the bet and paid ` 20,000 to Bannerjee. Can Chatterjee recover the loan amount from Arvinda? Give reasons. What would have been the difference had the transaction took place in Ahmedabad between the parties residing there? (3 marks)

Answer:
(b) (i) • Yes, Abhay can sue against his lecturer on the ground of influence under the provisions of the Indian Contract Act, 1872.

• A contract brought as a result of coercion, undue influence, fraud, misrepresentation would be voidable at the option of the person whose consent was caused.

• As per Sec. 19-A when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

• Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there-under, upon such terms and conditions as the Court may seem just.

(d) (i) • No, Sunit cannot recover the money from Anita. The agreement between Sunit and Anita is not a contract in the absence of consideration. In this case, Sunit's mother, Binita, voluntarily treats Anita during her illness.

• Apparently it is not a valid consideration because it is voluntary whereas cdnsideration to be valid must be given at the desire of the promisor-void Section 2(d).

• The question now is whether this case is covered by the exception given in Section 25(2) which *inter-alia* provides.

• "If it is a promise to compensate a person who has already

voluntarily done something for the promisor"

• Thus as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor.

• As Binita's son, Sunit to whom the promise was made, did nothing for Anita, So Anita's promise is not enforceable even under the exception.

(e) (i) • Yes, Chatterjee can recover the loan amount from Arvinda.

• The transaction between Arvinda and Chatterjee is a collateral transaction which is valid, though the main transaction between Arvinda and Bannerjee is void, being a wager.

• Had the transaction took place in Ahmedabad, Chatterjee could not have recovered the loan as in Ahmedabad the wager transactions are illegal and a transaction collateral to it is also void on the ground of illegality.

106. 2015- Dec

The father of a minor girl, Anu, entered into an agreement for her marriage with Vishal. Afterwards, Vishal refused to marry Anu. On attaining majority, Anu filed a suit against Vishai for damages for breach of promises to marry. Vishal contended that Anu cannot enforce the contract as she was not a party to the agreement between him and Anu's father. Is Vishal's contention valid? (3 marks)

Answer:

An agreement is made in connection with marriage, partition or other family arrangements, and a provision is made for the benefit of some person.

In such cases, a person, for whose benefit the provision is made in such family arrangements, can enforce the agreement even if he is not a party to it. '

It may, however, be noted that provision must be made for the benefit of the person who wants to enforce such marriage arrangements.

No, Vishal's consent is not valid.

The marriage agreement or other family arrangements where a provision is made for the benefit of some person can be enforced by the beneficiary even if he is not a party to the same.

107. 2015- Dec

X Father promised to pay his son Y a sum of ? One lakh if Y (son of X) passed CMA examination in the first attempt. Y passed the CMA examination in his first attempt, but X failed to pay the amount as promised. Y files a suit for recovery of the said amount. State along with reasons whether Y can recover the amount under the Indian Contract Act, 1872. (5 marks)

Answer:

• Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 10.

• According to the provisions there should be an intention to create legal relationship between the parties.

• Agreement of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced.

• This principal has been laid down in the case of *Balfour Vs. Balfour.*

• Accordingly, applying the provisions and the ease decision, in the case Y cannot recover the amount of Rupees one lakh from X for the reasons explained above.

108. 2016- Dec

A, aged 16 years, was studying in an engineering college. On 1 June, 2015 he took a loan of ` 2 Lakhs from B for the payment of his college fee and agreed to pay by 31s1 July 2016. A possesses assets worth ` 20 Lakhs. On due date, A fails to pay back the loan to B. B now wants to recover the loan from A out of his assets. Whether B would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872. (5 marks)

Answer:

The problem in question is covered under the exceptions. As per Section 68 of the Indian Contract Act, 1872 though a minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, this supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/tender is based on the principle of equity.

Hence, in the given case B will be entitled to recover the amount of loan given to A for payment of college fees from the property of A, the minor. Space to write important points for revision

109. 2017- Dec

A agreed to become an assistant for five years to B who was a doctor practicing at Chennai. It was also agreed that during the term of agreement A will not practice on his own account in Chennai. At the end of one year, A

left the assistantship of B and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether A could be restrained from doing so. (5 marks)

Answer:
According to the provisions of the Indian Contract Act, 1872, as contained - Section 27 any agreement through which a person is restrained from exercising a lawful profession or trade/business is void.
But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade.
Therefore, 'A' cannot be restrained by an injunction from doing so.

110. 2018- Dec
C is the wife of A. She purchased some sarees on credit from B. B demanded the amount from A. A refused. B filed a suit against A for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether B would succeed. (5 marks)

Answer:
Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied married agent, of her husband).
If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessaries.
But the legal presumption can be rebutted in the following cases:

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

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

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

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

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

111. Sunil, aged 16 years, was studying in a Medical College. On 1st March, 2017 he took a loan of ` 3 lakhs from Anil for the payment of his college fee and agreed to pay by 31st May, 2018. Sunil possesses assets worth ` 15 lakhs. On due date Sunil fails to pay back the loan to Anil. Anil now wants to recover the loan from Sunil out of his assets. Whether Anil would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.

112. 2013 - June
Write short notes on:

(i) Quasi contract (4 marks)

(ii) Discharge of contract (4 marks)

Answer:
(i) Quasi Contract:
Quasi contract is a fictitious contract in which the concerned parties do not intend to create a contract between them. In such contract, there is no regular offer and acceptance and no agreement between the parties, even then there exists a contract which is imposed by Court of law. Even in the absence of a contract, social relationships require certain duties to be performed by a certain persons. If a person finds some goods belonging to another person, he is required to return those goods to the actual owner even though there is no contract between the owner of goods and finder of goods. This is an example of quasi contract.
Quasi contract creates the same obligation (duty, responsibility, commitment) as the regular contract. Quasi contracts are based on the principles of equity, justice and good conscience.

Quasi contracts are also called Constructive contracts or Implied-in-law contracts.
The basic principle lying behind quasi contract is that no person should be allowed to gain something at the expense of some other person.
This type of contract is designed to remedy the cases of unjust enrichments or unjust benefits.
Features of Quasi contract:

1. It is imposed by law. It does not arise by offer, acceptance and agreement.

2. It is based on the duty of a party and not the promise of that party.

3. It is a right which is available not against the whole world, but against a particular person or persons only. In this respect it is similar to a regular contract.

4. It can be sued in a Court of law. This way it is also similar to regular contract.

(v) Discharge of Contracts: A contract can be discharged or terminated by any of the following eight ways

1.	By Performance or by Completion	The contract is completed on terms and conditions as stipulated in the agreement and it comes to an end after successful execution of all the items of contract. This is also called discharge by performance.
2.	By Mutual Consent	When the parties to the contract mutually agree to (a) by novation i.e. to substitute a new contract or (b) to withdraw and cancel it or (c) to alter or modify it (d) by remission i.e. reduction in performance required.
3.	By Doctrine of Frustration «	When a contract becomes impossible to be performed at a future date after the agreement, it is called supervening impossibility or Doctrine of Frustration. If the impossibility existed at the time of agreement, it falls under the category of impossibility of performance and the contract is void ab-initio. Subsequent to agreement, the impossibility of performance may be due to the following reasons: (a) Non existence or non occurrence of a particular state of things; (b) Breaking out of war; (c) Illegality of performance at a subsequent date; e.g. insolvency etc (d) By death or disablement of parties. (e) Destruction of subject matter e.g. A house is to be let out as per agreement and that house is destroyed in fire or earthquake.
4.	By Breach of contract	When there is a default on the part of one party regarding its performance in the contract, there is a breach of contract. It can be actual breach or anticipatory breach. When one party leaves the contract before its due date of completion, it is called anticipatory breach. The suffering party is entitled to compensation for damage.
5.	By Lapse of time	Contract should be completed before the application of Law of limitation which states that the contract should be performed before the expiry time limit set for it. In other words the contract should be performed before it is barred by law of limitation. In such a case there is no remedy is left for the contractor (promisee).
6.	By Operation of law	When the client dies or goes insolvent, there is discharge by operation of law.
7.	On the ground of accord and satisfaction	Any party is satisfied in any manner by the other party, in lieu of contract, this is called discharge by accord and satisfaction.
8.	By noncooperation of client	If the client does not provide reasonable facilities or opportunities for performance to the contractor, the contract is assumed to be discharged.

113. 2017 - Dec
Write short note on the following term:
Contingent Contract **(5 marks)**

Answer
Section 31 defines 'contingent contract' as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. The following are the essentials of contingent contract-

• Uncertainty and futurity of the event to which it is related;

• Uncertain future event must be collateral to the contract.

An agreement to sell unspecified half share in the property is not contingent contract as held in *Harbakhash Singh Gill V. Ram Rattan'AIR 1988 P&H 60. In 'Bhairon Prasad Chaurasiya V. Smt. Tara Devi'-AIR 1980 All.* 36
it was held that an agreement to sell a house is by no means a 'contingent contract'. An agreement to purchase a property is neither a contingent contract nor can it be characterized as a mere possible right or interest. It was contended that the contract is a 'contingent contract' because of either of the parties to the contract may refuse to perform his part on the contract. The Court held that the argument is fallacious. Such a contingency would not be a collateral to a contract.
An agreement to purchase a property is neither a 'contingent contract' nor can it be characterized as a mere possible right of interest. Reciprocal promises are not contingent contracts as they cannot be said to be collateral to each other. The law allows the enforcement of a contingent contract after the event upon which it was contingent has happened. The contingency which is the essence of a condition must be distinguished from mere futurity. An obligation is not to be classified as conditional because its performance is not yet due.
A contingent contract need not necessarily be independent on any external event. It may be conditional on the voluntary act or the future conduct of one of the parties or a third person.

114. 2018 - Dec
Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi-contracts by the Indian Contract Act, 1872. **(10 marks)**

Answer:
Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are called as - quasi contracts as they create some obligations as in the case of regular contracts.
Quasi-contracts are based on the principles of equity, justice and good conscience.
The salient features of quasi-contracts are:

Firstly, such a right is always a right to money and generally, though not always, to a liquidated sum of money
Secondly, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and
Thirdly, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a" contractual right.

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

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

3. Obligation of person enjoying benefits of non-gratuitous Act (Sec.-70): Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.

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

5. Liability for money paid or thing delivered by mistake or by coercion (Sec.-72): A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.
In all of the above cases contractual liability arises without any agreement between the parties.

115. 2013 - June
X agrees to pay Y a sum of money if Y marries Z. Z however marries F, who died subsequently. After the death of F, Z marries Y. Whether X is legally bound to pay the agreed sum of money to Y? Comment. (2 marks)

Answer:
Any contract of restraining the marriage is invalid. The original contract was dead at the time when Z married F. X is not legally bound to pay any sum to Y.

(116) 2017 - June
Mr. P and Mr. Q bet as to whether there would be rain on a particular day of December. Mr. P promises to pay ` 5,000 to Mr. Q if there is rain on that day and Mr. Q promises an equal amount to Mr. P if there is no rain on the day. Suppose, there is no rain on that specific day of December and Mr. Q filed a suit for recovery of ` 5,000 from Mr. P. Can Mr. Q recover the amount under Indian Contract Act, 1872? (6 marks)

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

(117) 2018 - June
Mr. X, a businessman has been fighting a long drawn litigation with Mr. Y, another businessman. To support his legal campaign Mr. X enlists the services of Mr. Z, a legal expert, stating that an amount of ` 10 lakhs would be paid, if Mr. Z does not take up the brief of Mr. Y. Mr. Z agrees, but at the end of the litigation Mr. X refuses to pay.
Decide whether Mr. Z can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872. (5 **marks)**

Answer:
The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either • illegal or void. Further Contract Act specifies that any agreements in restraint of trade, marriage, legal proceedings etc. are void agreements.

Thus Mr, Z cannot recover the amount of ` 10 lakhs promised by Mr. X because it is an illegal agreement and cannot be enforced by law.

(118) 2010- Dec
How the surety is discharged from liability? (4 marks)

Answer:
The surety (guarantor) is discharged when:

(a) Under any of the following conditions, a surety is discharged from liability:
(i) A new contract is made in place of the old contract;

(ii) Surety (guarantor) is dead ;

(iii) Surety gives notice that he is no longer surety (notice of revocation)

(iv) The contract itself becomes void.

(b) From the conduct of the creditor :

(i) Change in terms of contract between creditor and debtor without the consent of surety;

(ii) Release or discharge of the debtor by the creditor on any grounds;

(iii) if the creditor loses any security given by surety, the surety is discharged with the value of such security.

(119). 2011- Dec

Mr. Barick owes Banker a debt guaranteed by both Mr. Arora and Mr. Bora. The Banker releases Mr. Arora one of the co-sureties. Hence the remaining i.e. other surety (Mr. Bora) is also released automatically. Offer views. (2 marks)

Answer:

When a loan is guaranteed by more than one person, all persons (guarantors) are responsible for the payment of loan. If bank releases one person from guarantorship, that does not mean that the other guarantors are automatically discharged of guarantee. In the present case, Mr. Bora is still a guarantor and he is not discharged from his surety ship.

(120) 2012- June

In the event of principal debtor being a minor, creditor can not recover his money, from the surety-offer your views. (2 marks)

Answer

The statement is true. As the liability of minor is nil, the liability of the surety of minor would also be nil. There are contrary judgments about this matter. Some decisions of some courts say that the surety is liable to pay the creditor if the principal debtor who is a minor, fails to pay. There are some judgments which state that as the liability of a minor is nil, the surety can not be forced to pay if minor debtor fails to pay.

(121). 2012 - Dec

A surety is discharged from his liability where there is failure of Consideration between the Creditor and the Principal Debtor in a Contract of Guarantee. (2 marks)

Answer:

According to the Indian Contract Act, 1872, consideration is an essential element of any contract. If there is no consideration there is no contract. In the present case, there is a failure of consideration between the creditor and the principal debtor, hence the surety has no responsibility towards such contract because it is no contract at all. In such case the surety is discharged.

(122). 2014 - June

In a contract of Guarantee, A surety is discharged from his liability where there is a failure of consideration between the creditor and the principal debtors. Comment. (2 marks)

Answer:

According to the provisions of the Indian Contract Act,1872, presence of a lawful consideration is an essential element for a valid contract. Therefore, where in a contract of guarantee, there is a failure of consideration between the creditor and the Principal Debtor, the surety is discharged.

(123). 2014 - Dec

State the circumstances in which surety is not discharged. (3 marks)

Answer:

As per provisions of Indian Contract Act, 1872 Surety is not discharged in following circumstances

(a)	When Agreements made with third person to give time to principal debtor (Section 136)	Where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged.
(b)	Creditor's Forbearance to Sue (Section 137)	Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other .remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.
(c)	Release of One Co-Surety (Section 138) *t*	Where there are co-sureties, a release by the creditor of one of them does not discharge the others: neither does it free the surety so released from his responsibility to the other sureties.

(124). 2008- Dec

BEE owes 10,000/- to CEE. Amount was guaranteed by GEE. Said debt becomes payable on 25.10.07. CEE does not sue BEE. Hence due to delay GEE is automatically discharged from his surety ship.-Comment. (2 marks)

Answer:
False: Gee is not automatically discharged from his suretyship just because CEE does not sue BEE unless such provision is expressed in the guarantee agreement. GEE still remains guarantor for BEE to CEE.

(125). 2009- June
'A' executed a guarantee in favour of State Bank of India as Security for a loan to 'B'. Later 'A' contended that the guarantee was not enforceable as it was not supported by consideration as he was not paid guarantee commission. Is 'A's stand correct in law? (2 marks)

Answer:
Lawful consideration is an essential component of a contract of guarantee. Sufficiency of consideration is not required and it is not necessary that something'must have been done for the benefit of the Guarantor. Anything done or any promise made for the benefit of the principal debtor is a sufficient consideration to the surety/guarantor for giving the guarantee.

(126). 2009- Dec
Statesman publishes at the request of Mr. D.D. a libel upon Mr. S.S.,Mr. D.D. agrees to indemnify the Statesman the consequences of the publication if any. Mr. S.S. sued Statesman to pay damages. Statesman paid ` 2,00,000 to Mr. S.S. and demanded the amount from D.D. who refused. State legal provision. (2 marks)

Answer:
(Libel means defamation) Statesman has done a criminal act against Mr. S.S. When one person employs another to do an act which is criminal, the employer is not liable to the agent. There is no right way to do the wrong thing. Mr. D.D. is not liable to pay. Statesman is accountable for its criminal act and it does not matter who instigated it to do the crime.

(126). 2010- Dec
Mr. Bose is indebted to Mr. Das and Mr. Ghosh is the
surety. When Mr. Bose & Mr. Ghosh refused to pay, Mr. Das sued the surety (Mr. Ghosh) who paid the amount & cost as per orders of the Court. Can the surety recover the amount from Mr. Bose? (2 **marks)**

Answer:
Yes, It is implied condition in the contract of guarantee that the guarantor can recover the amount from the debtor. In this case the debtor Mr. Bose did not pay the amount to his creditor Mr. Das. Mr. Das went to Court and as per order of the Court the guarantor Mr. Ghosh paid the debt. Mr. Ghosh can recover the said amount from Mr. Bose.

(127). 2011- Dec

Mr. Ray made a contract with Mr. Basu to grow vegetables on Mr. Ray's . land and to deliver to Mr. Basu at a fixed rate. Mr. Karmakar guarantees Mr. Ray's performance of this contract. Mr. Basu diverts stream of water which is necessary for production thereby prevented Mr. Ray to grow vegetables. Mr. Ray fails to supply as per contract. Hence Mr. Basu sues Mr. Karmakar (guarantor), for non-performance. Advise. (2 marks)

Answer:
As per Section 67 of the Indian Contract Act, 1872, contracts need not be performed when promisee neglects or refuses to afford the promisor reasonable facilities for performance of promise. Mr. Karmakar is no longer liable on his guarantee as Mr. Basu violated the contract by not supplying stream of water to Mr. Ray.

(128). 2012- Dec
Mr A, Mr B & Mr C are Sureties to Mr D for the sum of INR 6000 lent to Mr E. Mr E failed to repay on due date. Mr A one of the sureties, disagreed to Pay. Advise whether 'A' is right. (2 marks)

Answer:
All sureties are equally responsible for the debt. As the debt was for INR 6000, and there are three sureties each surety will be responsible for one-third of the amount i.e. for INR 2000. Any surety cannot escape from this responsibility.

(129). 2013- June
Mr. Mitra guarantees payment to Mr. Basu to the extent of INR 50,000 for time to time supply of paper by Mr. Basu to Mr. Chandan. Basu supplies paper to Chandan more than the value of INR 50,000 and Mr. Chandan pays. Later on Mr. Basu, at the request of Chandan, supplies paper valued INR 60,000. This time Chandan fails to pay. What action Basu can take against Mitra? (2 marks)

Answer:
In this case, guarantee given by Mr. Mitra is a continuing guarantee (Sec.129) and accordingly Mr. Mitra being guarantor of INR 50,000, he is liable to Mr. Basu to the extent of INR 50,000 only. Mr. Basu can recover the balance amount from Chandan.

(130). 2014- June
'A' contracts with 'B' for a fixed price to construct a house for 'B' with stipulated time, 'B' would supply the necessary material to be used in the construction. 'C' guarantees A's performance of the contract. 'B' does not supply the material as per the agreement. Is 'C' discharged from his liability? (2 marks)

Answer:
• In this case C is surety for A's performance. Performance of A depends on the supply of material by B. B does not supply the required material which makes A unable to perform his part of contract.

• According to the Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

• In the given case, B omits to supply the necessary material.

• Hence, C is discharged from his liability.

(131). 2009 - June
Write explanatory note on:
Bailee's particular lien. (4 marks)

Answer:
Bailee's particular lien means bailees right to retain the goods given to him by the bailor till the time of payment of his service charges by the bailor. As soon as the payment is made by the bailor, the lien comes to end. Where the bailee has in accordance with the purpose of the bailment rendered any
service involving the exercise of labour or skill in respect of the goods bailed he has in the absence of a contract to the contrary, a right to retain such goods until he received due remuneration for the services he has rendered in respect of them.

(132). 2010 - June
Sale and Bailment are same. Do you agree? (4 marks)

Answer:

No, they are not same. There are many points of difference between them as given below

Sale	Bailment
A sale involves transfer of ownership and physical transfer of property.	Bailment involves physical transfer of property, ownership is not disturbed.
Parties involved are called seller and buyer.	Parties involved are called bailor and bailee.
The property is never taken back after transfer. Contract is over when buyer takes the possession of property after payment.	Property is taken back as per terms of bailment. Contract is not over when bailee takes the possession as the property is to be returned back to the bailor.

(133). 2011- June

State the different kinds or types of Bailment. (4 marks)

Answer:
Bailment may be classified into Six kinds as follows:

(i) Deposit: Delivery of goods by one man (Bailor) to another (Bailee) to hold them on his behalf.

(ii) Commodatum : Goods lent to a friend or relatives gratis (i.e. free of charge) for use by friends or relatives.

(iii) Hire : i.e. goods lent to the bailee for hire i.e. in return for payment of money.

(iv) Pawn or Pledge: Deposit of goods with another by way of security for money borrowed.

(v) Delivery of goods for being transported or something to be done about them by the bailee for reward.

(vi) Delivery of goods for being transported or something to be done about them by the bailee without reward.

(134). 2012- Dec

Goods seized by Customs Authority is a case of bailment under Indian Contract Act—offer your views.

(2 marks)

Answer :
When the goods are transferred to any person, the person having the possession is responsible for such goods as it is a case of bailment. In this case the possession of goods is with the customs authority, therefore bailment exists as per the Indian Contract Act, 1872.

(135). 2014 - June

Deposit of money in a bank does not constitute bailment. Justify. (2 marks)

Answer:
Bailment is concerned with only moveable goods. Money is not included in the category in moveable goods. As such deposit of money is not bailment.

(136). 2016 - Dec

What are the rights of a finder of goods under the Indian Contract Act, 1872? (4 marks)

Answer:

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

1.	Right of lien	The finder of goods has a right of lien over the goods for his expenses. As such he can retain the goods against the owner until he receives compensation for trouble and expenses incurred in preserving the goods and finding, out the owner. But he has no right to sue the owner for any such compensation (Section 168).
2.	Right to sue for reward	The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward. (Section 168).

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

(137). 2019 - June

State the essential elements of a contract of bailment. Distinguish between the contract of bailment and contract of pledge. (9 marks)

(138). 2012 - June

Saxena lets to Mr. Menon for hire a horse for his own riding but Mr. Menon drives the horse in his carriage. What action Saxena can take? (2 marks)

Answer:

• Saxena is bailor because he has given his horse to Menon (bailee) under the condition that Menon would use the horse for his own riding.

• This is a case of bailment where one person (bailor) gives his goods to another person (bailee) under certain conditions.

• The bailment may be cancelled or terminated if the conditions of bailment are not satisfied at the option of bailor.
• In this case it is at the option of bailor Saxena to cancel or continue the bailment as Menon has not followed the conditions of bailment.

(139). 2012- Dec

On 01.11.2012 Mr. Barun kept his cow under the custody of Mr. Tarun for one month and paid INR 1000 for maintenance. On 15.11.2012, the cow gave birth of a calf. On 30.11.12 Tarun returned the cow retaining the calf. (2 marks)

Answer:

• According to Indian Contract Act, The goods given as bailment still belongs to giver (bailor) and any profit or income arising out of goods belongs to the bailor Barun.

• Hence bailee (with whom the goods are kept) should not only give the cow but also the calf. He (Tarun) should not keep the calf with him.

(140.) 2013- Dec

Arvind hires a carriage of Govind and agrees to pay INR 500 as hire charges. The carriage is unsafe though Govind is unaware of it. Arvind is injured and claims compensation for injuries suffered by him. Govind refuses to pay. Discuss the liability of Govind. (3 marks)

Answer:

• Problem asked in the question is based on the provisions of the Indian Contract Act, 1872, as contained in the Section of 150. The section provides that if the goods are bailed for hire, the bailer is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

• Accordingly, applying above provisions in the given case Govind is responsible to compensate Arvind for the Injuries sustained even if he was not aware of the defects in the carriage.

(141). 2015 - June

Mr Jatin found a wrist watch in shopping mall. He made all efforts to trace the true owner of the wrist watch but could not find him. He sold the same to Nitin, who buys without any knowledge that Jatin is merely a finder. Is sale by Jatin to Nitin valid? Decide. (3 marks)

Answer:
When thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand, to pay the lawful charges of the finder, the finder may sell it:
The finder of goods can sell the goods only in the circumstances permitted under section 169 of the Indian Contract Act, 1872 which are as under:

(a) If the goods are in danger of perishing or losing the greater part of their value, the finder can sell the goods.

(b) If the lawful charges of the finder in respect of the goods amount to a minimum of two-third of the value then the finder can sell the goods.
In the present case, the sale by the finder will not be valid as it does not seem to fall in any of the above stated circumstances. Hence, the sale by Jatin to Nitin is invalid.

(142). 2013- June
On expiry of stipulated period, the pledgee can sell the pledged goods to any person. (2 marks)

Answer:
Pawnee/Pledgee cannot sell. Pawnee/Pledgee is to give notice to pawner indicating his intention to sell. Notice of sale is essential even where the agreement specially excludes it (Sec. 176). Hence, this is void and unenforceable.

(143). 2011- June
Mr. Saxena, a Pledgee incurred extra-ordinary expense for preservation of goods pledged. Pledgee refused to return such goods till the payment is settled, can he retain? (2 marks)

Answer:
The pledgee is entitled to recover the expenses incurred by him from the pledger, but he has no right to retain the goods for recovery of such expense. If the expenses are not paid, he can go to Court to recover the same.
Space to write important points for revision

(144). 2015 - June
Nishant lends a sum of ` 8,000 to Prashant on the security of ten shares of XYZ Ltd. on 1sl Jan, 2015. On 25,h March, 2015, XYZ Ltd. has issued one Bonus share. Prashant return the loan amount of ` 8,000 with interest to Nishant. But Nishant returns only ten shares which were pledged and refuse to give one bonus share. Advise, Prashant in the light of the provisions of the Indian Contract Act, 1872. (3 marks)

Answer:
• As per the provisions of Section 163(4) of the Indian Contract Act, 1872 "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions any increase or profit which may have accrued from the goods bailed".
• Applying the provisions to the instant case, the bonus share is an increase on the shares pledged by Prashant to Nishant.

• So Nishant is liable to return the shares along with bonus share and hence Prashant the bailor, is entitled to receive the bonus share also from Nishant *(Motilal VS Bai Marti).*

(145). 2015 - Dec
Kavita falsely representing herself as the wife of a millionaire, takes a necklace from a jeweller's shop for the approval of her husband. She pledges if with a pawn broker who in good faith and without notice of the fraud pays her ` 1,00,000. Can the jeweller recover the necklace from the pawn broker? (3 marks)

Answer:
• The necklace cannot be recovered from the pawn broker.

• The jeweller intended to contract with the person present before him.

• He was not mistaken about his identity but only about his attributes.

• His intention was to sell to the person present i.e., there was consent, but it was vitiated by fraud.

• Hence the contract is voidable and not void.

• In case of a voidable contract, before it is repudiated, one can pass a good title to the pledgee or purchaser in good faith. Thus, in the instant case, the pledge is valid.

• It may be noted that in the given case if Kavita would have falsely represented herself as the wife of a certain well known millionaire; it would have been a case of mistake as to the identity of person contracted with, rendering the agreement *void ab-initio,* thereby enabling the jeweller to recover the necklace from the pawn broker.

(146). 2009 - Dec
Write short note : (v) Agency of necessity. **(4 marks)**

Answer:
Agency of necessity:

• When someone is forced by circumstances to act as an agent of principal without his authority, it is agency of necessity.

• Suppose a horse is sent by a person to another person who does not take delivery of the horse at the destination.

• The station master has to feed the horse and take care of it.

• It is held that the station master becomes agent of the principal out of necessity and the principal must compensate him.

Following conditions must be satisfied for 'agency of necessity.

(i) It was not possible or reasonable to obtain permission or instruction of the principal.

(ii) The action taken was with bona fide intention.

(iii) The agent has taken all reasonable and necessary steps to safeguard the interest of principal.

(147). 2011 - Dec
Write short note on.
(i) Agency by ratification; **(4 marks)**

Answer:
Ratification means the subsequent adoption and acceptance of an act originally done without instruction or authority. Ratification may be expressed or implied i.e. it may be expressed in words or by conduct.

• Ratification is an approval of a previous act or conduct.

• It implies the adoption by the principal of an act done by an agent in his behalf, but without his authority.

•' Section 196 of the Contract Act provides that "where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts.

• If he ratifies them, the same effects will follow as if they had been performed by his authority."

• Thus ratification relates back to the date when the act was done by the agent. It is simply adoption of the old contract.

• It only endorses the unauthorised act of the agent as authorised. Worded differently, it is equivalent to previous authority.

(148). 2008- Dec

An agent retained all the stock and other papers of a principal until his pending dues are cleared by the principal. State legal position. (2 marks)

Answer:
True : The agent has lien (lien means possession, practical control) over stock and other papers of the principal if his fee/commission is not paid to him. Unless some contrary measures exist in the agreement, the agent has right to retain property, papers or stock of principal until the amount due to him is paid to him or accounted for or adjusted in any manner in his accounts.
Space to write important points for revision

(149). 2010 - June

Discuss the position of Agent appointed by minor. (2 marks)

Answer:
Minor is not supposed to take decisions. He can neither enter into a contract nor can he appoint agent. Such agents will be deemed to be not appointed at all and their appointment will be null and void in the eyes of law.

(150). 2018 - June

State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of the principal ? (10 marks)

Answer:
The general rule of the Indian Contracts Act, 1872 states that:

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

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

The following are the exceptions to the above rule:
1. Foreign Principal: When agent acts for sale or purchase of goods for a principal resident abroad i.e., foreign principal.

2. Personal liability by agreement: Where it is expressly provided in the contract that the agent shall be personally liable.

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

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

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

6. Agent's liability: When the agent exceeds his authority or commits a breach of warranty of authority.

7. Pretended Agent: When he acts as a pretended agent.

8. Mistake or Fraud: When he receives or pays money by mistake or fraud.

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

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

(151). 2009- June
State the rights and liabilities of 'A' in the following cases:

(i) 'A' is owner of the factory building and also of product. 'A' authorises 'B' to take an insurance policy on factory building for ` 2 lacs. 'B' procures a policy for ` 2 lacs on factory and another policy for ` 2,000 on products. 'A' refused to reimburse to 'B'. (2 marks)

(ii) 'A' authorises 'B' to buy 500 pieces of Sunlight soap for him but 'B buys 500 pieces Sunlight and 200 pieces Henko at a total price of ` 5,000. 'A' refused to pay to 'B'. (2 marks)

Answer:
(i) In this case "B" was not authorized to pay the premium for a policy for the products.
Since both the policy and the value can be separated, A is bound to pay the premium for the policy on factory buildings but not the premium for the policy on the products.
(ii) In this case, the agent i.e. "B" does more than what he is authorized to do and the amount of ` 5,000/- can not be separated between Sunlight and Henko. "A" may repudiate and say no to the whole transaction. As per Contract Act, the principal is not bound when excess of Agent's Authority is not separable and measurable. It is at the option of A whether to approve it or reject it.

(152). 2010- June
Mr. Tarafdar instructs Mr. Kinkar, a merchant, to buy a ship for him. Mr. Kinkar employs a renowned ship surveyor to choose a seaworthy ship for Mr. Tarafdar. The ship turns out to be un seaworthy and is lost. Mr. Kinkar, who is agent is responsible. (2 marks)

Answer:
Mr. Kinkar is not responsible as Mr. Tarafdar is also supposed to see the seaworthiness of the ship before buying. Mr. Kinkar is acting as agent and he has all the lights to appoint another person as agent as this is a case of technical expertise. Mr. Kinkar cannot be charged of negligence as he has appointed a renowned firm for the survey.

(153). 2010 - Dec
Mr. Roy consigns some fruits to his agent Mr. Paul at Mumbai with direction to send those fruits to Mr. Kar at Chembur. Mr. Paul sold fruits, which were spoiling at Mumbai below cost price without prior consent of Mr. Roy. Whether Mr. Paul's action was valid? (2 marks)

Answer:
• -Mr. Paul's action is justified. He has taken this action in the interest of his principal and to reduce loss to the principal.
• It is simple understanding that the fruits should be sold if they are likely to become bad.
• An agent has authority to act on behalf of his principal in emergency with normal reasoning and prudence.

(154). 2012- June
Mr. A being an agent of Mr. P (who is owner of land) agrees for money to obtain for Mr. B a lease of P's land but without the knowledge of 'P'. Discuss the validity of this agreement. (2 marks)

Answer:
When an act is done by one person on behalf of another but without his knowledge or authority, the later may elect either to ratify or disown such Act (sec 196 of The Indian Contract Act, 1872).
In the instant case if a lease is granted by "A" in favour of B on the fact coming to the knowledge of the P, he may either decide to ratify the lease agreement or'to disown it.
If the P decides to ratify the lease, then it would be a valid contract.

(155). 2012 - June

Jayanta, the owner of a car handovers the car with key to Partha (the mercantile agent) to sell the car at a price not below INR1,00,000. Partha (the agent) sold at INR 90,000 to Amitava who buys in good faith and without notice of reserve price/or any fraud. Partha misappropriated the money also. Jayanta filed a suit against Amitava to recover the car. Advise with reasons whether Jayanta can succeed. (3 marks)

Answer:

Amitava has purchased the goods in good faith and he was not aware that the agent has not complied with the conditions of sale as set by the owner Jayanta. In this case the agent Partha has not fulfilled the condition that the sale should not be below INR 1,00,000 but this is not the fault of buyer Amitava as he was not aware of the agreement between original owner Jayanta and his agent Partha.

Jayanta cannot recover the car from Amative as sale by his agent is a valid sale. Jayanta can sue against his agent Partha but cannot sue against Amative.

(156). 2015 - Dec

Bimal at Durgapur under instruction from Amal of Kolkata contracts with Kamal to deliver electric oven to him. Amal does not send the oven to Bimal and Kamal sues Bimal for breach of contract. Bimal informs Amal of the suit and as per Amal's advise Bimal defend the suit. Bimal compelled to pay damages, costs and incurs expenses Amal refuse. Advise Bimal. (3 marks)

Answer:

• As per Section 222 of the Indian Contract Act, 1872, the principal is bound to indemnify an Agent against the consequences of all Lawful acts done by the agent in exercise of authority conferred upon him.

• Sec. 223 further provides where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons.

• In view of above, Amal is liable to Bimal for such damage, cost & expenses.

SALE OF GOODS ACT, 1930

Introduction	The law relating to sale or purchases goods was dealt with by the Indian Contract Act, 1872, prior to 1930. During the year 1930, Sections 76 to 123 of the Indian Contract Act were repealed. A separate Act viz., Sale of Goods Act, 1930 was passed. The Sale of Goods Act, 1930 lays down the special provisions governing the contract of sales of goods. The provisions of the Indian Contract Act are also applicable to the contracts for the sale of goods unless they are inconsistent with the express provisions of the Sale of Goods Act.
Applicability	This Act extends to whole of India, except Jammu and Kashmir.
Effective date	This Act came into force from 01.07.1930.
IMPORTANT DEFINITIONS	**Goods** Section 2(7) defines the term 'goods' as every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.
Future Good	Section 2(6) defines the phrase 'future good' as goods to be manufactured or produced or acquired by the seller after making of the contract of sale.
Document of title to goods	Section 2(4) defines the phrase 'document of tile to goods' as including bill of lading dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.
Insolvent	Section 2 (8) provides that a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;
Mercantile agent	Section 2(9) defines the phrase 'mercantile agent' as a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.
Specific goods	Section 2(14) defines the phrase 'specific goods' as goods identified and agreed upon at the time a contract of sale is made;
CONTRACT OF SALE	As per section 4(1) "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price." According to Section 4(2), a contract of sale may be absolute or conditional.
Essentials of a Contract of Sale	The following are thus the essentials of a contract of sale of goods: (**1**) **Bilateral contract**: It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself. (**2**) **Transfer of property:** The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.

	(3) Goods: The subject matter must be some goods. **(4) Price or money consideration:** The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale. **(5)** All essential elements of a valid contract must be present in a contract of sale.
Agreement to sell	As per Section 4(3), where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. Section 4(4) provides that an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.
Contract of sale how made	Section 5(1) provides that a contract of sale is made by- • an offer to buy or sell goods for a price; and • the acceptance of such offer. the contract may provide for the immediate delivery of the goods or immediate payment of the price of both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed. Section 5(2) provides that a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.
Subject matter of contract	The subject matter of the contract – • existing or future goods; • goods perishing before making contract; • goods perishing before sale but after agreement to sell.
Existing or future goods	Section 6 provides that- • The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods. • There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen. • Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.
Goods perishing before making contract	Section 7 provides that where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.
Goods perishing before sale but after agreement to sell	Section 8 provides that where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement

	before the risk passes to the buyer, the agreement is thereby avoided.
Ascertainment of price	Section 9(1) provides that the price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties. Section 9(2) provides that where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.
Agreement to sell at valuation	Section 10(1) provides that where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided. If the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor. Section 10(2) provides that where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.
Stipulations to time	Section 11 provides that unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Difference between contract of sale and agreement to sell.

Basis	Contract of sale	Agreement to sell
Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled.
Type of contract	It is an executed contract.	It is an executory contract.
Type of goods	Sales takes place only for existing and specific goods.	Future and contingent goods.
Risk of loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in the possession of the buyer
Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer	The seller can sue for damages only in case of breach by the buyer
General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller	It gives a right to the buyer against the seller to sue for damages
Insolvency of the buyer	In the absence of lien over the goods the seller is to return the goods to the Official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of the seller	The buyer, becoming the owner, is entitled to recover the same from the Official receiver or assignee	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

Transfer of Ownership	The Sections 18 to 25 of the Sale of Goods Act, determine when the property passes from the seller to the buyer.

Rules for Ascertaining Passing of Property:	The provisions are discussed hereunder: **(A) Goods must be ascertained (section18)** As per section 18 in a contract for sale of unascertained goods, the property in the goods does not pass to the buyer unless and until the goods are ascertained. **(B) Intention of the parties for such transfer (section 19)** As per section 19(1), in a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Section 19(2) provides that the intention of the parties is ascertained from the terms of the contract, the conduct of the parties and the circumstances of the case. When intention of the parties cannot be ascertained, rules contained in section 20-24 are required to be applied for ascertaining the time of transfer of property and the same are discussed hereunder: **(i) Specific goods (Secs 20 to 22)** **(a) Specific goods in a deliverable state (Section 20)** In an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. (Sec 20). Goods are said to be in deliverable state when they are in such a state that the buyer would under the contract is bound to take delivery thereof. **(b) Specific goods to be put into a deliverable state (Sec. 21)** Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof (Sec 21). **(c) Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (Section 22)** If there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof. (Sec 22). **(ii) Unascertained goods (Sec 23)** (a) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made. **(b) Delivery to carrier:** Where, in pursuance of the contract, the seller delivers

	the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods for the purpose of the contract. **(iii) Goods on approval or 'on sale or return' (Sec 24)** In order to push up the sales generally there is a practice of sending goods to the customer with the clear cut understanding that he has option to approve or return the goods within a given period. This type of sales is known as "approval or sale or return" In such cases, the transaction does not culminate into sale until the goods are approved by the customer and the property in goods still remains with the seller. When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property therein passes to the buyer— **(a)** When he signifies his approval or acceptance to the seller **(b)** When he does any other act adopting the transaction. **(c)** If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. **Reservation of Right of Disposal (Sec 25)** Section 25(1) – Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. **Sec 25(2) –** Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of landing or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal. **Sec 25(3) –** Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt, to secure acceptance to payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange, and, if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.
Effect of Destruction of Goods:	As per section 26 of the Act, unless otherwise agreed, the goods remains at the seller's risk until the property therein is transferred to the buyer, but when the property in goods is transferred to the buyer, the goods are at the risk of the buyer whether delivery of the goods has been made or not. Thus, risk prima facie passes with property unless otherwise is agreed by the parties. In other word, the parties may in the contract have different stipulation as to time of passing of risk irrespective of what is provided in section 26 of the Act.
Risk Prima Facie	The rule regarding risk passes with the property enshrined in section 26 is subject

Passes with Property: Exceptions	to the following exceptions: (a) This rule of 26 will apply only if there is no agreement to the contrary. It is permissible for the parties to provide in the agreement that although the property does not pass, the risk passes and they may fix the point of time when it is to pass. (b) Where delivery has been delayed through the fault of either party the buyer or the seller, the goods are at the risk of the party at fault as regards any loss which might not have been occurred but for such fault. The goods are at the risk of the party who is at fault in delay of delivery. (c) If there is a custom in that particular trade that the risk does not pass with property, in such a case the risk will pass as per the custom. (d) Risk and property may be separated by agreement between the parties. Section 40 of the Act also provides that where the seller agrees to deliver the goods at his own risk at a distant place from where they are, the buyer shall unless otherwise agreed, not take any risk of deterioration in the goods incidental to the transit. This will be discussed subsequently in the paragraph dealing with delivery of goods.
Transfer of Title by Non-Owners of Goods:	As per section 27 of the Sale of Goods Act, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded from denying the seller's authority to sell. A buyer cannot get good title to the goods unless he purchased the goods from a person who is the owner thereof and sell them under the authority or with the consent of real owner. "Nemo dat qui non habet" means that no one can give what he himself does not have. It means a non owner cannot make valid transfer of property in goods. If the title of the seller is defective, the buyer's title will also be subject to same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to protect the real owner of the goods. Though this doctrine seeks to protect the interest of real owners, but in the interest of the trade and commerce, there must be some safeguard available to a person who acquired such goods in good faith for value. Accordingly the Act provides the following **exceptions** to this doctrine which seek to protect the interest of bona fide buyers: **1. Sale by a mercantile agent:** If a mercantile agent is authorized by the owner of the goods to sell on his behalf, then such sale shall be valid. In such cases, the buyer can acquire a good title of the goods. This exception will be implemented subject to fulfilment of the following conditions:- • The person must be in possession of goods or documents of title to the goods in his capacity as a mercantile agent and with the consent of his owner • The person must sell the goods while acting in the ordinary course of business. • The buyer must act in good faith without having any notice, at the time of

contract that the mercantile agent has no authority to sell the goods.

2. Transfer of title by Estoppels: This exception is based on the principle of personal estoppels. Sometime, the real owner may lead the buyers by virtue of his conduct or words or by act to believe that the seller is the owner of the goods or has the authority to sell them. In such case, he may not thereafter deny the seller's authority to sell.

3. Sale by a joint owner: As per Section 28, it there are several joint owners of goods, one of them if has sole possession of the goods by permission of the co-owners, then the property in goods is transferred to any person who buys them from such joint owner. In order to apply this exception, following conditions must be fulfilled.

• One of the several owners must be in sole possession of the goods.

• The joint owner must have permission of co-owners.

• The buyer must purchase goods in good faith.

• The buyer should not have notice regarding the matter that the seller has no authority to sell.

4. Sale by person in possession under voidable contract: - According to the Section 29 a person in possession of goods under a voidable contract which is not rescinded, can transfer a good title to the buyer. The buyer should purchase the goods in good faith and without notice of the seller's defective title.

5. Sale by seller in possession after sale: - Under Section 30 (1) it is laid down that where a person has sold goods but he continues in possession of goods or of the documents of title to the goods, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, the person can get a good title to them. In order to apply this exception, the seller must be in possession after sale of goods and there must be delivery or transfer of the goods or documents of title by the seller.

6. Sale by buyer in possession after sale:- Under Section 30 (2), it is laid down that where a buyer having bought or having agreed to buy goods, obtain with the consent of the seller the possession of the goods or documents of title to the goods, he can resell the goods to a bona fide transfer. If at the time of this sale, buyer was not in possession, then this exception will not apply.

7. Sale by an unpaid seller:- If the unpaid seller has exercised right of lien or stoppage in transit, resells the goods, then the buyer acquires a good title as against the original buyer, even though the resale is not justified in the circumstances.

8. Exception under other Acts:- According to some Acts, a person although he is not the owner of the goods may sell the goods and pass a better title than he himself has. As for example-

(i) Under Section 169 of the Indian Contract Act, a finder of the goods has the right to sell.

(ii) Under Section 176 of the Indian Contract Act, a pawnee of goods has the right

	to sell the goods pawned subject to satisfying some conditions. (iii) In certain cases, a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate, custom officers for dues and duties remaining unpaid etc. (iv) A person who takes a negotiable instrument in good faith and for value becomes the true owner even if he takes it from a thief or finder.
CONDITIONS AND WARRANTIES	Section 12(1) provides that a stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
Condition [Section 12(2)]	A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. A condition in a contract of sale of goods is of fundamental nature for breach of which the buyer can repudiate the contract.
Warranty [Section 12(3)]	A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. **Differences between Condition and Warranty** S.No. | Condition | Warranty 1. | A condition is a stipulation which is essential to the main purpose of the contract. | A Warranty is a stipulation which is collateral to the main purpose of the contract. 2. | The aggrieved party can repudiate the contract of sale in case there is a breach of a condition | The aggrieved party can claim damages only in case of breach of a warranty. 3. | A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contended with damages only | A breach of a warranty, con not be treated as a breach of a condition.
When condition to be treated as warranty?	Section13 provides that where a contract of sale is- • subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.; • not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect. Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.
Remedies Available to the Buyer for Breach of Conditions	(a) Affected party may claim refund of price and reject the goods; (b) Elect to treat breach of condition as breach of warranty and claim damages or compensation;

	(c) When the affected party treat, breach of condition as breach of warranty he cannot repudiate the contract but claim damages only; (d) No remedy is available when the fulfilment of condition is excused by law by means of impossibility or otherwise 13(3).
Consequences of Breach of Warranty:	**(a)** The breach of warranty gives right to a claim for damages but not to reject the goods and treat the contract as repudiated. **(b)** Buyer may sue for damages. **(c)** No remedy is available if the fulfilment of warranty becomes impossible by law.
Implied conditions are of the following types:	**(i) Condition as to title [Sec 14(a)]** In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is— • an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass. **(ii) Sale by description (Sec 15)** Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description, and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. Goods are sold by description when they are described in the contract such as MP Atta, Dehradun Rice, Kasmiri Rajama, Amul butter and the buyer contracted relying on such description of goods by the seller. **(iii) Condition as to quality or fitness (Sec 16)** As per Sec 16 of the Sale of Goods Act, the buyer is supposed to satisfy himself about the quality of goods he purchased and is also charged with the responsibility of seeing that the goods suit the purpose for which they were purchased by him. Later on if the goods does not turn out to be as per his purpose, the seller cannot be asked to compensate him. This is based on the famous doctrine of CAVEAT EMPTOR which means 'let the buyer beware'. However, there are some exceptions to this which are as under: **(a)** Where the buyer, expressly or by implication, makes it known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably be fit for such purpose. However, in the case of a contract for the sale of a specified article under its patent or other trade name, there are no implied conditions as to its fitness for any particular purpose. **(b)** Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. However, if the

buyer has examined the goods, there shall be no implied conditions as regards defects which such examination ought to have revealed.

In order to apply the implied condition as to merchantability the following requirements must be satisfied.

(i) the seller should be dealer in goods of that description;

(ii) the buyer must have not opportunity to examine the goods or there must be some latent defect in the goods which would not be apparent on reasonable examination of the same.

It may be noted the term merchantability has not been defined in the Act. As per English Sale of Goods Act, goods of any kind are merchantable quality if they are as fit for the purpose or purposes for which goods of that kind are commonly brought as it is reasonable to expect having regard to any description applied to them, the price and all other relevant circumstances.

(c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In some cases the purpose for which the goods are required may be ascertained from the acts and conducts of the parties to the sale or from the nature of the description of the article purchased. For example if a hot water bottle is purchased, the purpose for which it is purchased is implied in the thing itself. In such a case the buyer need not tell the seller the purpose for which the bottle is purchased. Similarly if a thermometer is purchased in common usage, the purpose of thermometer is well known, the buyer need not tell the seller.

(d) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

(iv) Sale by sample (Sec 17)

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

In the case of a contract for sale by sample there is an implied condition –

• That the bulk shall correspond with the sample in quality.

• That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

• That the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the sample

(v) In case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Implied warranties are of following types:

The implied warranties are as under:

	(i) Warranty of quiet possession [Sec.14 (b)] If the buyer in any way is disturbed from enjoying the quiet possession of goods purchased because of seller's defective title, the buyer can claim damages from seller. It is a warranty that neither the seller shall nor shall anybody claiming under a superior title or under his authority interfere with the quite enjoyment of the superior title or under his authority interfere with the quite enjoyment of buyer. **(ii) Warranty of freedom from encumbrances [Sec.14(c)]** The buyer is also entitled to additional warranty that the goods are free from any charge or right of any third party, not declared or known to the buyer. It is presumed that the goods are free of third parties charges, if it is otherwise the buyer is entitled to claim damages from the seller. **(iii) Warranty as to quality or fitness by usage of trade**: An implied warranty as to quality or fitness for a particular purpose may be annexed by usage of trade. **(iv) Warranty to disclose dangerous nature of goods:** Where a person sell goods knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.
DOCTRINE OF CAVEAT EMPTOR	The term "caveat emptor" is a Latin word which means "let the buyer beware". This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. The doctrine of caveat emptor is embodied in Section 16 of the Act which states that "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale". In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. The principle was applied in the case of Ward v. Hobbs, (1878) 4 A.C. 13, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer's own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer's duty to satisfy himself regarding the health of the pigs. Exceptions: Section 16 lays down the following exceptions to the doctrine of Caveat Emptor: **(1)** Where the seller makes a false representation and the buyer relies on it. **(2)** When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same. **(3)** When the buyer, relying upon the skill and judgement of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.

	(4) Where goods are bought by description from a seller who deals in goods of that description.
PERFORMANCE OF CONTRACT OF SALE	Chapter IV of the Act describes the procedure for performance of the contract of sales. Section 31 provides that it is the duty of the seller to deliver the goods and the buyer to accept and pay for them, in accordance with the terms of the contract. The performance of contract involves the following- • Payment and delivery are concurrent conditions; • Delivery; • Buyer's right of examining the goods; • Acceptance of goods; • Buyer's liability
Payment and delivery are concurrent conditions	Section 32 provides that the delivery of the goods and payment of the price are concurrent conditions unless otherwise agreed. • The seller shall be ready and willing to give the possession of the goods to the buyer in exchange for the price. • The buyer shall be ready and willing to pay the price in exchange for the possession of the goods.
Delivery	Section 33 provides that the delivery of goods sold may be made- • by doing anything which the parties agree; or • which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf; Section 35 provides that the seller of goods is not bound to deliver them until the buyer applies for the delivery apart from any express contract.
Part delivery	Section 34 deals with the effect of part delivery. A delivery of part of goods, in progress of the delivery of the whole, has the same effect as a delivery of the whole for the purpose of passing the property in such goods. If a delivery of part of the goods is done with an intention of severing it from the whole, then it does not operate as a delivery of the reminder.
Rules as to delivery	Section 36 provides rules for the delivery as detailed below: • Apart from any contract, goods sold are to be delivered • at the place at which they are at the time of the sale; and • goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell; or • if not then in existence, at the place at which they are manufactured or produced; • Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them

	within a reasonable time; • Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless until such third person acknowledges to the buyer that he holds the goods on his behalf; This shall not affect the operation of the issue or transfer of any document of title to the goods; • Demand or tender of delivery may be treated as ineffectual unless made at reasonable hour; • Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.
Delivery of wrong quantity	The transfer of goods, in a sale, is expected to be delivered as agreed to in the contract. If there is variation in the quantity of goods delivered, the following action may be taken by the buyer- • Section 37(1) provides that where the sellers delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them. If the buyer accepts the goods so delivered he shall pay for them at the contract rate; • Section 37(2) provides that where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and the reject the rest. Or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate; • Section 37(3) provides that where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the reject or may reject the whole; • Section 37(4) provides that the provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.
Instalment deliveries	Section 38(1) provides that the buyer of the goods is not bound to accept the delivery of goods by installments unless otherwise agreed to between both the parties. Section 38(2) provides that where there is a contract for the sale of goods to be delivered by stated installments which are to be separately paid for and- • the seller makes no delivery or defective delivery in respect of one or more installments; or • the buyer neglects or refuses to take delivery of or pay for one or more instalments it is a question in each case, depending on the terms of the contract and circumstances of the case as to whether the breach of contract is- • a repudiation of the whole contract; or • whether it is severable breach giving rise to a claim for compensation

	but not to treat the whole contract as repudiated.
Delivery to carrier or wharfinger	Section 39(1) provides that if the seller is authorized or required to send the goods to the buyer, through a carrier whether it is named by the buyer or not or delivery of the goods to a wharfinger for safe custody, the delivery of goods to such a carrier or wharfinger shall be deemed to be a delivery of the goods to the buyer. Section 39(2) provides that the seller shall make contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and other circumstances of the case. If the seller omits so to do and the goods are lost or damaged in the course of transit or whilst in the custody of the wharfinger, the buyer – • may decline to the treat the delivery to the carrier or wharfinger as a delivery to himself; or • may hold the seller responsible for damages. Section 39(3) provides that where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure the seller shall give such notice to the buyer as may enable him to insure them during their sea transit. If the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.
Delivery of goods at a distant place	Section 40 provides that where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.
Buyer's right of examining the goods	According to Section 41, the buyer is having right to examine the goods, which have not been examined by him previously before acceptance. The examination of the goods by the buyer is for the purpose of ascertaining whether they are in conformity with the contract. The seller is also bound to afford an opportunity to the buyer for examining the goods for the purpose of ascertaining whether they are in conformity with the contract.
Acceptance	Section 42 provides that the buyer is deemed to have accepted the goods- • when he intimates to the seller that he has accepted them; or • when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller; or • when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.
Return of rejected goods	Section 43 provides that where goods are delivered to the buyer and he refuses to accept them, the buyer is not bound to return them to the seller. It is sufficient if he intimates to the seller that he refuses to accept them.
Liability of the buyer	Section 44 provides that where the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not within a reasonable time take delivery of the goods he is liable to the seller any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods. The rights of the seller shall not be affected by this section

	where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.
Unpaid seller	According to Section 45(1), the seller of the goods is deemed to be 'unpaid seller' within the meaning of this Act- • when the whole of the price has not been paid or tendered; • when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise; Section 45(2) defines the term 'seller' as including any person who is in the position of a seller as for instance an agent of the seller to whom the bill of lading has been endorsed or a consignor or agent who has himself paid, or is directly responsible for the price.
Rights of an Unpaid Seller against the Goods	According to Section 46, an unpaid seller's right against the goods are: (a) A lien or right of retention (b) The right of stoppage in transit. (c) The right of resale. (d) The right to withhold delivery **(a) Right of Lien** (Sections 47-49 and 54) An unpaid seller who is in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the payment or tender of the price in cases where: (i) the goods have been sold without any stipulation as to credit; or (ii) the goods have been sold on credit, but the term of credit has expired; or (iii) the buyer becomes insolvent. The lien depends on physical possession. The seller's lien is possessory lien, so that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges. A lien is lost – (i) When the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods; (ii) When the buyer or his agent lawfully obtains possession of the goods; (iii) By waiver of his lien by the unpaid seller **(b) Stoppage in transit (Sections 50-52)** The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and

retaining possession until payment or tender of the price.

The right to stop goods is available to an unpaid seller

(i) when the buyer becomes insolvent; and

(ii) the goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:

(i) If the buyer obtains delivery before the arrival of the goods at their destination;

(ii) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;

(iii) If the carrier wrongfully refuses to deliver the goods to the buyer.

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.

The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller's claim to the carrier or other person having control of the goods. On notice being given to the carrier, he must redeliver the goods to the seller who must pay the expenses of the re-delivery.

The seller's right of lien or stoppage in transit is not affected by any sale on the part of the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a bona fide purchaser for value is valid against the seller's right.

(c) Right of re-sale (Section 54):

The unpaid seller may re-sell:

(i) where the goods are perishable;

(ii) where the right is expressly reserved in the contract;

(iii) where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time. If on a re-sale, there is a deficiency between the price due and amount realised, he is entitled to recover it from the buyer.

If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.

(d) Rights to withhold Delivery:

If the property in the goods has passed, the unpaid seller has right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

Rights of an unpaid seller against the buyer
An unpaid seller in addition to his rights against the goods has the following rights against the buyer personally

1. Suit for price: [Sec. 55]
Where the property in goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay the price, the seller can sue the buyer for price.

2. Suit for damages for non-acceptance: [Sec. 56]
Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller can sue him for damages for non-acceptance of the goods.

3. Suit for repudiation:
Where the buyer repudiates the contract before the date of delivery, the seller may wait till the date of delivery or may treat the contract as cancelled and sue for damages for breach.

4. Suit for interest: [Sec. 61]
Where there is specific agreement between the seller and the buyer regarding interest on the price of goods, the seller may claim it from the date when payment becomes due. If there is no specific agreement, the interest is payable from the date notified by the seller to the buyer.

Buyer's Remedies against Seller for Breach of Contract

A buyer also has certain remedies against the seller who commits a breach. These are:

1. Suit for Damages for Non-Delivery [Section 57]- When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. This is in addition to the buyer's right to recover the price, if already paid, in case of non-delivery.

2. Suit for price- Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.

3. Suit for specific performance [Section 58]-
When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods. The court orders for specific performance only when the goods are specific or ascertained and an order for damages would not be an adequate remedy. Specific performance is generally allowed where the goods are of special significance or value e.g. a rare paining, a unique piece of jewellery, etc.

	4. Suit for Breach of Warranty [Section 59]- Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods. The buyer may, (a) set up the breach of warranty in extinction or diminution of the price payable by him, or (b) sue the seller for damages for breach of warranty. **5. Repudiation of contract before the due date [Section 60]** Section 60 provides that where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach. **6. Suit for interest** The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed. In the absence of a contract to the contrary, the court may award interest, to the buyer, in a suit by him for the refund of the price in a case of a breach on the part of the seller, at such rate as it thinks fit on the amount of the price from the date on which the payment was made.
AUCTION SALE	Section 64 provides that in the case of a sale by auction- • where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale; • the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract his bid; • a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bit at the auction; • where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer; • the sale may be notified to be subject to a reserved or set up price; • if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer. Section 64 does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer. In other words, all that happens at the fall of the hammer or at the announcement of the closure of the sale in other customary

	manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.
EFFECT OF TAX [Section 64A]	In the event of any tax being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulations as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such good tax- paid where tax was chargeable at that time. **(a)** if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition, and **(b)** if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer made deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.

PRACTICE MANUAL

Fill in the blanks

1. 'Goods' under Sale of Goods Act is _____ property.

2. The contract of sale is an _____contract.

3. A warranty is a stipulation _____ to the main purpose.

4. In an agreement to sale, the transfer of property in the goods is to take place at a _____ time.

5. When the property is transferred to the buyer the goods are at the _____ risk whether the delivery has been made or not.

6. The seller of the goods is deemed to be _____ when the whole of the price has not been paid.

7. The unpaid seller has the right of _____ on the goods for the price while he is in possession of them.

8. The contract of sale is not _____ by the mere exercise by unpaid seller of his right of lien or stoppage in transit.

9. Where no time is fixed for the acceptance of goods, the measure of damage is the difference between the _____ price and the market price on the date of refusal by the buyer to accept the goods.

10. If the buyer or his agents obtains delivery of the goods before their arrival at the appointed destination, the transit is at an _____.

Choose the correct answer

1. Which one of the following is not the feature of 'agreement to sale'?
(a) It is an executor contract;
(b) Sales takes place for existing and specific goods;
(c) The seller can sue for damages only in case of breach by the buyer;
(d) It gives a right to the buyer against the seller to sue for damages.

2. Which one of the following is the subject matter of the contract?
(a) Existing or future goods;
(b) Goods perishing before making contract;
(c) Goods perishing before sale but after agreement to sell;
(d) Any of the above

3. Which is not the circumstance in which the transit of the goods is at end?
(a) If the buyer or his agents obtains delivery of the goods before their arrival at the appointed destination;
(b) Where the earlier or other bailee wrongfully refuses to deliver the goods to the buyer or his agents in that behalf; **(c)** If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them;
(d) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agents in that behalf.

4. Find out the right of the unpaid seller from the following-
(a) A lien on the goods for the price while he is in possession of them;
(b) A right of resale as limited by the Act;
(c) In case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them.
(d) All the above.

5. Which one of the following is correct in regard to risk with property?
(a) Risk is involved on both the seller and the buyer;
(b) Where the delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault;
(c) Both (a) and (b);
(d) None of the above.

State whether TRUE or FALSE
1. In a contract of sale the property in the goods is transferred from the seller to the buyer.
2. In an 'agreement to sale' the buyer is entitled to recover the same from the Official Liquidator in case of insolvency of the seller.
3. A condition is a stipulation essential to the main purpose of the contract.
4. In a sale by sample an implied condition is that the bulk shall correspond with the sample in quality.
5. Unless otherwise agreed, the goods remain at the buyer's risk until the property is transferred to the buyer.
6. The seller of the goods is not bound to deliver them until the buyer applies for the delivery.
7. The buyer of the goods is not bound to accept the delivery of goods by installments unless otherwise agreed.
8. If the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer cannot sue to seller damages for non delivery.
9. In an auction sale the sale may be noticed to be subject to a reserved or set up price.
10. The buyer is not to reject to goods where there is a breach of warranty by the seller.

Model Questions

1. What are the differences between 'contract of sale' and 'agreement to sale'.
2. When conditions are to be treated as warranty?
3. Under which circumstances the buyer can obtain the good title?
4. Explain the provisions relating to delivery of goods.
5. What are the rights of unpaid seller against the goods?
6. Give the picture of effects of stoppage of goods in transit.
7. Write a note on auction sale.
8. What are the remedies available for breach of warranty?
9. For what purposes suits may be filed by either of the parties for breach of contract?
10. Discuss the provisions on the re-selling of goods.

Answers:

Fill in the blank

1. Moveable;
2. Executed;
3. Collateral;
4. Future;
5. Buyer's
6. Unpaid seller;
7. Lien;
8. Rescinded;
9. Contract;
10. End.

Choose the correct answer
1. B;
2. D;
3. C;
4. D;
5. C

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

MTP Question:

MTP June 2019
Question: 1 Discus Buyer's remedies against Seller for Breach of Contract.

Answer:
A buyer also has certain remedies against the seller who commits a breach. These are: 1. Suit for Damages for Non-Delivery [Section 57]- When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. This is in addition to the buyer's right to recover the price, if already paid, in case of nondelivery.

2. Suit for price- Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.

3. Suit for specific performance [Section 58]- When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods. The court orders for specific performance only when the goods are specific or ascertained and an order for damages would not be an adequate remedy. Specific performance is generally allowed where the goods are of special significance or value e.g. a rare paining, a unique piece of jewellery, etc.

4. Suit for Breach of Warranty [Section 59]- Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods. The buyer may,

(a) set up the breach of warranty in extinction or diminution of the price payable by him, or

(b) sue the seller for damages for breach of warranty.

5. Repudiation of contract before the due date [Section 60]
Section 60 provides that where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

6. Suit for interest
The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed.
In the absence of a contract to the contrary, the court may award interest, to the buyer, in a suit by him for the refund of the price in a case of a breach on the part of the seller, at such rate as it thinks fit on the amount of the price from the date on which the payment was made.

MTP Dec 18
Question: 2 Explain the differences between Sale and Agreement to Sell

Answer:
Differences between Sale and Agreement to Sell

Basis	Sale	Agreement to sell
Transfer of property	The property in the goods passes from buyer to seller	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled
Type of Contract	It is an executed contract	It is an executor contract
Types of goods	Sales take place only for existing and specific goods	Future and contingent goods
Risk of Loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in possession of the seller	If the goods are destroyed, the loss falls on the seller despite the goods are in possession of the buyer.
Breach of contract	The seller can sue the buyer for the price and for damages in case of breach by the buyer	The seller can sue for damages only, in case of breach by the buyer
General and Particular property	It gives the buyer a right to enjoy the goods as against the world at large including the seller.	It gives a right to the buyer against seller to sue for damages
Insolvency of the buyer	In absence of lien over the goods the seller is to return the goods to the official receiver or the assignee. He is entitled to get the dividend declared by the official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of seller	The buyer becoming the owner is entitled to recover the same from the official receiver or assignee.	The buyer cannot claim the goods but may receive the dividend declared by the official receiver or assignee.

Question: 3 K the owner of a Fiat car wants to sell his car. For this purpose he hands over the car to M, a mercantile agent for sale at a price not less than `100, 000. The agent sells the car for `75, 000 to B, who buys the car in good faith and without notice of any fraud. M misappropriated the money also. K sues B to recover the car. Decide given reasons whether K would succeed.

Answer:
The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied :
(a) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
(b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
(c) The buyer should act in good faith.
(d) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, M, the agent, was in the possession of the car with K's consent for the purpose of sale. B, the buyer, therefore obtained a good title to the car. Hence, K in this case, cannot recover the car from B. A similar decision, in analogous circumstances, was taken in Folkes v. King

MTP June 18
Question:4 X, Y and Z were joint owners of a bus and possession of the said bus was with Y. P purchased the bus from Y without knowing that X and Z were also owners of the bus. Decide in the light of provisions of the Sale of Goods Act, 1930, whether the sale between Y and P is valid or not?

Answer:
This problem is based on Section 28 of the Sale of Goods Act, 1930 which lays down an exception to the general rule that a person cannot transfer a better title than that he himself possesses. A person who is one of joint owners may transfer a better title that he possesses. Section 28 provides that – ―if one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell‖.

The given problem fulfills all such requirements. X, Y and Z are joint owners of the bus. Y had sole possession of it. In such a case if P has purchased the bus from Y in good faith without notice at the time of sale that Y had no authority to sell, then P acquires good title and becomes full owner although Y was not the full owner.

Question:5 Transfer of title by non-owners State the exceptions to it.

Answer:
Transfer of title by non-owners - Exceptions As per section 27 of the Sale of Goods Act where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded from denying the seller's authority to sell.

A buyer cannot get good title to the goods unless he purchased the goods from a person who is the owner thereof and sell them under the authority or with the consent of real owner.

The Sale of Goods Act, 1930 provides the following exceptions to this doctrine which seeks to protect the interest of bona fide buyers:

1. Sale by a mercantile agent: If a mercantile agent is authorized by the owner of the goods sell on his behalf, then such sale shall be valid. In such cases, the buyer can acquire a good title of the goods. This exception will be implemented subject to fulfilment of the following conditions:-

- he person must be in possession of goods or documents of title to the goods in his capacity as a mercantile agent and with the consent of his owner
- The person must sell the goods while acting in the ordinary course of business
- The buyer must act in good faith without having any notice, at the time of contract that the mercantile agent has no authority to sell the goods.

2. Transfer of title by Estoppels
This exception is based on the principle of personal estoppels. Sometime, the real owner may lead the buyers by virtue of his conduct or words or by act to believe that the seller is the owner of the goods or has the authority to sell them. In such case, he may not thereafter deny the seller's authority to sell.

3**. Sale by a joint owner**
It there are several joint owners of goods, one of them if has sole possession of the goods by permission of the co-owners, then the property in goods is transferred to any person who buys them from such joint owner. In order to apply this exception following conditions must be fulfilled.
- One of the several owners must be in sole possession of the goods.
- The joint owner must have permission of co-owners.
- The buyer must purchase goods in good faith.
- The buyer should not have notice regarding the matter that the seller has no authority to sell.

4. Sale by person in possession under voidable contract
According to the Section 29 a person in possession of goods under a voidable contract which is not rescinded, can transfer a good title to the buyer. The buyer should purchase the goods in good faith and without notice of the seller's defective title.

5. Sale by seller in possession after sale
Under Section 30 (1) it is laid down that where a person has sold goods but he continues in possession of goods or of the documents of title to the goods, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, the person can get a good title to them. In order to apply this exception, the seller must be in possession after sale of goods and there must be delivery or transfer of the goods or documents of title by the seller.

6. Sale by buyer in possession after sale
Under Section 30 (2), it is laid down that where a buyer having bought or having agreed to buy goods, obtain with the consent of the seller the possession of the goods or documents of title to the goods can and resells the goods to a bona fide transfer. If at the time of this sale, buyer was not in possession, then this exception will not apply.

7. Sale by an unpaid seller
If the unpaid seller has exercised right of lien or stoppage in transit, resells the goods, then the buyer acquires a good title as against the original buyer, even though the resale is not justified in the circumstances.

8. Exception under other Acts
According to some Acts, a person although he is not the owner of the goods may sell the goods and pass a better title than he himself has. As for example-
(i) Under Section 169 of the Contract Act, a finder of the goods has the right to sell.
(ii) Under Section 176 of the Contract Act, a pawnee of goods has the right to sell the goods pawned subject to satisfying some conditions.
(iii) In certain cases, a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate, custom officers for duties remaining unpaid etc.
(iv) A person who takes a negotiable instrument in good faith and for value becomes the true owner even if he takes it from a thief or finder.

MTP Dec 17
Question: 6 X, Y and Z were joint owners of a bus and possession of the said bus was with Y. P purchased the bus from Y without knowing that X and Z were also owners of the bus. Decide in the light of provisions of the Sale of Goods Act, 1930, whether the sale between Y and P is valid or not?

Answer:
This problem is based on Section 28 of the Sale of Goods Act, 1930 which lays down an exception to the general rule that a person cannot transfer a better title than that he himself possesses. A person who is one of joint owners may transfer a better title that he possesses. Section 28 provides that – "if one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell".

The given problem fulfills all such requirements. X, Y and Z are joint owners of the bus. Y had sole possession of it. In such a case if P has purchased the bus from Y in good faith without notice at the time of sale that Y had no authority to sell, then P acquires good title and becomes full owner although Y was not the full owner**.**

MTP June 17
Question:7 K the owner of a Fiat car wants to sell his car. For this purpose he hands over the car to M, a mercantile agent for sale at a price not less than `100, 000. The agent sells the car for `75, 000 to B, who buys the car in good faith and without notice of any fraud. M misappropriated the money also. K sues B to recover the car. Decide given reasons whether K would succeed.

Answer:
The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as

such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied :

(a) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
(b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
(c) The buyer should act in good faith.
(d) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, M, the agent, was in the possession of the car with K's consent for the purpose of sale. B, the buyer, therefore obtained a good title to the car. Hence, K in this case, cannot recover the car from B. A similar decision, in analogous circumstances, was taken in Folkes v. King.

MTP June 17
Question: 8 Explain the differences between Sale and Agreement to Sell

Answer:
As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Suggested Dec 17
Question: 9 What do you understand by "Caveat-Emptor" under the sale of Goods Act, 1930? What are the exceptions to this rule?

Answer:
Caveat emptor' means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: -Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale

The rule of caveat emptor does not apply in the following cases:
1. Fitness for buyer's purpose: Where the buyer, expressly or by implication, makes know to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. (Section 16(1)).

2. Sale under a patent or trade name: In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1)).

3. Merchantable quality: Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. (Section 16(2)).

4. Usage of trade: An implied warranty/or condition as to qualify or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3)). 5. Consent by fraud: Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

(b) Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, possessor or endorsee cannot receive the amount of Instrument. Hence, normally X would not be entitled to sue Y as X has obtained instrument through fraud.

However, as per section 53, a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z (who is a holder in due course), X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence, X will succeed.

Revisionary Question:

Revisionary Dec 2018
Question:10 Write a short note on auction sale.

Answer:

Auction sale

Section 64 provides that in the case of a sale by auction-

- where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;

- the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract its bid;

- a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bit at the auction;

- where the sale is not notified to the subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

- the sale may be notified to be subject to a reserved or set up price;

- if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Section 64 does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer. In other words, all that happens at the fall of the hammer or at the announcement of the closure of the sale in other customary manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.

Question:11 Justify the following:
On 30.11.13 Mr. Sham agrees to sell a painting to Mr. Ram for ` 5,000 but Mr. Sham died on 8.12.13. Mr. Sham's son claimed ` 10,000, Can Mr. Ram obtain the painting at ` 5,000 which was agreed to by Mr. Sham?

Answer:

A contract of sale of goods is a contract where by the seller transfer or agrees to transfer the property in goods to the buyer for price.

A contract may provide for payment by installment or that the delivery or payment or both shall be postponed.

Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth.

In this case although the contract was not executed but in view of above, Ram, may enforce 'Sham's heirs for the painting at ` 5000 which was agreed to by 'Sham'.

Question:12 On 30.11.13 Mr. Sham agrees to sell a painting to Mr. Ram for ` 5,000 but Mr. Sham died on 8.12.13. Mr. Sham's son claimed ` 10,000, Can Mr. Ram obtain the painting at ` 5,000 which was agreed to by Mr. Sham?

Answer:
A contract of sale of goods is a contract where by the seller transfer or agrees to transfer the property in goods to the buyer for price.

A contract may provide for payment by installment or that the delivery or payment or both shall be postponed.

Question:13 Mr. Ram gives diamond to Mr. Sham on "sale or return" basis on the same day; Mr. Sham gives those diamonds to Mr. Jadu on "sale or return" basis. Those diamonds were lost from Mr. Jadu on the same day, who will the loss?

Answer:
Ownership under sale on return remains with seller until it passes to buyer. Mr. Sham, giving diamonds to Jadu, acquires ownership. Although the diamonds were lost from Mr. Jadu's custody on the same day but he was not owner in this case. The owner i.e. Sham shall bear the loss i.e. Mr. Sham shall pay to Mr. Ram.

Question:14 M/s. Wholesaler agreed to supply 1,000 Pcs. of Cotton Shirts to M/s. Retailer at `300 per shirt by 31.05.2014. On 01.02.2014 M/s. Wholesaler informs the Retailer that he is not willing to supply the shirt as the price of shirt increased to `350 each. Examine the right of M/s. Retailer.

Answer:
In terms of the provisions of Section 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the- seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:
(1) To have delivery of the goods as per contract. (Sec. 31 & 32);
(2) To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;
(3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57);
(4) To sue the seller for specific performance;
(5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59);
(6) To sue the seller the damages for anticipatory breach of contract (Sec 60)

In the instant case M/s. Retailer can exercise any of his rights discussed above

Revisionary June 2018
Question: 15 Raman instructed Soman, a transporter, to send a consignment of apples to Mumbai. After covering half a distance, Soman found that the apples will perish before reaching Mumbai. Hence, he sold the same at a half the market price. Raman sued against Soman. Will he succeed?

Answer:

Agent's Authority in an emergency:

As per section 189 of the sale of Goods Act, 1930, An agent has the authority in an emergency to do all such acts as man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances. A typical case is where the agent handling perishable goods like 'apples' can decide the time, date and place of sale, not necessary as per instructions of the principal, with the intention of protecting the principal from losses**.**

Here the agent acts in an emergency and act as a man of ordinary prudence. In the given case, Soman had acted in an emergency situation and Raman will not succeed against him.

Question: 16 Differentiate between a contract of Sale and an Agreement to sell.

Answer:

Basis	Contract of Sale	Agreement to sell
Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled.
Type of contract	It is an executed contract	It is an executory contract
Type of goods	Sales takes place only for existing and specific goods	Future and contingent goods
Risk of loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in the possession of the buyer
Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer	The seller can sue for damages only in case of breach by the buyer
General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller	It gives a right to the buyer against the seller to sue for damages
Insolvency of the buyer	In the absence of lien over the goods the seller is to return the goods to the Official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of the seller	The buyer, becoming the owner, is entitled to recover the same from the Official receiver or assignee	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

Question: 17 On 30.11.13 Mr. Sham agrees to sell a painting to Mr. Ram for ` 5,000 but Mr. Sham died on 8.12.13. Mr. Sham's son claimed ` 10,000, Can Mr. Ram obtain the painting at ` 5,000 which was agreed to by Mr. Sham?

Answer:
A contract of sale of goods is a contract where by the seller transfer or agrees to transfer the property in goods to the buyer for price.

A contract may provide for payment by installment or that the delivery or payment or both shall be postponed.

Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth.

In this case although the contract was not executed but in view of above, Ram, may enforce 'Sham's heirs for the painting at ` 5000 which was agreed to by 'Sham'.

Question: 18 Mr. Sham informs Mr. Ram that Mr. Sham's estate is free from encumbrances. Mr. Ram buys the property fully relating on Mr. Sham. Subsequently it revealed that the estate was mortgaged. What will be the position of Mr. Ram?

Answer:
In this the contract is voidable at the option of Ram, he may avoid the contract. He may insist on its being carried out and the mortgaged debt redeemed.

Question: 19 Mr. Ram gives diamond to Mr. Sham on "sale or return" basis on the same day; Mr. Sham gives those diamonds to Mr. Jadu on "sale or return" basis. Those diamonds were lost from Mr. Jadu on the same day, who will the loss?

Answer:
Ownership under sale on return remains with seller until it passes to buyer. Mr. Sham, giving diamonds to Jadu, acquires ownership. Although the diamonds were lost from Mr. Jadu's custody on the same day but he was not owner in this case. The owner i.e. Sham shall bear the loss i.e. Mr. Sham shall pay to Mr. Ram.

Question: 20 Mr. Sham orders on Mr. Ram to deliver certain goods at Mumbai. While the goods are lying at Mumbai Railway Station. The Station Master informs Mr. Sham that the goods are held at station at Mr. Sham's risk, but Mr. Sham became insolvent. Has Mr. Ram has any right as an unpaid seller?

Answer:
Mr. Ram has lost his right of stoppage in transit; the intimation by the station master that the goods are held at the Station at Mr. Sham's rights has transformed the position of station master into a bailee of Mr. Sham instead of Mr. Ram. The transit has thus come to an end.

An unpaid seller can stop the goods in transit in the event of buyers' insolvency. The transit being over, the right is thus lost.

Question: 21 M/s. Wholesaler agreed to supply 1,000 Pcs. of Cotton Shirts to M/s. Retailer at `300 per shirt by 31.05.2014. On 01.02.2014 M/s. Wholesaler informs the Retailer that he is not willing to supply the shirt as the price of shirt increased to `350 each. Examine the right of M/s. Retailer.

Answer:
In terms of the provisions of Section 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the- seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:
(1) To have delivery of the goods as per contract. (Sec. 31 & 32);

(2) To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;

(3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57);

(4) To sue the seller for specific performance;

(5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59);

(6) To sue the seller the damages for anticipatory breach of contract (Sec 60)

Question: 22 Exceptions to 'Risk Prima Facie passes with the property'

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

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

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

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

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

Workbook Question:

Question: 23 State the Difference between contract of sale and agreement to sell.

Answer:

Basis	Contract of sale	Agreement to sell
1.Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled.
2.Type of contract	It is an executed contract	It is an executory contract
3.Type of goods	Sales takes place only for existing and specific goods.	Future and contingent goods.
4.Risk of loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in the possession of the buyer
5.Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer	The seller can sue for damages only in case of breach by the buyer
6.General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller	It gives a right to the buyer against the seller to sue for damages
7.Insolvency of the buyer	In the absence of lien over the goods the seller is to return the goods to the Official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of the seller	The buyer, becoming the owner, is entitled to recover the same from the Official receiver or assignee	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

Question: 24 What is contract of sale? Explain in brief the essentials of a Contract of Sale.

Answer:
According to section 4(1) "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

Essentials of a Contract of Sale
The following are thus the essentials of a contract of sale of goods:
(1) Bilateral contract: It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself.

(2) Transfer of property: The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.

(3) Goods: The subject matter must be some goods.

(4) Price or money consideration: The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale.

All essential elements of a valid contract must be present in a contract of sale.

Question: 25 Define the term "Condition and Warranty" and explain the differences.

Answer:
Section 12(1) provides that a stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

Condition [Section 12(2)]
A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated.

A condition in a contract of sale of goods is of fundamental nature for breach of which the buyer can repudiate the contract.

Warranty [Section 12(3)]
A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

Question: 26 Differences between Condition and Warranty

Answer:

Sl. No.	Condition	Warranty
1.	A condition is a stipulation which is essential to the main purpose of the contract.	A Warranty is a stipulation which is collateral to the main purpose of the contract.
2.	The aggrieved party can repudiate the contract of sale in case there is a breach of a condition	The aggrieved party can claim damages only in case of breach of a warranty.
3.	A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contended with damages only	A breach of a warranty, con not be treated as a breach of a condition.

Question: 27 State the remedies Available to the Buyer for Breach of Conditions

Answer:
(a) Affected party may claim refund of price and reject the goods;

(b) Elect to treat breach of condition as breach of warranty and claim damages or compensation;

(c) When the affected parties treat breach of condition as breach of warranty he cannot repudiate the contract but claim damages only;

(d) No remedy is available when the fulfillment of condition is excused by law by means of impossibility or otherwise 13(3).

Question: 28 Explain different types of implied warranties

Answer:
Implied warranties are of following types, which are as under**:**

(i) Warranty of quiet possession [Sec.14 (b)]
If the buyer in any way is disturbed from enjoying the quiet possession of goods purchased because of seller‟s defective title, the buyer can claim damages from seller. It is a warranty that neither the seller shall not nor shall anybody claiming under a superior title or under his authority interfere with the quite enjoyment of the superior title or under his authority interfere with the quite enjoyment of buyer.

(ii) Warranty of freedom from encumbrances [Sec.14(c)]
The buyer is also entitled to additional warranty that the goods are free from any charge or right of any third party, not declared or known to the buyer. It is presumed that the goods are free of third parties charges if it is otherwise the buyer is entitled to claim damages from the seller.

(iii) Warranty as to quality or fitness by usage of trade:
An implied warranty as to quality or fitness for a particular purpose may be annexed by usage of trade.

(iv) Warranty to disclose dangerous nature of goods:
Where a person sell goods knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger he must be warn the buyer of the probable danger, otherwise he will be liable in damages.

Question: 29 What do you mean by doctrine of "caveat emptor"? State its exceptions.

Answer:
The term "caveat emptor" is a Latin word which means "let the buyer beware". This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. The doctrine of caveat emptor is embodied in Section 16 of the Act which states that "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale". In simple words, it is not the seller‟s duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. The principle was applied in the case of Ward v. Hobbs, (1878) 4 A.C. 13, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer‟s own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer‟s duty to satisfy him regarding the health of the pigs.

Exceptions: Section 16 lays down the following exceptions to the doctrine of Caveat Emptor:

(1) Where the seller makes a false representation and the buyer relies on it.

(2) When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same.

(3) When the buyer, relying upon the skill and judgment of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.

(4) Where goods are bought by description from a seller who deals in goods of that description

Question: 30 What do you mean by "delivery" in Sale of goods act 1930. What is part delivery? State the rules for the delivery as per act

Answer:
Delivery Section 33 provides that the delivery of goods sold may be made-

- by doing anything which the parties agree; or

• which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf;

Section 35 provides that the seller of goods is not bound to deliver them until the buyer applies for the delivery apart from any express contract.

Part delivery
Section 34 deals with the effect of part delivery. A delivery of part of goods, in progress of the delivery of the whole, has the same effect as a delivery of the whole for the purpose of passing the property in such goods. If a delivery of part of the goods is done with an intention of severing it from the whole, then it does not operate as a delivery to the reminder.

Rules for the delivery
Section 36 provides rules for the delivery as detailed below:

• Apart from any contract goods sold are to be delivered

• At the place at which they are at the time of the sale; and

• Goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell; or

• If not then in existence, at the place at which they are manufactured or produced;

• Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time;

• Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless until such third person acknowledges to the buyer that he holds the goods on his behalf; This shall not affect the operation of the issue or transfer of any document of title to the goods; □ Demand or tender of delivery may be treated as ineffectual unless made at reasonable hour;

• Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller

Question: 31 What do you mean by Unpaid Seller? Explain the rights of unpaid seller against the Goods.

Answer:
Unpaid seller:
The seller of the goods is deemed to be „unpaid seller" within the meaning of this Act-

• when the whole of the price has not been paid or tendered;

• when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instruments or otherwise;

Section 45(2) defines the term „seller" as including any person who is in the position of a seller as an agent of the seller to whom the bill of lading has been endorsed or a consignor or agent who has himself paid, is directly responsible for the price.
Rights of an Unpaid Seller against the Goods
An unpaid seller"s right against the goods are:
(a) A lien or right of retention
(b) The right of stoppage in transit.
(c) The right of resale.
(d) The right to withhold delivery

(a) Right of Lien (Sections 47-49 and 54) : An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the fulfillment or tender of the price in cases where the:
(i) goods have been sold without stipulation as to credit; or
(ii) goods have been sold on credit, but the term of credit has expired; or
(iii) buyer becomes insolvent.
The lien depends on physical possession. The seller‟s lien is possessory lien, so that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges.
A lien is lost –
(i) When the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods;

(ii) When the buyer or his agent lawfully obtains possession of the goods;

(iii) By waiver of his lien by the unpaid seller

(b) Stoppage in transit (Sections 50-52): The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

The right to stop goods is available to an unpaid seller when the –
(i) buyer becomes insolvent; and

(ii) goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:
(i) If the buyer obtains delivery before the arrival of the goods at their destination;

(ii) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;

(iii) If the carrier wrongfully refuses to deliver the goods to the buyer

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.
The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller‟s claim to the carrier or other person having control of the goods. On notice being given to the carrier, he must redeliver the goods to the seller who must pay the expenses of the redelivery.

The seller‟s right of lien or stoppage in transit is not affected by any sale on the part of the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a bona fide purchaser for value is valid against the seller‟s right.

(c) Right of re-sale (Section 54):
The unpaid seller may re-sell where the –

(i) goods are perishable;

(ii) right is expressly reserved in the contract;

(iii) in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time.

If on a re-sale, there is a deficiency between the price due and amount realised, he is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.

(d) Rights to withhold Delivery:
If the property in the goods has passed, the unpaid seller has right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transit.

Question: 32 Write a short note on auction sale

Answer:
Auction sale
Section 64 provides that in the case of a sale by auction-

- where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;

- the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract its bid;

- a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bit at the auction;

- where the sale is not notified to the subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

- the sale may be notified to be subject to a reserved or set up price;

- if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Section 64 does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer. In other words, all that happens at the fall of the hammer or at the announcement of the closure of the sale in other customary manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.

Scanner Question:

Question: 33
2008- Dec Write explanatory notes on:

(i) Rights of the unpaid seller; ; **(4 marks)**
(ii) Sale and agreement to sale; **(4 marks)**

Answer:

(i) Rights of the unpaid seller : The credit sales are indispensable to any business and non payment of debts is an inseparable part of credit sales. The seller who has not received full payment against the goods sold by him must have certain rights and remedies to recover or reduce the loss being suffered by him. The Sale of Goods Act has elaborate provisions regarding the rights of unpaid seller.
By virtue of **Section 45,** the seller of goods is unpaid seller (i) when the whole price has not been paid or tendered (ii) when the legal instrument received by him as conditional payment has not been honoured.
An unpaid seller has the following rights as per the Sale of Goods Act.

Right of lien (lien means control, right to possess, right to retain) (Section 47): The unpaid seller has a lien on the goods for the price while he is in possession, until the payment or tender of the price. A lien is a right to retain possession of goods until payment of the price. He is entitled to lien in the following three cases, namely:
(i) Where goods have been sold without any condition of credit; or
(ii) Where goods have been sold on credit but the terms of credit has expired, or
(iii) Where the buyer becomes insolvent.

The seller can exercise the lien although he holds the goods as the agent or bailee for the buyer.

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an argument to waive the lien.

Right of Stoppage in transit (Section 50): The unpaid seller has the right of stopping the goods in transit after he has parted with their possession to a carrier, in case of insolvency of buyer,
The right is exercisable by the seller only if the following conditions are fulfilled:
(i) The seller must be unpaid;
(ii) He must have parted with the possession of goods;
(iii) The goods must be in transit;
(iv) The buyer must have become insolvent;
(v) The right is subject of provisions of the Act.

Right of re-sale (Section 51) : When the goods are of a perishable nature, the unpaid seller may re-sell the goods without giving any notice to the buyer.

(ii)

S.N.	Sale	Agreement to sale
1	Property in goods or title of goods is transferred immediately to the buyer.	Property in goods or title of goods is to be transferred to buyer at a future date after fulfilling some conditions.
2	By the yery nature, It always refers to the existing and specific goods.	It refers to existing as well as future goods.
3	If price is not paid, the seller can re-sale, stop the goods in transit.	If price is not paid, the seller has sole option of filing a suit for damages, because the possession of goods is already with the buyer.
4	Relates to present sale of present goods.	Relates to present or future sale of present or future goods.
5	Buyer becomes owner and the risk is associated with the owner.	Ownership is with the seller, the risk is associated with the seller even if the goods are in possession of buyer.
6	If the buyer has paid the price and the seller becomes insolvent thereafter, the buyer can claim the goods from the official receiver.	In such cases, the buyer cannot claim the goods but can only claim relief related to money paid by him.
7	If the ownership of goods is transferred to the buyer before paying the price, and the buyer becomes insolvent, the seller has to deliver the goods to the official receiver.	In such case, the seller can refuse to deliver the goods to the official receiver.

Question: 34 2009 - June
Seller's lien. **(4 marks)**

Answer:
Sellers lien : The unpaid seller of goods who is in possession of goods is entitled to retain possession of such goods until payment or tender of the price in the following cases viz.
(a) Where the goods have been sold without any stipulation as to credit.
(b) Where the goods have been sold on credit but the term of credit had expired.
(c) Where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as an agent or bailee for the buyer.

Question: 35 2009- Dec

Termination of lien; (4 marks)

Answer:

Termination of Lien: Lien has not been specified in the question. It is taken as lien of unpaid seller. The unpaid seller loses his lien on the following conditions :
(i) when he himself agrees to terminate or waive his lien for example when he extends the period of credit;
(ii) When the buyer or. his agent lawfully obtains possession of goods
(iii) when- the seller unconditionally delivers the goods as per directions of the buyer. It should be noted that if the seller has obtained a decree for the price of goods, it does not mean that his lien is lost.

Question: 36 2010- June

Right of resale (4 marks)

Answer:

Right of Resale :
• If the seller has not received the payment from the buyer, he is called unpaid seller.
• The unpaid seller has the right to resell those goods provided he gives proper notice to the buyer in this regard.
• The buyer should be given reasonable time to pay the balance amount and if he fails to pay, unpaid seller may resell the goods and he also has right to recover the damages occurred to him by breach of contract, from the buyer.
• If such notice has not been given, the unpaid seller has no right to recover the damages from the original buyer nor he (unpaid seller) has any right over the profit arising out of such sale.
• The second buyer gets the good title after such resale. The seller can retain any profit on account of such sale.

Question: 37 2010- Dec

Exceptions to 'implied condition as to quality or fitness'. (4 marks)

Answer:

Exceptions to 'implied conditions as to quality and fitness':
(i) If the buyer has examined goods, there shall be no implied conditions.

(ii) If the buyer has examined goods, he should be vigilant and all defects should be noted by him during the examination. There shall be no implied conditions for such defects .which can be noticed with such examination.

(iii) 'If the goods bear trade name of any company, there shall be no implied conditions on the part of the seller as to quality and fitness.

Question: 38 2011- June

Termination of lien (Sale of Goods Act) (4 marks)

Answer:

Please refer 2009 - Dec [3] (a) (i) on page no. 142

Question: 39 2011- Dec
Transfer of Property of Unascertained Goods; (4 marks)
Answer
Unascertained goods or future goods are manufactured as per the description decided by the seller and the buyer. The buyer inspects the manufactured goods and selects goods of his choice and keeps them separately. This process of selection of goods is also called ascertainment. As per Section 18 of sale of goods act, the property or right of goods passes to the buyer only after he has ascertained the manufactured good.

Question: 40 2012 - June

(i) Future Goods; (4 marks)

Answer:
Future Goods:
• According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods.
• It is expressed in the Latin phrase as ' Nemo dat quod non habet.' which means that "none can give who does not himself possess."
• There is one exception to this rule in case of future goods.
• Future goods mean goods to be manufactured or produced or acquired by the seller after the making of contract of sale.
• As rule, any person may sell or offer for sale goods of which he is not the owner at present, but which he expects to acquire in due course of time.
• A contract to sell oil not yet extracted from the refineries owned by him or not yet obtained from pressing of seeds in his possession is a contract for sale of future goods.
• Any contract for present sale of future goods, constitutes as an agreement to sell.
Specific Goods:
• These are the goods which are specifically identified and agreed upon at the time when contract of sale is drawn and executed.
• It is essential that the goods must be identified and separated from the other goods at the time when the contract of sale is made.
• Merely an identification of goods does not make it specific goods.
• For example, in a case of sale of one horse out of a lot of 25 horses, goods shall be specific if the horse is selected before the contract of sale is made.
• Here it is important to note that all horses are horses but they cannot be ■ exactly similar to each other.
Therefore, it is imperative to select the horse out of the lot as specific goods.

Question: 41 2012- **Dec Termination of lien of unpaid Seller**. **(4 marks)**

Answer:

Please refer 2009 - Dec [3] (a) (i) on page no. 142

Question: 42 2013- June
Damping (Sale of Goods Act) (4 marks)

Answer:
Damping: Some bidders may do something to discourage the other bidders for bidding. Damping is illegal practice because it is intended to reduce the bidding price. The seller or the auctioneer can withdraw goods from auction if he smells of damping in the auction sale.

Question: 43 2010- Dec

Distinguish between 'condition' and 'warranty' (Sale of Goods Act). (4 marks)
Answer:
Distinguish between Condition and Warranty

Condition	Warranty
Contract becomes invalid and void if condition is not satisfied.	Contract remains valid even if warranty is not satisfied.
It is essential for the contract.	It is not essential but desirable in the contract. It is collateral (additional security) to the main contract.
Condition can be treated as warranty by the buyer.	Warranty can not be treated as condition by the buyer.
It can be waived (ignored) by law if found impossible.	It can also be waived by law if found impossible.
In dispute, what is condition, is decided by interpretation of the term.	In dispute, what is warranty, is decided by interpretation of the term.

Question: 44 2008- **Dec**

What will be the consequences when goods are sold by a person not the Owner and without Owner's consent. (4 marks)

Answer:
The buyer gets no title of goods because the seller has no title of goods sold by him. However, if the owner has by his conduct not denied the seller's authority to sell, the sale would be treated as valid.

Question: 45 2009- June

An hirer, who obtains possession of a car from its owner under a hire purchase agreement, sells the car to a buyer who buys in good faith and without notice of the right of the owner. The buyer gets good title to the car. (2 marks)

Answer:
According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods. It is expressed in the Latin phrase as ' Nemo dat quod qui non habet.' which means that "none can give who does not himself possess." A hirer is not the owner of the goods and does not posses title of the goods. Since sale involves transfer of ownership and a hirer, being a non-owner, cannot transfer ownership in the given case, buyer shall not get a good title.

Question: 46 2009- June

(i) In an auction sale, a bid once made can be withdrawn by the bidder. Comment citing rules. (2marks)

(ii) Stipulation as to time of payment is deemed to be essence of a contract of Sale. Comment. (2marks)

(iii) When property passes to the buyer under 'goods on approval' or 'on sale or return'? (2marks)

Answer:
(i) In the case of sale by Auction, the sale is complete only when the auctioneer announces its completions by the fall of a hammer or in other customary manner and until such announcement is made any bidder rrYay retract/withdraw his bid.

(ii) Unless the terms of the contract show a different view and intention, stipulation as to time of payment is not deemed to be of essence of a contract of sale. Whether any other stipulation as to time of the essence of the contract or not, depends on the terms of the contract. If the time and manner of payment have been outlined in the contract, time of payment becomes essence of contract.

(iii) When goods are delivered to the buyer on approval or on sale or return or other similar terms the property therein passes to the buyer;

(a) When he signifies his approval or acceptance to the seller.

(b) If he does not signify his approval or acceptance to the seller but retains the goods, without giving notice of rejection then if a time has been fixed for the return of goods on the expiration such time, and if no time have been fixed on the expiration of reasonable time.

Question: 47 2010- June

Sale and Agreement to sale are same. (2 marks)

Answer:
No. They are not same. In sale the consideration moves with the sale at the present date while in agreement to sale the consideration will move at a future date when the sale would take place.

Question: 48 2010- June

(i) An exchange of goods for goods is a sale. Comment with Rule position. (2 marks)

(ii) When sale is complete in an Auction sale. (2 marks)

Answer:
(i) Exchange of goods with goods is not sale, but it is called barter exchange. Sale is defined in Sale of Goods Act as transfer of property in goods for a price.

(ii) Auction sale is complete when the auctioneer announces the completion in any formal manner e.g. by falling the hammer.

Question: 49 2011- June

"Only the owner of goods can transfer a good title-none else" but there are some exception. Can you cite at least 2 such exceptions with detailed provision. (4 marks)

Answer:
• According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods. It is expressed in the Latin phrase as ***'Nemo dat quod qui non habet.'*** which means that "none can give who does not himself possess."

• There is one exception to this rule in case of future goods. Future goods means goods to be manufactured or produced or acquired by the seller after the making of contract of sale.

• As rule, any person may sell or offer for sale goods of which he is not the owner at present, but which he expects to acquire in due course of time.

• A contract to sell oil not yet extracted from the refineries owned by him or not yet obtained from pressing of seeds in his possession is a contract for sale of future goods. Any contract for present sale of future goods, constitutes as an agreement to sell. There are many examples, some of them are given below:

(i) **Sale by mercantile agent** : (mercantile means commercial or trade). The commercial agent of owner can sell the goods on behalf of owner though the commercial agent is not the owner of goods. The buyer gets valid title on goods purchased from agent.

(ii) **Sale by one of the joint owners** : The goods can be sold by any of joint owners provided that the joint owners give permission in this regard.

(iii) Sale by seller who is in possession of goods after sale.

(iv) Sale by unpaid seller, sale by finder of goods, sale by official receiver or liquidator.

(v) Sale by pawnee,

Question: 50 2011- June

What are the essentials of a contract of Sale? (4 marks)

Answer:
Essentials of contract of sale:
1. There must be at least two parties - buyer and seller. Since a person can not buy from and sell to himself.

2. Transfer or Agreement to transfer, the ownership of goods.

3. Subject matter of goods must necessarily be goods.

4. The consideration is price i.e. money. Goods received against goods is not a sale but it is called barter.

5. A contract of sale may be unconditional or conditional.

6. All other essentials of a valid contract must be present i.e. parties of contract must be competent to enter into contract, consent of parties shall be free, object shall be lawful and so on.

Question: 51 2012- June

A seller may deliver goods to a carrier with a right of disposal. Comment. (2 marks)

Answer:

Yes, the seller may do so. In such case, he does not lose the right of lien **u/s 46(1) (a) of The Sale of Goods Act, 1930,** even though the seller has parted with the possession of goods.

Question: 52 2012- Dec

In an auction sale a bid once given cannot be withdrawn. Do you agree? (2 **marks)**

Answer:

Any bid once made can be withdrawn at any time before the completion of the auction. When auction is completed and finished, the final bid which is accepted cannot be withdrawn.

Question: 53 2012- Dec

A non owner cannot make a valid Transfer of Goods. (4 marks)

Answer with Rule position.

Answer :

Please refer 2011 - June [2] (g) on page no. 148

Question: 54 2013- June

Parties to a contract of sale can get the price of goods fixed by third parties. (2 marks)

Answer:

Agreement to sell at valuation:

Sometimes the goods to be sold is such that either the seller or the buyer is not able to determine and decide its price.

• In such cases both the parties make a contract that value of goods will be determined or valued by a third party who is expert in such field.

• Thus there is an agreement to sell goods on the terms that the price is to be fixed by valuation of third party.

• The third party should have no interest in the contract except for fixation of price.

• If that third party does not fix the price because of any reason of its own, the contract becomes void for non fixation of price consideration.

• If the buyer has taken or used any part of goods or the whole goods, the buyer should pay a reasonable price, what is reasonable price will depend on facts and figures of each case.

Question: 55 2013- June

Transfer of Title to goods takes place when it is intended. Whether it is correct? (2 marks)

Answer:

• It should be noted that transfer of property in goods is distinct and different from delivery or possession of goods. The property may pass from the seller to buyer even without delivery of goods.

• It is elementary (basic) law of contract that parties may fix the time when the property (ownership) in goods shall be deemed to have passed.

• It may be at the time of delivery of goods, or it may be at the time making final payment or even at the time of making of goods.

• The seller can sue for price only when the property in goods has passed to the buyer.

Question: 56 2013- Dec
In case of auction sales, auctioneers has some implied obligations. State such obligations. (4 marks)

Answer:
Yes, obligations are:

(i) He has authority to sale goods.

(ii) He warrants that he does not know any defects in the title of the principal.

(iii) He undertakes to give possession of the goods against price paid.

(iv) He guarantees quiet possession of goods by the purchases.

Question: 57 2013- Dec
A non owner can convey a better title to the bonafide purchaser of goods for value in certain cases. List out those cases. (6 marks)

Answer:
Sale by person not the owner:
• Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded the seller's authority from denying the seller's authority to sell.

• Generally the owner alone can transfer property in goods "nemo dat quod non habet" means that no one can give what he himself does not have. '

• It means a non owner cannot make valid transfer of property in goods.

• If the title of the seller is defective, the buyer's title will also be subject to. same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to protect the real owner of the goods.

• Though this doctrine seeks to protect the interest of real owners, but in the interest of the trade and commerce there must be some safeguard available to a person who acquired such goods in good faith for value; accordingly the Act provides the following exceptions to this doctrine which seeks to protect the interest of bonafide buyers.

(i)	**Sale by mercantile agent (Section 27)**	Where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the sale, provided that the buyer acts in good faith and he has not noticed at the time of the contract of sale that the seller has no authority to sell.
(ii)	**Sale by one of joint owners (Section 28)**	If one of several joint owners of goods has the sole possession of the goods by permission of the co-owners, the property (means ownership) in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale noticed that the seller has no authority to sell. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are sanctioned.
(iii)	**Sale by person in possession under voidable contract (Section 29)**	When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or 19A of the Indian Contract Act, 1872, but the contract has not rescinded at the time of the sale the buyer acquires a good title to the goods, provided he buys

		them in good faith and without notice of the seller's defect of title.
(iv)	**Seller or buyer in possession after sale (Section 30)**	Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery to transfer were expressly authorized by the owner of the goods to make the same.
(v)	**Sale by estoppel (Section 27)**	Where the owner by his conduct or omission, leads the buyer to believe that the seller has authority to sell, he is estopped • from denying the fact afterwards. The buyer thus gets a better title than the seller.
(vi)	**Sale by an unpaid seller after exercising his right of lien or stoppage in transit**	In addition to the exceptions discussed above which are provided in various sections of the Sale of Goods Act, the following exceptions are provided in other Acts like Contract Act, Civil Procedure Code etc.
	(a) Sale by a finder of lost goods	Under Section 169 of the Contract Act, if a finder of lost goods could not reasonably find the true owner or the true owner refuses to pay the lawful charges of the finder of lost goods, the finder of lost goods can sell the goods when the goods are perishable in nature or when the lawful charges of the finder of lost goods amounts to 2/3rd of its value.
	(b) S a I e by pawnee	Under Section 176 of the Indian Contract Act, a pawnee can sell the goods under certain circumstances with due notice to the owner.
	(c) S a I e by official receiver or assignee	In case of insolvency of any individual his official receiver or liquidator of a company can sell the goods and buyer thereof gets good title to it.
	(d) Execution of Sale	Under order 21 of the Civil Procedure Code, officer of Court may sell goods and convey good title to the buyer inspite of the fact that the officer of Court is not the true owner of the goods.

Question: 58 2014 June

Under what circumstances breach of condition is treated as breach of warranty under the provisions of The Sale of Goods Act, 1930? (4 marks)

Answer:

According to Section 13 of the Sale of the Goods Act,1930 a breach of condition may be treated as breach of warranty in the following circumstances:

(i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.

(ii) Where the buyer elects to treat the breach of condition as breach of a warranty.

(iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
(iv) Where the fulfillment of any condition or warranty is excused by law, by reason of impossibility or otherwise.

Question: 59 2014- Dec
Abhishek contracts to sell Bhusan, by showing sample, certain quantity of tea described as 'Best quality Darjeeling tea. The tea when delivered matches with the sample, but it is not Darjeeling tea. Referring to the provisions of Sale of Goods Act,-1930 advise the remedy, if any, available to Bhusan. (3 marks)

Answer:
Sale by sample is described in Sec. 17 of the Sale of Goods Act, 1930.
A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. In the case of a contract for sale by sample there is an implied condition-
• That the bulk shall correspond with the sample in quality.
• That they shall have a reasonable opportunity of comparing the bulk with the sample.
• That the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the goods.
In a contract for sale of brand by sample, Bhusan is entitled to return the tea and claim refund of money as there is breach of condition.

Question: 60 2016 - June
State your views on the following:

(a) Consideration for sale of goods must be in terms of money.
(b) In an auction sale, a bid once made can not be withdrawn by the bidder. (2 marks each)

Answer:
(a) **Correct:** It is one of the essentials of the contract of sale, that price must be paid in terms of money.

(b) **Incorrect:** The bidder can withdraw his bid any time before the fail of the hammer i.e., completion of sale.

Question: 61 2016- Dec
What are the consequences of 'destruction of goods' under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected. (4 marks)

Answer:
Destruction of Goods-Consequences:

(i) **As per Section 7,** a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer
to answer to their description in the contract. The rule is based on ground of mutual mistake or impossibility of performance, which is one of the essentials of a valid contract.

(ii) **Section 8** provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.
It may, however, be noted that **Section 7 and 8** apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such "goods" in the possession of the seller will not relieve him of his obligation to deliver the goods.

Question: 62 2017- Dec
What do you understand by "Caveat-Emptor" under the sale of Goods Act, 1930? What are the exceptions to this rule? (8 marks)

Answer:
As per Sec. 16 of the Sale of Goods Act, the buyer is supposed to satisfy himself about the quality of goods he purchased and is also charged with the responsibility of seeing that the goods suit the purpose for which they were purchased by him. Later on if the goods does not turn out to be as per his purpose, the seller cannot be asked to compensate him. This is based on the famous doctrine of CAVEAT EMPTOR which means 'let the buyer beware'. However, there are some exceptions to this which are as under:

(a) Where the buyer, expressly or by implication, makes it known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably be fit for such purpose. However, in the case of a contract for the sale of a specified article under its patent or other trade name, there are no implied conditions as to its fitness for any particular purpose.

(b) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. However, if the buyer has examined the goods, there shall be no implied conditions as regards defects which such examination ought to have revealed.

In order to apply the implied condition as to merchantability the following requirements must be satisfied.

(i) the seller should be dealer in goods of that description;

(ii) the buyer must have not opportunity to examine the goods or there must be some latent defect in the goods which would not be apparent on reasonable examination of the same.
It may be noted the term merchantability has not been defined in the Act. As per English Sale of Goods Act, goods of any kind are merchantable quality if they are as fit for the purpose or purposes for which goods of that kind are commonly brought as it is reasonable to expect having regard to any description applied to them, the price and all other relevant circumstances.

(c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In some cases the purpose for which the goods are required may be ascertained from the acts and conducts of the parties to the sale or from the nature of the description of the article purchased. For example if a hot water bottle is purchased, the purpose for which it is purchased is implied in the thing itself. In such a case the buyer need not tell the seller the purpose for which the bottle is purchased. Similarly if a thermometer is purchased in common usage, the purpose of thermometer is well known, the buyer need not tell the seller.

(d) An express warranty or conditions does not negative a warranty or condition implied by this Act unless inconsistent therewit

Question: 63 2009- June
Mr. A.agreed to purchase 100 bales of cotton from 'B' from his large stock. 'A' sent his men to take delivery of cotton. On completion of packing of only 70 bales, there was accidental fire and entire stock including packed 70 bales were destroyed. There was no Insurance cover. Who will bear the loss? (2 marks)

(i) State the rights and liabilities of 'A' in the following cases :

(ii) An Auctioneer advertised in a newspaper that a sale of office furniture will be held at Kolkata on 29.11.2009. 'A' came from New Delhi to buy the furniture but the auction was cancelled. Whether 'A' can a file a suit against the auctioneer for his loss of time and cost. (2 marks)

Answer:
(i) Since 70 bales were ascertained and appropriated, property in those 70 bales were transferred to A. Hence A is liable for 70 bales only and B is liable for remaining stock.
(ii) A can not file a suit against the Auctioneer for his loss of time and cost because the Advertisement was merely a declaration of intention to hold Auction. Advertisement is not an offer but it is an invitation to offer. Moreover there was no agreement between A and the party.

Question:64 2009- Dec
Mr. Sham agrees to sell Mr. Ram 10 bags of wheat out of 100 bags lying in his godown for 10,000. Wheat is completely destroyed by fire. Mr. Ram cannot compel Mr. Sham to supply wheat as per contract. (2 marks)

Answer:

True: Mr. Sham cannot supply the wheat as it is destroyed and the subject matter of agreement is no longer in existence. Moreover Mr. Ram cannot compel Mr. Sham to supply the agreemented specific goods as the goods are destroyed without any fault on the part of seller.

Question:65 2009- Dec
Mr. Sham orders on Mr. Ram to deliver certain goods at Mumbai. While the goods are lying at Mumbai Rly. Station, Station Master informs Mr. Sham that the goods are held at station at Mr. Sham's risk, but Mr. Sham became ihsolvent. Has Mr. Ram has any right as an unpaid seller? **(2 marks)**

Answer:
• The goods have reached its destination and are in the possession of station master who is supposed to deliver goods to Mr. Sham.

• The station master is bailee of Mr. Sham the buyer and not of Mr. Ram the seller.

• An unpaid seller can stop the goods in transit in the event of buyer's insolvency.

• This right has been lost by the seller as the goods are no longer in transit.

Question:66 2009 - Dec
Mr. Ram gives some diamonds to Mr. Sham on "sale or return" basis. On the same day, Mr. Sham gives those diamonds to Mr. Jadu on "sale or return" basis. Those diamonds were lost from Mr. Jadu on the same day, who will bear the loss? (2 marks)

Answer:
While giving diamonds to Mr. Jadu, Mr. Sham behaved like owner of diamond?. As he becomes the owner, he should bear the loss and make payments to Ram. Loosing of diamonds by Jadu does not establish his ownership, hence he will not bear .the loss.

Question:67 2010- June
Mr. Roy give Mr. Ghosh on hire, a horse for his own riding but Mr. Ghosh drives the horse in his carriage. What action Mr. Roy can take? (2 marks)

Answer:
This is contract of bailment. Mr. Ghosh has not followed the conditions of bailment and his action to use the horse in his carriage in not as per the terms of bailment. It is now up to Mr. Roy to continue with or terminate the bailment.

Question: 68 2010- Dec
Mr. X accepted certain Goods of Mr. Y for delivery at Durgapur. When the driver of the truck which was carrying the Goods went for lunch, the Goods were stolen. There was no insurance. Mr. Y has no remedy.
(2 marks)

Answer:
Mr. X is bound to deliver goods at Durgapur or return it back to Y. He does neither hence Y can claim damages from X. Y can file a suit against X. Goods were stolen because of fault of X as he did not make arrangements for its safety when driver went for food. To get the goods insured was also part of duty of X when he accepted the contract with Y. Y has all rights to claim damages.

Question:69 2010- Dec
Mr. Bose settled the price after selecting two chairs. He arranges to take delivery of chairs next day and agrees to pay next month, i Said chairs were destroyed by fire before delivery. Seller demanded the price. Mr. Bose refused. State legal position. **(2 marks)**

Answer:
Mr. Bose should pay the price. When the goods were specified by Bose and lprice was also settled, the contract was complete and the title of chairs was Ipassed to Bose from the seller. Those chairs were kept as reserved for Bose land the seller was simply keeping the custody of the chairs on behalf of |Bose. The seller is entitled to demand and receive the price of chairs.

Question:70 2010 - **Dec**
Ramen sold 50 Kg. of rice to Khagen who paid by cheque and Ramen gave the delivery order to Khagen. Khagen resold such rice to Bhaben who purchased on good faith and for consideration. Khagen's cheque was dishonoured. Ramen refused to deliver rice to Bhaben on the plea of non-payment. Advise Bhaben.
(2 **marks)**

Answer:
According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods. It is expressed in the Latin phrase as ' Nemo dat quod qui non habet.' which means that "none can give who does not himself possess." Bhaben cannot claim delivery of goods because Khagen cannot sell what he does not have. Khagen right on rice is invalid because his cheque was dishonoured and he was not owner of rice when he sold the rice to Bhaben.

Question:71 2011- Dec
A stock of bark was sold at an agreed price per tonne. The bark was to be weighed by the agent of seller as also by the buyer for ascertainment of price. A part of the bark was weighed and carried away by the buyer's agent on 12.11.11. On 13.11.11, the remaining stock was swept away by flood. Who will bear the loss and why?
(2 **marks)**

Answer:
Goods must be ascertained for property in goods to be transferred to buyer. (Sec. 18 of Sale of Goods Act, 1930). The loss of the remaining stock be borne by the seller as the property in the remaining stock was not passed because the required weighing was not completed.

Question: 72 2011- Dec
Mrs. Kamini purchased a tin of standard quality kerosene oil from a dealer of repute. When part of the kerosene was put to use in a stove for cooking, an explosion occurred causing damage. Mrs. Kamini claims damages from the dealer who refuses to pay damages. Offer your views based on provisions of sale of Goods Act.
(4 marks)

Answer:
Section 16 of the sale of goods act states that goods sold should be capable of being used for the purpose for which it has been sold. Kerosene oil should be capable of being used as fuel which was not so in the present case. Kamini shall be entitled to receive back the price as well as compensation for the loss

Question: 73 2011- Dec
(i) **Mr. Ambika an agent of a buyer obtained goods from Railways and loaded such goods on his truck on 02.11.11. In the meantime, the Railways received a Notice from the seller (i.e. consignor) for stopping goods in transit as the Buyer became insolvent. Referring to the provisions of the Sale of Goods Act, 1930 decide whether the Railways can stop goods in transit as instructed by the seller ? (2 marks)**

(ii) Mr. Paul sold to Mr. Ray certain quantity of foreign refined palm oil warranted equal to sample. The samples consisted of palm oil mixed with vegetable oil. The oil tendered corresponds with the sample but it was not such as is known in market as foreign refined palm oil. Mr. Ray wants to reject the oil on the ground that the oil supplied was not in accordance with the foreign refined palm oil. Advise Mr. Ray. (2 marks)

Answer :
(i) As the goods are not in possession and control of the railways, they can not stop goods in transit because they (railways) have already given goods to Ambika. It is Ambika who can stop the goods in transit because the goods are loaded in truck as per instruction of Ambika.

(ii) Mr. Ray can reject the goods. In case of sale by sample as well as by description, goods must not only correspond to sample but also to description i.e. foreign refined palm oil. **(Section 15 of the Sale of Goods Act, 1930)**
No amount of exemption clauses can compel a person to buy a thing different from contracted to buy.

Question:74 2012- June [2]
(i) As per order, Mr. Malhotra sent some goods to Mr. Paul at Kolkata through Rail. The Station Superintendent of Howrah Statibn informed Mr. Paul that goods are held at the Station at Paul's risk and cost. In the mean time, Mr. Paul became insolvent. Mr. Malhotra wants to enforce right as an unpaid sellei. Advise. (2 marks)

(ii) Ashim Selis 1600 kgs. of wheat out of large quantity lying in his godown forwarded to Bablu. Out of these, Bablu sells 600 kgs. to Chandan (wheat yet to be ascertained). Then Chandan the delivery order signed by Bablu

to Ashim who confirmed that wheat would be despatched in due course. Bablu then becomes insolvent. Ashim refused to deliver to Chandan. Advice Chandan based on rules. (3 marks)

(iii) Mr. Batliboi bought 50 kgs. of potato against cash payment from Mr. Joshi under a Contract of Sale but half of consignment was rotten and Mr. Joshi refused to change the rotten potato nor refunded the value. Advise Mr. Batliboi. (3 marks)

Answer :
(i) The goods has reached its destination and the seller Malhotra has no right of stoppage in transit as the transit is over at Kolkata. Paul has become insolvent hence he cannot make any payments. Malhotra cannot act as an unpaid seller because the buyer is not capable of making any payment.

(ii) Ashim can not refuse to deliver 600 kgs. of wheat to Chandan. Sec. 53 of The Sale of Goods Act, 1930 provides that seller (i.e. Ashim) loses his right of lien, if he has assented to the sale to a subsequent buyer. By giving assent to Chandan, Ashim has lost his right of lien.

(iii) The seller should deliver the potatoes in good condition which he has not done. The buyer has right to ask for good quality and correct quantity of potatoes. As per Sale of Goods Act 1930, the seller should pay for the rotten potatoes.
The quantity indicates that food stuff was not for personal consumption and for commercial purposes. Hence Mr. Joshi cannot take the plea of "implied condition of fitness". The doctrine of 'Caveat Emptor' would apply and Mr. Joshi does not have a case.

Question: 75 2012- Dec
'A', the buyer ordered a patent smoke consuming furnace by its Patent name for his brewery on 'B'. Furnace received was however fopnd to be unsuitable for the purpose. Hence seller is responsible. (2 marks)

Answer
The seller is not responsible because he has supplied the goods as per the orders and specifications of buyer. If the buyer could not use the goods for his purpose, it is not the failure of seller. Buyer should have been careful while giving the order for the goods, whether such goods would serve his purpose or not.

Question: 76 2012- Dec
Mr. Barun tells Mr. Tarun in presence of Mr. Arun that he is the Agent of Arun who maintains silence instead of denying Barun's statement. Later on Barun sells Arun's Goods to Mr. Tarun. Arun now disputed Barun's title to the goods, as Barun was not Agent of Arun. Explain whether Arun is right. (2 marks)

Answer:
In this case Arun cannot dispute Tarun's ownership title to the goods. Sec. 27 of Sale of Goods Act provides that where the owner by his conduct or omission, leads the buyer to believe that the seller has right and/or authority to sell, he is stopped from denying the fact afterwards. The buyer thus gets better title than the seller. This is case of sale by estoppels.

Question: 77 2013- June
Mr. 'A' purchased a Refrigerator from Mr. 'B' on "hire purchase agreement" expiring on 31.12.15. Mr. 'A' sold on 01.05.13 that Refrigerator to 'C' who purchased against adequate consideration. 'A' has right to give good title to Mr. C. (2 marks)

Answer:
Under Hire Purchase Agreement, the ownership passes to buyer only on payment of last installment. The hirer under hire purchase system, has no title to the refrigerator therefore Mr. A cannot give a good title to Mr. C. This is because Mr. C. does not get a better title than Mr. A had.

Question: 78 2013- June
(i) M/s. wholesaler agreed to supply 1000 Pcs. of Cotton Shirt to M/s. Retailer at INR 300 per shirt by 31.05.2013. On 01.02.2013 M/s. Wholesaler informs the Retailer that he is not willing to supply the shirt as the price of shirt increased to INR 350 each. Examine the right of M/s. Retailer. (2 marks)

(ii) Mr. Malhotra sold 1000 kgs. of rice to Mr. Basu who delayed in taking the rice from Mr. Malhotra. In the meantime Mr. Malhotra sold those rice to Mr. Roy who took the delivery for value & without notice of prior sale. Hence Mr, Roy has no good title of ownership to goods Comment. (2 marks)

Answer
(i) On 01.02.2013 M/s Wholeseller indicated his unwilfingness to supply cotton shirt @ 300/- per shirt although there is time up to 31.05.2013 for performance of the contract.
It is therefore called anticipating breach of contract. In such case M/s. Retailer can claim damages. M/s Wholeseller may treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and claim damages for breach.

(ii) Where Mr. Malhotra having sold goods continues in possession thereof or documents of title to the goods, the delivery by such seller i.e., Mr. Malhotra will pass a good title to Mr. Roy, since Mr. Roy acted on good faith and without notice of the previous sale by paying the value (Sec. 30)

• Where however Mr. Malhotra keeps the goods as Mr. Basu's bailee, this section shall not apply **(Sec. 30)**

• In these circumstances Mr. Roy can sue Mr. Malhotra

Question: 79 2013- Dec
Raman instructed Soman, a transporter, to send a consignment of apples to Mumbai. After covering half a distance, Soman found that the apples will perish before reaching Mumbai. Hence, he sold the same at a half the market price. Raman sued against Soman. Will he succeed? (3 marks)

Answer:
Agent's Authority in an emergency: As per **Section 189 of the Indian Contract Act, 1872.**
• An agent has the authority in an emergency to do all such acts as man of ordinary prudence (means carefulness, wisdom)would do for protecting his principal from losses which the principal would have done under similar circumstances.

• A typical case is where the agent handling perishable goods like 'apples' can decide the time, date and place of sale, not necessary as per instructions of the principal, with the intention of protecting the principal from losses.

• Here the agent acts in an emergency and act as a man of ordinary prudence.

• In the given case, Soman had acted in an emergency situation and Raman will not succeed against him.
Space 10 write important points for revision,

Question: 80 2014- June
Mr. Z bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e., whether it is fit to make ice. After using the same, Mr. Z came to know that the refrigerator was unfit for the purpose. State giving reasons as per the provisions of The Sale of Goods Act, 1930, is the dealer liable to refund the price? (4 marks)

Answer:
As per the Rule of Implied Condition, [Sec. 16 (1)]: There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods. This is expressed by the maxim caveat emptor (let the buyer beware). But there is exception to this rule of Condition as to Quality or Fitness: There is an implied Condition that the good shall be reasonably fit for a particular purpose described if the three conditions are satisfied:

(i) The particular purpose for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller.

(ii) The buyer must have relied upon the seller's skill or judgment.

(iii) The seller's business must be to sell such goods.

Note: *This condition cannot be invoked against a casual seller. In the given case, Mr. Z' bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e. whether it is fit to make ice. After using the same Mr. Z' came to know that the refrigerator was unfit for the purpose. The dealer is liable to refund the price because refrigerator* was *unfit for the purpose for which it was meant for and the buyer was not required to disclose this particular purpose.* ***(Evens v. Stelle Benjamin).***

Question: 81 2014- Dec
Makhan, seeing a mobile phone in a showcase of a shop which was marked for sale for ` 2,000, enters the shop, pJaces ` 2,000 on cash counter and told to give him displayed mobile. Shop owner refused. Can the shop owner refuse to sale the displayed mobile? (3 marks)

Answer:

• Price quotations and price tags do not amount to an offer but are only an invitation to an offer.

• Therefore, Makhan's picking up the mobile with price tag of ` 2,000/- amounts to an offer by Makhan to purchase the same at that price.

• It remainsto be accepted by the seller- the salesman at the cash counter of the mobile store, to result in a concluded contract. The salesman has every right to accept or refuse the offer.
Thus, Makhan shall have no remedies.

Question: 82 2014- Dec
Lalit delivered sarees valuing ` 50,000 to Rohit on 'Sale or Return Basis'. Rohit further delivered these sarees to Sumit and Sumit to Mohit on the same terms and conditions. Subsequently, these sarees were burnt by fire while in the custody of Mohit. Lalit filed a suit against Mohit for the recovery of the price, with reference to provisions of the Sale of Goods Apt, 1930, examine whether Lalit's suit for the price shall be maintainable. (4 marks)

Answer:
In case of sale of goods on 'sale or return' basis the property in goods passes from the seller to the buyer in any of the following circumstances as per provisions given under Section 24 of the Sale of Goods Act, 1930:

(a) When he (buyer) signifies his approval or acceptances to the seller;

(b) Where he does any act adopting the transaction, i.e., sells or pledges the goods to a third party and,

(c) Where he retains fhe goods, without giving notice of rejection, beyond the time fixed for the return of goods or beyond a reasonable time (where no time is fixed).

Thus, in the given-problem, Rohit is deemed to have accepted the sarees by further transaction to Sumit and Sumit is deemed to have accepted the sarees by further transaction to Mohit. The ownership is thus vests on Sumit till Mohit approves or does any act adopting the transaction. In the meantime the sarees are burnt from the custody of Mohit, and it is assumed that Mohit has handled the sarees with due care.
Hence the loss should fall on Sumit, because at present he is the owner and risk being associated with ownership unless otherwise agreed between the parties.

Question: 83 2014- **Dec**
RK sells 200 bales of clothes to SK and sends 100 bales by lorry and 100 bales by Railway. SK receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. RK being still unpaid, stops the goods in transit. The official receiver, on SK's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (4 marks)

Answer:
Section 50, of Sale of Goods Act, states that, subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that

is to say, he may resume possession of the goods as long as they are in course of transit and retain them until payment of tender of the price. **Hence the major rules applicable would be:**

(a) The seller must be unpaid

(b) He must have parted with the possession of goods

(c) The goods must be in transit

(d) The buyer must have become insolvent

Applying the above provisions in the given case, we may conclude that RK being unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit and SK has become insolvent.

Question: 84 2015- June
With a view to boost the sales, M/s ABC Ltd. sells a new machine to Mr. B on trial basis for a period of three days with a condition that if Mr. B is not satisfied with the performance of the new machine, he can return back the new machine. However, the machine was destroyed in a fire accident at the place of Mr. B before the expiry of three days. Decide whether Mr. B is liable for the loss suffered under Sale of Goods Act, 1930. (3 marks)

Answer:
• The problem as asked in the question is based on the provisions of the Sale of Goods Act, **1930** as contained in **Section 8.**

• Where there is an agreement to sell specific goods and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

• In the given case that the subject matter of the contract i.e., new machine was destroyed before the transfer of property from the seller to the buyer. Thus the risk passes only when the ownership is transferred to the buyer.

• Therefore, in the present case Mr. B is not liable for the loss suffered due to the fire accident over which B has no control.

• Thus M/s. ABC Ltd. will have to bear whatever loss that has taken place due to the fire accident.

Question: 85 2015 - Dec
(i) For the purpose of making uniform for the employees, Amit bought dark blue coloured cloth from Bhagat, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Amit whether he is entitled to have any remedy under the Sale of Goods Act, 1930? (3 marks)
(ii) Mahendra made a hire-purchase agreement with Narendra for a car of which Narendra was described as the owner. Mahendra paid four of the twelve monthly instalments and then learnt that Jitendra claimed to be the owner of the car. He nevertheless paid the balance of instalment and exercised his option to purchase. Jitendra then demanded the car and Mahendra gave it up to him. Mahendra then sued Narendra to recover the full price and Narendra counter claimed for a reasonable sum as hiring charges for the car during the period it was with Mahendra. Decide. (3 marks)

Answer:
(i) • As per the provision of **Section 16(1) of the Sale of Goods Act, 1930,** an implied condition in a contract of sale is that an article is fit for a particular purpose only arises when the purpose for which the goods are supplied is known to the seller, the buyer relied on the seller's skills or judgement and seller deals in the goods in his usual course of business.

• In this case, the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so.

• Therefore, the implied condition as to the fitness for the purpose does not apply.
Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act ***[Jones v. Padgett. 14 Q.B.D. 650].***

(ii) • The ***"Nemo dat quod non habef*** rule protects the true owner (Jitendra) and the buyer (Mahendra) who was aware of Narendra's defective rights after paying the fourth installments, would not get any right or title out of his ineffective hire purchase agreement with Narendra.

• Because Narendra was neither owner nor an authorized person to put the car on hire purchase and for the same reason, he is not entitled to receive any money under the agreement.

• However, Mahendra may be asked by Jitendra to pay a reasonable rent for the use of the car and Mahendra can recover the amount paid by him to Narendra.

Question: 86 2016 - June [2]

Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (5 marks)

Answer:
Section 50 of the Sale of Goods Act, states that, subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long.as they are in course of transit and retain them until payment of tender of the price.

Hence the major rules applicable would be:
(a) The seller must be unpaid

(b) He must have parted with the possession of goods

(c) The goods must be in transit

(d) The buyer must have become insolvent

Applying the above provisions in the given case, we may conclude that Ram being unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

Question: 87 2016 - Dec
(i) A delivered some diamonds to B on sale or return basis. B delivered
the diamonds to C and C to D on similar terms. The diamonds were stolen while in the custody of D. Who shall suffer the loss? (5 marks)

(ii) X buys synthetic pearls for a high price thinking that they are natural pearls. The seller though understood X's intention, kept silent. Examine the remedies X has against the seller as per the Sale of Goods Act, 1930. (3 marks)

Answer:
(i) In this case, B has adopted the transaction by delivering the diamonds to C and thus is liable to pay the price to A. Similarly C has adopted the transaction by further delivery to D and thus is liable
to pay the price to B. As between C and D, the transaction was still of sale or .return which was not adopted by D, either expressly or impliedly, and thus the ownership had not passed to D at the time of loss. Therefore, C shall suffer the loss of diamonds.

(ii) **X has no remedy against the seller as the doctrine of Caveat Emptor will apply:**
"Caveat emptor" means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

The rule is enunciated in the opening words of **Section 16 of the Sale of Goods Act, 1930** which runs thus, "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Question: 88 2018 - June
M/s. Tea Enterprises agreed to supply 2,200 Kgs. of Tea to M/s. Gopal Enterprises at `1200/- per Kg. by 30th April, 2018 . On 1st March, 2018 M/s. Tea Enterprises informs Gopal Enterprises that they are not willing to supply the Tea as the price of Tea increased to `1400/- per Kg. Examine the right of M/s. Gopal Enterprises.
(8 marks)

Answer:
In terms of the provisions of Sections 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.
Rights of the Buyer according to the Sale of Goods Act, 1930 include:
(1) To have delivery of the goods as per contract. (Sections 31 and 32);

(2) 'To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;

(3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec. 57);

(4) To sue the seller for specific performance;

(5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec. 59);

(6) To sue the seller the damages for anticipatory breach of contract (Sec. 60)
In the instant case M/s. Gopal Enterprises can exercise any of his rights
discussed above.

Question: 89 2019 - June [3]
Himadri sells 400 Kgs. of tea to Rahul and sends 200 Kgs. by lorry and 200 Kgs. by Railway. Rahul receives delivery of 200 Kgs. sent by lorry, but before he receives the delivery of the tea sent by railway, he becomes bankrupt. Himadri being still unpaid, stops the goods in transit. The official receiver, on Rahul's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (7 marks)

NEGOTIABLE INSTRUMENTS ACT, 1881

Introduction	The law relating to negotiable instruments is contained in the negotiable Instruments Act, 1981. It is an act to define and amend the law relating to promissory note, bills of exchange and cheques. The purpose of the Act is to present an orderly and authoritative statement of the leading rules of law relating to the negotiable instruments. The word negotiation has come from latin word "negos" which means "business".
Applicability of the Act	This Act is applicable to the whole of India.
Negotiable Instrument **MTP JUNE 18 SET 2**	Generally, an instrument, under legal parlance, denotes a piece of paper by which rights or liabilities of a person is created, satisfied, diminished, enhanced in relation to any other person. Section 13 of the Act defines the terms 'negotiable instrument' as a promissory note, bill of exchange or either payable either to order or to bearer. A promissory note, bill of exchange or cheque- • is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable; • is payable to the bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank; • either originally or by endorsement, is expressed to be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. Section 13 shows that the Act is confined to three specific types of instruments most in common use, namely, promissory notes, bills of exchange and cheques. The Contract Act is a general statute dealing with contracts. The Negotiable instruments Act is a statute dealing with a particular form of the contract. The law laid down for special cases must always overrule the provisions of general character as held in 'Kwong Hip Lone Saw Mill Co. V. C.A.M.A.L. Firms' – AIR 1933 Rang.131. The following are not the negotiable instruments- • share certificate passing from hand to hand with blank transfers – Hazarimaul V. Statis Chandra' – ILR 46 Cal.331; • Deposit receipts – Anantharam V. O.L., of T.N.Q. Bank' – 1939 Mad W.N. 1096; • Mate's receipt – Nacheppa Chetty V. Irravaddy Flotila & Co., - ILR 41 Cal. 670; • Bill of lading – United Bank of India V. N.S. Bank – AIR 1959 Cal. 328; • Promissory note - Khirodnath Gountia V. Arjun Panda' – (1971) 2 Cut. W.R. 223 • A benefit under a letter of credit – Joseph Pyke & Son V. Kedarnath- AIR 1962 Cal.326.
Essential Features of a Negotiable Instrument: **WORKBOOK**	1. It must be in writing. 2. It should be signed by the maker or drawer. 3. There must be a promise or order to pay. 4. The promise or order must be unconditional. 5. It must call for payment in money and money only. 6. It should call for payment of a certain sum.

	7. The property in the instrument may be passed in two ways: (a) by mere delivery; and (b) by indorsement and delivery. 8. The consideration is also presumed to have been passed
Promissory Note **MODEL QUESTION**	Section 4 of the Act defines the term 'promissory note' as an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. **Example –** **1**. I promise to B or order ` 50,000/-;  2. I acknowledge myself to be indebted to B in `1 lakh to be paid on demand, for value received. The instruments in the above two examples are promissory notes. 3. I promise to pay B `20,000/- seven days after my marriage with Helen.  4. I promise to pay ` 50,000/- on D's death, provided D leaves me enough to pay that sum. The instruments in the above two examples do not amount to promissory notes. The High Court in 'Santsingh v. Madandas Panika'AIR 1976 MP 144 held that an instrument is a promissory note if there are present the following elements- • There should be an unconditional undertaking to pay; • The sum should be a sum of money and should be certain; • The payment should be the order of a person who is certain, or to the bear of the instrument; • The maker should sign it. The High Court, Andhra Pradesh in 'Bahadurrinisa V. Vasudev' AIR 1967 AP 123 categorized the promissory note into three types- • A promise to pay a certain sum of money to a certain person; • A promise to pay a certain sum of money to the order of a certain person; • A promise to pay the bearer. Though currency note has all the features of promissory, it is not to be considered as such. Further bearer promissory note cannot be issued as it would have the same feature of a currency note.
Bill of exchange **MODEL QUESTION**	Section 5 defines the expression 'bill of exchange' as an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. A promise or order to pay is not 'conditional' within the meaning of this section and Section 4, by reason of the time for payment of the amount or any installment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen,

	although the time of its happening may be uncertain The sum payable may be 'certain' within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an installment, the balance unpaid shall become due. The person to whom it is clear that the direction is given or that payment is to be made may be a 'certain person' within the meaning of this section and section 4, although he is mis-named or designated by description only. The Calcutta High Court in 'Hundi V. Sinha V. Bidhy Bhasan' AIR 1955 Cal. 562 narrated the essential character of a bill of exchange which is that it contains an order to accept or to pay and that the acceptor should accept it; in the absence of such a direction to pay, the document will not be a bill of exchange or a hundi. The following are the bills of exchange- • A banker's draft – Birbhum Central Co-op bank V. Pioneer Bank Limited – AIR 1956 Cal. 615; • A demand draft even if it be drawn upon another office of the same bank – S.N. Shukla V. Punjab National Bank Limited' – AIR 1960 All. 238; • An order issued by a District Board Engineer on Government Treasury for payent to or order of a certain person – Rangaswami V. Sankaralingam – ILR 43 Mad 816.
Cheque	The term 'cheque' is defined under Section 6 of the Act. It is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. For the purposes of this section, the terms 'a cheque in the electronic form', 'truncated cheque' are defined which has been substituted by the Negotiable Instruments (Amendment) Act, 2015, with effect from 26.12.2015. 'A cheque in the electronic form' is a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometric signature) and asymmetric crypto system or with electronic signature, as the case may be. 'A truncated cheque' is a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

The expression 'clearing house' is the clearing house managed by the RBI or a clearing house recognized as such by RBI.

MTP DEC 19 SET 1
MTP JUNE 19 SET 2
WORKBOOK

Distinction between Promissory Note and Bill of Exchange

	Promissory Note		Bill of Exchange
1.	It is defined in Sec. 4 of NI Act, 1881.	1.	It is defined in Sec. 5 of the NI Act, 1881.
2.	There are two parties: • Maker. • Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety".	2.	There are three parties: • Drawer. • Drawee. • Payee.
3.	It contains a **Promise** to pay.	3.	It contains an **order** to pay.
4.	**No conditions** shall be made in a promissory note.	4.	A bill may be **accepted conditionally**.
5.	The liability of a maker of the promissory note is primary and absolute.	5.	The liability of the drawee of a bill of exchange is secondary and conditional.

Distinction between Promissory Note and Cheque

	Promissory Note		Cheque
1.	It is defined in Sec. 4 of NI Act, 1881.	1.	It is defined in Sec. 6 of the NI Act, 1881.
2.	There are two parties: • Maker. • Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety".	2.	There are three parties: • Drawer. • Drawee. • Payee.
3.	Promissory note contains a promise to pay the sum with interest or without interest at a later date.	3.	A cheque is payable immediately on demand without any days of grace.
4.	Promissory note is not crossed.	4.	Cheque can be crossed.
5.	No protection is available to the payee of note.	5.	Statutory protection is given to the drawee banker. (Sec. 128)
6.	A promissory note cannot be self drawn.	6.	A cheque can be self drawn or bearer cheque.
7.	No criminal liability shall be imposed on the maker.	7.	Criminal Liability may be imposed on drawee for the dishonour of cheques in certain circumstances.
8.	Stamp is necessary.	8.	Stamp is not necessary.
9.	Limitation: 3 years	9.	Limitation: 6 months

MTP DEC-19 SET 2

Distinction between Bill of Exchange and Cheque

	Bill of Exchange		Cheque
1.	It is defined in Sec. 5 of NI Act, 1881.	1.	It is defined in Sec. 6 of the NI Act, 1881.
2.	There are three parties: • Drawer. • Drawee. • Payee.	2.	There are three parties: • Drawer. • Drawee. • Payee.
3.	Bills of exchange are not crossed.	3.	Cheques may be crossed.
4.	Generally three days of grace are given for the payment in case of a bill of exchange. However, this convenience is not allowed in case of bill of exchange payable on demand.	4.	Immediate payment is required in case of cheque. No grace days are allowed.
5.	Anybody including banker may be a drawee in case of bill of exchange.	5.	The drawee is always a baker.
6.	It must be accepted before the acceptor can be made liable upon it.	6.	It requires immediate payment. It does not require acceptance of the maker. Thus the question of acceptance does not arise in case of cheque.
7.	Where a Bill of Exchange is not paid and not honoured, a notice of dishonour should be sent to the drawer to charge him.	7.	Where a cheque is dishonoured, Notice of Dishonour is not strictly necessary. The banker can return the cheque with the memo "Refer to Drawer" which is a sufficient notice.
8.	Statutory protection is not available.	8.	Sec. 85 of the N.I Act, 1881 affords protection to bankers.
9.	Civil Liability in case of dishonour of bill of exchange.	9.	Criminal liability in case of dishonour of a cheque/bouncing of a cheque and is liable to be prosecuted under Sec. 138 of the N.I. Act, 1881.

PARTIES TO THE INSTRUMENTS **MODEL QUESTION**	The transaction of the instrument requires at least two persons. One is the **drawer** and other is the **drawee.** The drawer of the instrument is the person who makes a bill of exchange or a cheque and the person thereby directed to pay is called the drawee. In 'Shivanth V. Bsihambar'- AIR 1935 Lah. 153 it was held that the definition of drawer is not exhaustive; the maker of the promissory note can also be called a drawer. **Drawer in case of need –** When in the bill or in any endorsement thereof the name of any person is given in addition to the drawee to be resorted to in case of need, such a person is called a 'drawee in case of need'. **Acceptor –** After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the acceptor. **Acceptor for honor**- When a bill of exchange has been noted or protested for non acceptance or for better security and any person accepts it supra protest for honor of the drawer or any one of the endorsers, such person is called an 'acceptor for honor'. **Payee –** The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the 'payee'. **WORKBOOK** **Holder –** Section 8 defines the term 'holder'. The holder of a promissory note or a bill of exchange or cheque is any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. In 'Anjaniaih V. Nagappa' – AIR 1967 AP 61 it was held that the term 'holder' as defined in Section 8 of the Act would not include a person, who, though in possession of the instrument, had no right to recover the amount due from the parties thereto, such as the finder of a lost instrument payable to bearer or a thief in possession of such an instrument, or even the payee himself, is he is prohibited by an order of court from receiving the amount due on the instrument. Where a plaintiff sued not as a holder in possession of the promissory note but claimed to recover the debt, on the basis of a succession certificate, he would be the only person entitled to recover the debt. **Holder in due course –** Section 9 defines the term 'holder in due course. It means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or the endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. In 'Braja Kishore Dikshit V. Purna Chandra Panda' – AIR 1957 Ori. 153 the High Court held that the holder in due course under Section 9 has to satisfy the following three conditions- • An endorsee becomes a holder in due course for consideration; • He can become an endorsee before the amount mentioned in the promissory note became payable; and • He should have no sufficient cause to believe that any defect existed in the title of the person from whom he was to derive his title. As regard to the second condition the promissory note becomes payable either on demand

or at maturity.

Difference between holder and holder-in-due course

Holder	Holder in due course
1. Holder is entitled in his own name to possess the instrument and the amount thereon from parties involved.	1. Holder in due course possesses the instrument for consideration before maturity and in good faith.
2. Title of the holder is subject to title of the transferor.	2. Holder in due course gets a better title than transferor.
3. Holder may receive the instrument without consideration.	3. Holder in due course always receives the instrument for consideration.
4. Holder does not get certain privileges available to the holder in due course.	4. Holder in due course always gets privileges not available to holder.

Payment in due course- Section 10 defines this expression as payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Example:

Where a bank makes payment in accordance with the apparent tenor of the instrument in good faith and without negligence under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment, payment is said to be done in due course. Therefore it is said "A banker's duty in paying a cheque is discharged by payment in due course".

TYPES OF Instruments

WORKBOOK

MODEL QUESTION

There are various types of instruments mentioned in this Act as follows:

• **Inland instrument** – a promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in, India shall be deemed to be an inland instrument.

• **Foreign instrument** – a promissory note, bill of exchange or cheque not drawn, made or made payable, in India, shall be deemed to be a foreign instrument.

• **Ambiguous instrument** – where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election, treat it as either and the instrument shall be thenceforward treated accordingly.

• **Instruments payable on demand** – A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

• **Inchoate stamped instruments** – Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments for the time being in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the mount intended by him to be paid there under.

Maturity (Sec 22-25)

Section 22 provides the date of the maturity of the instruments. The maturity of a promissory note or bill of exchange is the date at which falls due. If the promissory note

MODEL QUESTION	or bill of exchange does not express to be payable on demand, at sight or on presentment, the maturity for such cases is the third day on which it is expressed to be payable. In 'Hemadri V. Seshamma' – 1930 M.W.N. 1232 it was held that the term used in this section cannot apply to a promissory note payable on demand.
Calculation of maturity date	Section 23 provides for calculating maturity of bill or note payable so many months after date or sight. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity • the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated; or • presented for acceptance or sight; or • noted for non acceptance; or • or protested for non acceptance; or • the event happens; or • where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honor with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall held to terminate on the last day of such month. **Example – 1.** A negotiable instrument, dated 29th January, 2015, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 2015, i.e., 3rd March, 2015; 2. A negotiable instrument, dated 30th August, 2015 is made payable three months after date. The instrument is at maturity on 3rd December, 2015; 3. A promissory note or bill of exchange dated 31st August, 2015, is made payable three months after date. The instrument is at maturity on the 3rd December, 2015. Section 24 provides for exclusion of days in calculating the maturity date. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protect for non acceptance, or on which the event happens shall be excluded. If the maturity day is a public holiday then which will be the maturity date. Section 25 provides that when the day on which a promissory note or bill of exchange is maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day. The public holiday includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette to be a public holiday. Example – The maturity date is 14th April, 2016. That day was declared by the Central Government, as a public holiday on the eve of Dr. Ambedhkar's birthday. In this case the maturity date is 13th April, 2016.
CROSSING OF CHEQUES **MTP JUNE 17 SET 2** **MTP DEC 18 SET 2**	Section 123 provides that where a cheque bears across its face an addition of the words 'and company' or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words 'not negotiable' that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

	Section 124 provides that where a cheque bears across its face an addition of the name of a banker, either with or without the words 'not negotiable' that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker. Section 125 provides that where a cheque is not crossed, the holder may cross it generally or specially. • Where a cheque is crossed generally, the holder may cross it specially; • Where a cheque is crossed generally or specially, the holder may add the word 'not negotiable'; • Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.
Payment of cheque	The payment may be made in respect of the following cases- • payment of cheque crossed generally; • payment of cheque crossed specially; • payment of cheque crossed specially more than once; • payment in due course of crossed cheque; • payment of crossed cheque out of due course. Section 126 provides that where a cheque is crossed generally, the banker, on whom it is drawn, shall not pay it otherwise than to a banker. Section 127 provides that where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collect, the banker on whom it is drawn shall refuse payment thereof. Section 128 provides that where the banker on whom a cross cheque is drawn has paid the same in due course, the banker paying the cheque, and (in such case cheque has come to the hands of the payee) the drawer thereof, shall respectively entitled to the same rights and be placed in the same position in all respects, as they would respectively be entitled to and placed in it if the amount of the cheque had been paid to and received by the true owner thereof. Section 129 provides that any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Circumstances when the banker must refuse the payment **MTP DEC 17 SET 1**	Following are the circumstances in which the banker is bound to refuse the payment of a cheque: (1) When the customer has countermanded payment. The term 'countermand' means the issue of instruction to the banker not to pay a particular cheque. Thus, where a customer issues instructions to the banker not to make the payment of a particular cheque, the banker must not make the payment. A cheque, the payment of which is stopped by the customer is known as a 'stopped cheque'. And a stopped cheque is a piece of waste paper in the hands of payee. It is, however, necessary that a countermand to be effective must reach the banker before he had paid the cheque in the ordinary course. It may also be noted that the countermand notice must be duly signed by the customer and give correct particulars of the cheque. (2) When the customer has died. Sometimes, the banker receives notice of customer's death. In such cases, he must refuse the payment of the cheque presented after the notice of death. However, if the payment is made before the banker receives the notice of death, the payment is valid and banker is justified in making such payment. (3) When the customer has become insolvent. Sometimes, the banker receive; the notice of customer's insolvency. In such cases also he must refuse the payment of the cheques presented after the notice. (4) When the customer has become a person of unsound mind (i.e. insane). Sometimes, the banker receives the notice that his customer has become insane. In such cases also, he must refuse payment of the cheque presented after the notice. (5) When a garnishee order has been received by the banker. The term Garnishee order may be defined as a court order attaching the balance in customer's account. When the banker receives such order then he is bound to refuse the payment of the customer's cheque. (6) When the cheque is lost. Sometimes, the drawer informs the banker that a particular cheque is lost. In such cases, banker must refuse the payment of that cheque. (7) When the account is closed. Sometimes the customer closes his account and gives notice to the banker. In such cases the banker must not pay any cheque of the customer after the closure of the account. (8) When holder's title is defective. Sometimes, the banker comes to know of any defect in the title of the person presenting the cheque. In such cases, he must refuse the payment of the cheque. (9) When a customer gives notice of assignment of credit balance in his account, the banker must refuse the payment of cheque.
A banker will be justified or bound to dishonour a cheque in the following cases	1. If a cheque is undated 2. If the cheque is stale 3. If the instrument is inchoate or not free from reasonable doubt. 4. If the cheque is post -dated and presented for payment before its ostensible date. 5. If the customer‘s funds in the banker‘s hands are not _properly applicable‘ to the payment of cheque drawn by the former. 6. If the customer has credit with one branch of a bank and he draws a cheque upon another branch of the same bank in which either he has account or his account is overdrawn. 7. If the bankers receive notice of customer‘s insolvency or lunacy. (i) If the customer countermands the payment of cheque for the banker‘s duly and authority to pay a cheque ceases. (ii) If a garnishee or other legal order from the Court attaching or otherwise dealing with the money in the hand of the banker, is served on the banker.

	(iii) If the authority of the banker to honour a cheque of his customer is undermined by the notice of the latter's death. (iv) If notice in respect of closure of the account is served by either party on the other (v) If it contains material alterations, irregular signature or irregular endorsement
Cheque bearing 'not negotiable'	Section 130 provides that a person taking a cheque crossed generally or specially, bearing in either case the words 'not negotiable', shall not have, and shall not be capable of giving, a better title to the cheque than which the person from whom he took it had.
Non liability of banker	Section 131 provides that a banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title of the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment. A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof. It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the prima facie genuineness of the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary case.
ENDORSEMENT	Meaning of Endorsement: The term 'Endorsement' can also be pronunciated as 'Indorsement'. This term is said to have been derived from the Latin word 'indorsum', which means 'upon the back' (in = upon; dorsum = back). The 'Indorsement' means signatures of the person which are generally made at the back of the instrument, for the purpose of transfer of rights to another person. Section 15 of the Act provides that when the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negation on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument he is said to indorse the same and is called the 'indorser'. Therefore, endorsement (indorsement) means writing of a person's name (other than maker) on the face or back of an instrument or on a slip of paper attached thereto for the purpose of negotiation. The person signing the instrument is known as endorser and the person in whose favour it is endorsed is known as endorsee.
Essentials of a valid endorsement	(I) It must be on the instrument itself or on a separate slip of paper (called allonge) attached thereto. (II) For the purpose of negotiation, it must be signed by the endorser. (III) The instrument may contain in addition to the signature of the endorser, the name of the endorsee also. No particular form of words is necessary for endorsement. (IV) Endorsement is complete when the instrument is delivered to the endorsee with the intention of passing the property in it to the endorsee. Delivery is to be made by the endorser himself or someone on behalf of him.
Who may endorse a bill	The first endorsement of an instrument can be made by the payee only, however, subsequent endorsement can be made by any person who becomes the holder of the instrument. As per section 15 endorsement can not be made by the maker or holder of an instrument as maker. Thus if a bill is drawn payable to the drawer's order the first

	signature of the drawer as a drawer is not an endorsement, but if he signs the bills second time for the purpose of negotiating it, the second signature would be an endorsement. It may noted that as per section 51 every sole maker, drawer, payee or indorsee or all of several joint makers, drawers, payees or indorsees of a negotiable instrument may endorse and negotiate it.
Types of endorsement	The endorsement of a negotiable instrument can be (i) blank (ii) full (iii) restrictive endorsement or (iv) conditional endorsement As per section 16(1), if the endorser signs his name only, the endorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be "in full", and the person so specified is called the "endorsee" of the instrument. Section 49 of the Act provides the mechanism of conversion of a blank endorsement into a full endorsement. As per section 49 the holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the endorser's signature a direction to pay to any other person as endorsee, convert the endorsement in full; and the holder does not thereby incur the responsibility of an endorser. **Example:** X is a holder of a bill which has been endorsed in blank by Y and delivered to him. If X writes over the signature of Y "Pay to Z or order", X is not liable as a endorser but this operate as full endorsement by Y to Z. As per section 55 if a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the endorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person. As per section 54, subject to the provisions hereinafter (section 55) contained crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order. **Example:** If A is a payee and holder of a negotiable instrument. He endorses it in blank and delivers it to B who in turn endorse in full" Pay to C or order". C transfers it to D without any formal endorsement. In the instant D as the bearer of the instrument is entitled to payment or to sue drawer, acceptor or A who endorsed the bill in blank but he cannot hold B or C liable. However, C can sue B as he received the bill in full endorsement from B. But if C makes a proper endorsement in favor of D and then delivers to him, D can claim payment from all the prior parties including A and B in addition to C. As per section 50 endorsement of a negotiable instrument followed by delivery thereof has the effect of transferring the property in the instrument to the endorsee with a further right to negotiate the Instrument. But the endorser may by express words restrict or exclude such rights in which it will be called a **restrictive endorsement.** As per section 50 the of a negotiable instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation; but the endorsement may be express words, restrict or exclude such right, or may merely constitute the endorsee an agent to indorse the instrument, or to receive its contents for the endorser, or for some other specified person. The effect of restrictive endorsement is that the endorsee gets the right to full payment of the bill when due for payment and has right to sue any party to the bill but he has no right to transfer this right to any other person unless he expressly authorized to do so. The negotiability of the instrument comes to an end and the last endorsee is the person to sue upon. However, when the restrictive endorsement transfer the right of further endorsement or transfer all the subsequent endorsee get the bill with same right and liabilities as the fires endorsee after the first restrictive endorsement. As per section 40 if the holder of a negotiable instrument without consent of the endorsee,

destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability as if the instrument had been paid at maturity.

Quite possible the holder of a negotiable instrument lost the instrument before its date of maturity. In such cases as per section 45 A of the act the holder has right to claim a duplicate copy of the lost bill subject to giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so as he has no option to give a duplicate copy of the said instrument.

As per section 52 of the Act, the endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon, or make such liability or the right of the endorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen. This is called **conditional endorsement.**

Where an endorser so excludes his liability and afterwards becomes the holder of the instrument all intermediate endorsers are liable to him.

Example 1: The Endorser of a negotiable instrument signs his name adding the words "without resources" upon this endorsement he incurs no liability.

Example 2: X is both holder as well payee of a negotiable instrument. Excluding personal liability by an endorsement " without recourse" he transfers the Instrument to B and B further endorses it to C who endorse it to A. A is not only reinstated in his former rights, but has the rights of an endorsee against B and C.

As clear from the above examples we can say that an endorser can exclude or limit his liability in the following ways;

(a) By excluding his liability by making a Sans recourse endorsement. This can be done by adding the words' Sans recourse(Without recourse) to the endorsement. For example the endorsement can be in the form" Pay A or order without recourse to me" or "pay A or order sans recourse' or 'Pay A or order at his own risk'. In the instant case if the instrument is dishonored, the subsequent holder or the endorsee cannot look to the endorser for the payment of the same. Where an endorser excludes or limits his liability in this manner and afterwards becomes the holder of the same instrument, all intermediate endorsers continue to be liable to him.

(b) Sans Frais endorsement: It may be understood that where the endorser does not want that the endorsee or any other holder to incur any expense on his account, it is called a " sans frais endorsement".In a "Sans Frais' endorsement the endorsee or any other holder does not want to incur any expense on his account This is called without expense endorsement also.

(c) By making his liability contingent upon an uncertain event which may never happen as when the uncertain future event is not possible his liability is extinguished. But the endorsee can sue the prior parties before happening of the event.

Example:

The holder of a bill may endorse it "pay A or order on the arrival of the ship 'Vikrant" at Surat or pay A or order on his marriage with B. In all these cases, the liability of the holder as an endorser would arise upon the happening of the event specified.

(d) By making right of endorse to receive payment on event which may never happen. In this case endorsee can not sue prior parties before the happening of the specified event.

	(e) Partial endorsement: In order to be called a proper and valid endorsement the whole amount of the bill has to be endorsed. A part of the amount of an instrument cannot be endorsed. However, where a part of the amount has been paid or received by the holder, in such endorsement of the remaining unpaid amount can be made. **Example:** An instrument is of ` 5,000 however, if any party to the instrument endorsee it for `4000 in favor of any party such endorsement will not be valid. However, where ` 1000 has been received against that instrument and the fact is recorded in the instrument then the endorsement of balance `4000 is perfectly valid. (f) Facultative endorsement;-In case of such an endorsement the endorser abandone some rights or increases his liability as endorser e.g "Pay A or order, notice of dishonor waived".
MATERIAL ALTERATION	Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties: Alteration by endorsee: And any such alteration, if made by an endorsee, discharges his endorser from all liability to him in respect of the consideration thereof. It may be noted that to get benefit of this section the alteration must be intentional and not purely accidental. Secondly the alteration must be material. In Lookaram Sethiya V Ivon E John(1977) SC defined the term material alteration as follows: "A material alteration is one which varies the rights, liabilities or legal position of the parties as ascertained by the deeds in its original state or otherwise varies the legal effets of the instruments as originally expressed or which may otherwise prejudice the party bound by the deed as originally executed. Some of the alterations which have been held to be material in various cases are as under;

	(i) Alteration of an order cheque to a bearer cheque except by or with the consent of the drawer. (ii) Alteration by tearing material part of the instrument. (iii) Alteration by erasing account paying crossing (J ladies Beauty V State Bank of India,AIR 1984 Guj 33) (iv) Alteration by affixing stamps without the promisor's knowledte to a note. (Thommer v Union Khan 1967 Ker LJ 80 N Gowda v B Gowda 1968 1 Myrs LJ 591) (v) Alteration of the date of payment [(A Subha Reddy v Neelapa Reddy Rammana Reddy AIR 1966 AP 267] (vi) Alteration of the time of payment. (Long v Moore,1790 3 Esp 155) (vii) Alteration of the place of payment (Tidamarsh v Grover 1813 23 LJ QB 261) (viii) Alteration of the sum payable (scholfield v Earl of Londesborough 1896 AC 514) (ix) Alteration by adding new party to the instrument (Garner v Walsh 1855 5 ESB 83) (x) Alteration by tearing a material part of the instrument. (xi) Alteration of the rate of interest (Seeth Tulsidas lalchand v Rajagopal 1967 2 MLJ 66) From the above cases of alteration which have been treated material alteration we can say that any alteration which changes the legal character of the instrument or alters the liabilities of the parties, whether change is prejudicial or beneficial is a material alteration. Though we have discussed that material alteration discharges the parties to an instrument. But still there are some alterations which do not vitiate the instrument. These are as under;-- (i) Alteration before the completion of the instrument. (ii) Crossing of an open cheque or conversion of general crossing into a special crossing. (iii) Making qualified acceptance. (iv) Completion of inchoate instrument. (v) Making a blank endorsement into full endorsement. (vi) Conversion of a bearer cheque into an order cheque. (vii) Alteration with the consent of the party liable on the instrument. (viii) Alteration made for the purpose of correcting mistake. (ix) Making a blank instrument into a full endorsement.
Payment of instrument on which alteration is not apparent	So far we have discussed that material alteration on a instrument discharge the parties to it. Still there may be some alteration in an instrument which may not be apparent at the time of payment. As per section 89: (1) Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or where a cheque is presented for payment

	which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay an paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such a person or banker from all liability thereon, and such payment shall not be questioned by reasons of the instrument having been altered, or the cheque crossed. (2) Where the cheque is an electronic image of a truncated cheque, any difference in apparent tenor of such electronic image and the truncated cheque shall be a material alteration and it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of electronic image of the truncated cheque while truncating and transmitting the image. (3) Any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same. f a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.(Section 90)
ACCEPTANCE	Only certain types of bills require acceptance. Essentials of a valid acceptance are— (i) Must be written on the face of the bill, (ii) The bill must be signed by drawee or his authorized agent. (iii) The accepted bill is required to be delivered to the holder of the instrument.
Meaning of acceptance:	A bill is said to be accepted when the drawee (i.e., the person on whom the bill is drawn), after putting his signature on it, either delivers it or gives notice of such acceptance to the holder of the bill or to some person on his behalf.
Acceptor:	After the drawee has accepted the bill, he is known as the acceptor. It is only the bill of exchange (other than cheque) which requires acceptance. However, acceptance is not necessary to make a valid bill. If a bill is not accepted, it does not become invalid. It only becomes dishonoured by non-acceptance.
Presentation for acceptance may be excused in the following circumstances:	(a) Where the drawee is dead or insolvent. (b) Where the drawee is a fictitious person or one incapable of contracting. (c) When the drawee can cannot be found with reasonable efforts. (d) When acceptance has been refused on some other grounds.
Acceptance in Case of Bills in Sets:	Where a bill is drawn in sets, the acceptance is required to be put on one part only. Where the drawee signs his acceptance on two or more parts, he may become liable on each of them respectively.
When presentation for acceptance is necessary:	(a) Where the bill is payable at a given time after acceptance or after sight. (b) Where the bill expressly stipulates that it shall be presented for acceptance before presented for payment. (c) Where the bill is made payable at a place other than the place of residence or business

	of the drawee. In no other case is presentation for acceptance necessary in order to render liable any party to the bill.
Types of Acceptance:	Acceptance may be either general or qualified. **General Acceptance:** An acceptance is said to be general when the drawee accepts the bill without qualification to the order of the drawer. If the acceptance is not absolute, the holder may treat the bill as dishonoured by non- acceptance **Qualified Acceptance:** An acceptance is said to be qualified when the drawee accepts the bill subject to qualification. It may be noted that an acceptance will not be treated as a qualified acceptance unless the qualification is expressed on the bill in the clearest language. The qualification may relate to an event, amount, place, time, etc.
Circumstances indicating Qualified Acceptance **MODEL QUESTION**	According to Section 86, an acceptance is qualified under the following circumstances: (a) Where it undertakes the payment on the happening of an event therein stated; (b) Where it undertakes the payment of part only of the sum ordered to be paid; (c) Where it undertakes the payment at a specified place of his choice and not otherwise or elsewhere; (d) Where it undertakes the payment at a time other than that at which under the order it would be legally due. (e) Where it is not signed by all drawees who are not partners
Effect of Qualified Acceptance	(a) The holder, may, treat the bill as dishonoured due to non-acceptance and after giving due notice of dishonour, sue the drawer and prior endorsers. (b) If he accepts a qualified acceptance all prior parties whose consent is not obtained are discharged as against the holder and those deriving title from him.
Examples of Qualified Acceptance	(a) Accepted payable when in funds. (b) Accepted payable on giving up bill of lading. (c) Accepted payable when a cargo consigned to me is sold. (d) A bill drawn for `1,000 accepted for ` 900 only. (e) Accepted payable at Delhi only where no place of payment is specified in the order. (f) Accepted payable at Delhi only where the place of payment specified in the order was Bombay. (g) Accepted payable 4 months after date where the bill drawn as payable 3 months after date. (h) Accepted by A, B and C where drawees were A. B. C and D who not partners. (i) Accepted payable on receiving income tax refund (j) A bill drawn for ` 1,000 but accepted to the extent considered reasonable and just by a common friend of both.

NEGOTIATION	Chapter IV of the Act deals with negotiation. Section 14 defines the term 'negotiation'. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated. In 'L. Parsotam V. L. Bankey Lal' – AIR 1935 All. 1041 it was held that handing over a negotiable instrument to an agent for safe custody is not negotiation. There must be a transfer by the holder to the transferee to make the latter a holder within the meaning of Section 8.
Delivery	Section 46 provides that the making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery. The delivery is of two types – one is actual delivery and the other is constructive delivery. As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf. As between such parties and any holder of instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein. A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof. A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof. In 'Bhagwati Prasad V. Pahil Sundari'- AIR 1969 Pat 215 it was held where property in a promissory note is transferred by partition, the transferee is entitled to maintain his suit on it; his rights cannot be defeated on the ground of non endorsement. In 'Vaddadi Venkitasami V. Mh. Begum' – AIR 1956 AP 9 it was held that in addition to the mode of transfer of a promissory note indicated in Section 46 here are two other modes of its transfer- • By operation of law; and • Transfer as a chose-in-action contemplated by Section 130 of the Transfer of Property Act. The only difference between the two modes is that while transfer by negotiation clothes the transferee with certain rights, assignment as a chose-in-action under Section 130 limits such rights, as the transferor had in the document i.e., the assignee takes only subject to equities in favor of the maker; an assignee of a promissory note otherwise than by indorsement such as transfer by means of writing under Section 130 of the Transfer of Property Act, can sue on the promissory note. Negotiation is of two types – one is negotiation by delivery and the other is negotiation by indorsement.
Negotiation by delivery	Section 47 provides that subject to the provisions of Section 58 a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof. There is an exception to this. A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in certain event is not negotiable (except in the hands of a holder for value without notice to the condition) unless such event happens. **Example:** 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 bank 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 becomes the holder of it.
Negotiation by ndorsement	Section 48 provides that subject to the provisions of Section 58, a promissory note, a bill of exchange or cheque payable to order is negotiable by the holder by endorsement and delivery thereof. In 'Chaitram V. Mohanlal' – AIR 1957 Nag. 65 it was held that where a promissory note payable to a particular person does not contain any words prohibiting transfers or indicating that it was not transferable, it would be a negotiable instrument payable to order; it would be negotiable by the holder by endorsement and delivery with the necessary intention to constitute the person in whose favor the endorsement is made as the holder thereof; there must be intention of the endorser to constitute the endorsee as a holder of the pro-note accompanied by delivery; unless this is proved negotiation is not complete.
Conversion of ndorsement in into endorsement in	Section 49 provides that the holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a director to pay to any other person as endorsee, convert the endorsement in blank into an endorsement in full and the holder does not there by incur the responsibility of an endorse.
Effect of ndorsement	Section 50 provides that the endorsement of a negotiable instrument followed by delivery transfer to the endorsee the property therein with the right of further negotiation, but the endorsement may, by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to endorse the instrument, or to receive its contents for the endorser, or for some other specified person. **Example:** 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 for order for the account of B' (d) 'The within must be credited to C' These indorsements exclude the right of further negotiation by C (e) 'Pay C' (f) 'Pay C value in account with the Oriental bank' (g) 'Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others' These indorsements do not exclude the right of further negotiation by C. In 'Wasudev V. National Savings Bank' – IR 1953 Bom. 209 it was held that Section 50 deals with what are known as restrictive endorsements which in express words restrict or exclude the rights of endorsees; it does not apply to cases where the endorsee wishes to

	satisfy the Court by oral evidence that he was endorsee for a particular purpose only.
Who may negotiate?	Section 51 provides that every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in Section 50, indorse and negotiate the same. Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument unless he is holder thereof. **Example** – 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.
Indorser who excludes his own liability	Section 52 provides that the indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen. Where an indorser so excludes his liability and after becomes the holder of the instrument, all intermediate indorsers are liable to him.
Holder deriving title from holder in due course	Section 53 provides that a holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.
Instrument indorsed in blank	Section 54 provides that subject to the provisions contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.
Claim on the conversion of indorsement of blank into indorsement in full	Section 55 provides that if a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives the title through such person.
Indorsement for part of sum due	Section 56 provides that no writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.
Instrument obtained by unlawful means	Section 57 provides that when a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder by means of an offence or fraud or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.
Instrument acquired after dishonor	Section 59 provides that the holder of a negotiable instrument, who has acquired it after dishonor, whether by non acceptance or nonpayment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor.
Accommodation bill	Any person, who in good faith and for consideration becomes the holder, after maturity, of a promissory note or a bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount or bill from any party. **Example** – 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 but 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 bill.
Instrument negotiable till payment	Section 60 provides that a negotiable instrument may be negotiated, (except by the maker, drawee or acceptor after maturity) until payment or satisfaction by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.
Presentment **MODEL QUESTION**	Chapter V of the Act provides the procedure of presentment of negotiable instruments. • Section 61 – Presentment for acceptance; • Section 62 – Presentment of promissory note at sight; • Section 63 – Drawee's time for deliberation; • Section 64 – Presentment for payment; • Section 65 – Hours for presentment; • Section 66 – Presentment for payment of instrument payable after the date or sight; • Section 67 – Present for payment of instrument payable by installments; • Section 68 – Presentment for payment of instrument payable at specified place and not elsewhere; • Section 69 – Instrument payable at specified place; • Section 70 – Presentment where no exclusive place specified; • Section 71 – Presentment when maker, etc., has no known place of business or residence; • Section 72 – Presentment of cheque to charge drawer; • Section 73 – Presentment of cheque to charge any other person; • Section 74 – Presentment of instrument payable on demand; • Section 75 – Presentment by or to agent, representative or deceased or assignee of insolvent; In 'Jagjivan Mavji V. Ranchoddas' AIR 1954 SC 553 it was held by the Supreme Court that a bill payable after sight has two distinct stages; firstly when it is presented for acceptance and later when it is presented for payment. Section 61 deals with the former and Section 64 deals with the later. Presentment for acceptance must always and in every case precede presentment for payment. But when the bill is payable on demand, both stages synchronize; there would be only one presentment, both for acceptance and for payment. When the bill is paid, it involves acceptance; but when not paid, it is really dishonored for non acceptance. But whether the bill is payable after sight, or at sight or on demand, acceptance by the drawee is necessary before he can fixed with liability on it. It is acceptance that establishes privity on the instrument between the payee and the drawee. In 'Banaras Bank Limited V. Normusji Pestonji' – AIR 1930 All. 648 it was held that Section 64 should be given its plain meaning; the exception to it must be read as more or less an independent rule of law; non presentment of hundis for payment does not exempt

	the acceptor from his liability; it exempts only other parties to the hundis. In 'Nanumal V. Shibba Mal' AIR 1939 Lah. 18 it was held that where the place of payment is not indicated by the maker in the instrument, the note or bill has to be presented at the place of business, if any, or at the usual residence of the maker, drawee or acceptor. In 'Jayaram V. Sivaram' AIR 1963 Mad 294 it was held that the term specified place in Section 69 must have been intended to refer to a place indicated with sufficient precision to enable the person, who wants to charge the maker with liability, to resort to him readily, a promissory note which refers to a large city like Madras as the place for presentment does not fall under Section 69 and does not require presentment. In 'Gopikisan V. Jethmal' Air 1935 Nag.144 it was held that in the absence of any indication in the instrument itself of the place of payment, presentment must be at the place of business of the acceptor or maker or the place where he has his home or residence.
Presentment when not necessary **MTP JUNE 17 SET 1** **MTP DEC 18 SET 1** **MODEL QUESTION**	Section 76 provides that no presentment for payment is necessary in any one of the following cases- • If the maker, drawee or acceptor intentionally prevents the presentment of the instrument; or • If the instrument is being payable at his place of business, he closes such place on a business day during the usual business hours; or • If the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours; or • If the instrument not being payable at any specified place, he cannot after due search be found; • As against any party sought to be charged therewith, if he has engaged to pay notwithstanding non presentment; • As against any party if, after maturity, with knowledge that the instrument has not been presented he makes a part payment on account of the amount due on the instrument or promises to pay the amount due thereon in whole or in part or otherwise waives his right to take advantage of any default in presentment for the payment
Payment and interest	Chapter VI deals with the payment of interest. Section 78 provides that the payment should be made to the holder or his accredited agent. Section 79 provides that interest is payable on the amount which has been paid after the due date. The interest is payable from the date of due to the date of realization. Section 80 provides that when no interest rate has been specified in the instrument then the interest shall be calculated at the rate of 18% per annum from the date of due to the date of realization of the amount. Section 80 provides that any person liable to pay and called upon by the holder to pay the amount due on a negotiable instrument is before payment entitled to have it shown and is on payment entitled to have it delivered up, to him, or if the instrument is lost or cannot be produced to be indemnified against any further claim thereon against him.

ASSIGNMENT OF NEGOTIABLE INSTRUMENTS

Assignment takes place where the holder of an instrument transfers it to another so as to confer a right on the transferee to receive the payment of the instrument. All negotiable instruments are chose in action and as such are transferable by assignment without endorsement under sections 130-132 of the Transfer of property act. Assignment of a negotiable instrument is effected by writing without endorsement. The main feature of assignment is that the assignee obtains the right of the assignor. Therefore if the assignor's title is defective assignee's title will also be defective.

Difference between Negotiation and Assignment

Negotiation	Assignment
Consideration is presumed until contrary is proved.	Consideration must be proved
It transferee is a holder in due course he takes the instrument free from any defects.	Assignee's title is always subject to defenses and equities between the original debtor and assignor.
Notice of transfer is not necessary.	Notice of assignment must be given.
Negotiation is effected by delivery in case of instruments payable to bearer and by delivery and endorsement in case of instrument payable to order.	Assignment is effected only by writing
Transferee can sue the third party in his own name.	Assignee cannot do so.
There are a number of presumptions in favor of holder in due courses.	There are no such presumptions.

Discharge from liability

Chapter VII deals with the discharge from liability on negotiable instruments. Section 82 provides the methods of discharge from liability-

• by cancellation;

• by release; and

• by payment.

Section 83 provides that if the holder allows the drawee more than 48 hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance and thereby discharged them from liability to such holder.

Delay in presentation of cheque

Section 84 provides that where a cheque is not presented for payment within a reasonable time and the drawer at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he discharged to the extent of such damage, that is to say, to the extent to which such drawer is a creditor of the banker to a larger amount that he would have been if such cheque had been paid.

In 'Abdul Majid V. Ganesh Das Kalooram' – AIR 1954 Ori. 124 it was held that a drawer of a cheque who wants to take advantage of Section 84 must prove two facts-

• He had sufficient money in deposit in the bank in his account to honor the cheque; and

• He had suffered actual damage on account of non presentment of the cheque within a reasonable time.

Cheque payable to order

Section 85 provides that where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharge by the payment in due course. Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

Parties to notes, bills and cheques	Chapter III of the Act deals with the parties to notes, bills and cheques.
Capacity	Section 26 provides that every person capable of contracting may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself. Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered. In 'Sulochana V. Pnaidyan Bank Limited' - AIR 1975 Mad 70 (DB) it was held that when a minor being along with one other executed a promissory note, held, though no liability could be enforced against the minor executants, the other executants, also a party to the document, could not escape his liability. In 'Orilo Industries Limited v. Bombay Mercantile Bank Limited' – AIR 1961 SC 993 it was held that Section 26 does not purpose to make any provision of substantive or procedural law. The latter part of the section merely brings out that a company cannot claim authority to issue a cheque under its first part. The law in regard to the company's power to issue negotiable instruments has to be found in the relevant provisions of the Companies Act itself.
Agency **MODEL QUESTION**	Section 27 provides that every person capable of binding himself or being bound may so bind himself or be bound by a duly authorized agent acting in his name. A general authority to transact business and to receive and discharge debt does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal. An authority to draw bills of exchange does not itself import an authority to indorse. In 'M. Rajagopal V. K.S. Imam Ali' – AIR 1981 Ker 36 (DB) it was held that in case of conflict between Sections 19 and 22 of the Partnership Act on the one hand and Sections 26, 27 and 28 of the Negotiable Instruments Act on the other, the latter Act should prevail. A claim against a firm based on a written contract by one partner in the course of business and with authority to act is binding on the firm. But when such claim is made on a promissory note or bill of exchange, the Court has to be satisfied that the negotiable instrument disclosed the liability of the firm clearly.
Liability of agent **MODEL QUESTION**	Section 28 of the Act provides that an agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable. This section carries an exception to the general law of contract, that the principal, though not disclosed on the instrument may be proceeded against if it is discovered later on that the agent had acted on his behalf as held in 'Ramanathan V.Baldeo Singh'- AIR 1933 Rang.111.
Liability of the representative **MODEL QUESTION**	Section 29 provides that a legal representative of a deceased person who signs his name to a promissory note, bill of exchange or a cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.
Liability of drawer	Section 30 provides that the drawer of a bill of exchange or cheque is bound, in case of dishonor by the drawee or accepter thereof, to compensate the holder, provided due notice of dishonor has been given to, or received by the drawer as herein provided. In 'Union Bank of India V. Swastika Motors' – AIR 1983 Del. 420 it was held that a drawee having dishonored the hundis, their drawer would be liable to the payee provided he had due notice of dishonor, even if the documents of title, accompanying the hundis, had been delivered to the drawee without valid acceptance.

	In 'Silchar Bank V. Pioneer Bank'- AIR 1951 Assam 127 it was held that if the drawee bank dishonors the cheque after the drawer had stopped payment, the question of notice of dishonor does not arise; the drawer is liable to compensate the holder.
Liability of the drawee of cheque **MODEL OF QUESTION**	Section 31 provides that the drawee of a cheque having sufficient funds of the drawer in his hands property applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.
Liability of maker of note and acceptor of bill	Section 32 provides that in the absence of contract to the contrary, the maker of promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder of the demand. In default of such payment, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default. In 'Jagjivan Mavji V. Ranchoddas' – AIR 1954 SC 554, the Supreme Court held that the drawee of a negotiable instrument is not liable to the payee, unless the drawee has accepted it. Under Section 32 the liability of the drawee arises only when he accepts the bill; there is no provision in the Act that the drawee is as such liable on the instrument, except under Section 31 when the drawee has sufficient funds of the customer in his hands; and even then, the liability is only towards the drawer, not the payee. In 'M. Ramnarain Private Limited V. State Trading Corporation of India Limited' – AIR 1988 Bom 45 (DB) it was held that where the payee was the holder of bills but not willing to part with them unless the entire amount covered by the bills had been paid to him, the drawer may sue the acceptor for compensation but only after payment to the payee and his endorsement on the bills in favor of the drawer.
Only drawee can be acceptor except in need or for honor	Section 33 provides that no person except the drawee of the bill of exchange or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honor can bind him by an acceptance. In 'Manikchand V. Chartered bank' – AIR 1961 Cal. 653 (DB) the High Court narrated the scope of Section 33. Section 33 must not be misread as preventing the drawee from accepting through an agent; under Section 26 and 27 the drawee can accept a bill through his agent.
Acceptance by several drawees not partners	Section 34 provides that where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.
Liability of Indorser	Section 35 provides that in the absence of contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonor by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonor, provided due notice of dishonor has been given to, or received by, such indorser as herein after provided.
Liability of prior parties to holder in due course	Section 36 provides every prior party to a negotiable instrument is liable thereon to holder in due course until the instrument is duly satisfied.
Maker, drawer and acceptor principals	Section 37 provides that the maker of a promissory note or a cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor as the case may be.

Prior party a principal in respect of each subsequent party	Section 38 provides that as between the parties the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party. **Example –** 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 debtors, and A,C and D are his sureties. As between E and A, A is the principal debtors and C and D are his sureties. As between E and C, C the principal debtor and D is his surety.
Suretyship	Section 39 provides that when the holder of an accepted bill of exchange enters into any contract with the acceptor which, under Sections 134 or 135 of the Contract Act, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.
Discharger of indorser's liability	Section 40 provides that where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. **Example –** As 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 and Co; • Fourth indorsement – John Rozario This bill A puts in suit against John Rozario and strikes without John Rozario's consent the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from Rozario
Acceptor bound, although indorsement forged	Section 41 provides that an acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.
Acceptance of bill drawn in fictitious name	Section 42 provide that an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.
Negotiable instrument made without consideration	Section 43 provides that a negotiable instrument made, drawn, accepted , indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. Explanation 1 to this section provides that no party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation. Explanation 2 to this section provides that no party to the instrument who has induced any

	other party to make, draw, accept, indorse or transfer the same to him for a consideration which he failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed. In 'Ram Narain V. Ramjiwan' AIR 1937 Nag. 267 it was held that Section 43 must be read subject to Section 59 in all cases in which the latter section applies; the holder, as against other parties, would have only the rights thereon of his transferor.
Partial absence or failure of money consideration	Section 44 provides that when the consideration for which a person signed a promissory note, bill of exchange or cheque consisted or money, and was originally absent in part of has subsequently failed in part, the sum which is a holder standing in immediate relation with such signer is entitled to receive from his is proportionately reduced. Explanation to this section provides that the drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with the indorsee. Other signers may by agreement stand in immediate relation with the holder. **Example:** A draws a bill on `500 payable to the order of A. B accepts the bill, but subsequently dishonors it by non payment. A sues B on the bill, B proves that it was accepted for value as to `400/- and as accommodation to the plaintiff as to the residue. A can only recover `400/-. In 'Mutyala Yarakadu V. State of Andhra Pradesh' – 1955 An.WR 870 it was held that where a promissory note has been endorsed to a third person, Section 44 cannot be applied so as to prejudice his rights. Where the maker of the promissory note stands in immediate relation to the payee, Section 44 would entitle the debtor to relief. In 'Tirupagari Tayaramma V. Sri Ramanjaneya Mercantile Co. Eluru' – AIR 1977 AP 205 it was held that Section 44 would not apply when consideration for the promissory note was a set of obligations, not merely of money.
Partial failure of consideration not consisting of money	Section 45 provides that where a part of the consideration for which a person signed a promissory note, bill of exchange or a cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.
Holder's right to duplicate of lost bill	Section 45A provides that where a bill of exchange has been lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. If the drawer on request refuses to give such duplicate bill, he may be compelled to do so.
Notice of dishonour **MODEL QUESTION**	Chapter VIII deals with the notice of dishonor.
When dishonored?	The dishonor may be due to the following reasons- • non acceptance; and • by nonpayment. Section 91 provides that a bill of exchange is said to be dishonored by non acceptance when the drawee, or one of several drawees, not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused

	and the bill is not accepted. When the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonored. Section 92 provides that an instrument is said to be dishonored by nonpayment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.
Notice	Section 93 provides that when an instrument is dishonored the holder must give notice that the instrument has been dishonored. In 'Union bank V. Dina Nath' – AIR 1953 All. 637 it was held that this section was intended to confine the holder's right of enforcing the liability to only those who are otherwise liable under the law and to whom notice has been given; it was not intended to enlarge the holder's right so as to enable him to claim damages from persons against whom he has no remedy under the Act.
Mode of giving notice	Section 94 provides that the notice may be in writing or oral. If it is in written form it must be sent by post and may be in any form but it must inform the party to whom it is given either in express term or by reasonable intendment that the instrument has been dishonored and he will be held liable thereon. It must be given within a reasonable time after dishonor at the place of business or at the residence of the party for whom it is intended. Section 95 provides that any party receiving notice of dishonor must, in order to render any prior party liable to himself, give notice of dishonor to such party within a reasonable time, unless such party otherwise receives due notice. Section 96 provides that when the instrument is deposited with an agent for presentment, the agent is to issue notice to his principal who is entitled to a further like period to give notice of dishonor. Section 97 provides that when the party, to whom a notice of dishonor is dispatched, is dead, but the party is not aware of the death, the notice is sufficient.
Notice – when not necessary? **WORKBOOK**	Section 98 provides that in the following circumstances there is no requirement to issue notice- • When it is dispensed with by the party entitled thereto; • In order to charge the drawer, when he has countermanded payment; • When the party charged could not suffer damage for want of notice; • When the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it; • To charge the drawers, when the acceptor is also a drawer; • In the case of a promissory note which is not negotiable; • When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.
Noting and Protest **MODEL QUESTION**	Chapter IX deals with the procedure of noting and protest.
Noting	Section 99 provides that when an instrument is dishonored for any reason, the holder may cause the dishonor to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each. The noting must be made within a reasonable time

	after dishonor. The noting must specify the date of dishonor, the reason assigned for such dishonor or if the instrument has not been expressly dishonored, the reason the holder treats it as dishonored and the notary's charges.
Protest	Section 100 provides that when an instrument is dishonored the holder may cause such dishonor to be noted and certified by a notary public. Such certificate is called a protest. When the acceptor of an instrument becomes insolvent or his credit has been publicly impeached, before maturity of bill, the older may, within a reasonable time, cause a notary public to demand better security of the acceptor and on its being refused may, within a reasonable time, cause such facts to be noted and certified. Such certificate is called a protest for better security.
Contents of the protest **MODEL QUESTION**	Section 101 provides that a protest must contain- • either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon; • the name of the person for whom and against whom the instrument has been protested; • a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public, or that he could not be found; • when the note or bill has been dishonored, the place and time of dishonor and when better security has been refused, the place and time of refusal. • the subscription of the notary public making the protest; • in the event of an acceptance for honor or of a payment for honor, the name of the person by whom, of the person for whom, and the manner in which such acceptance or payment was offered and effected.
Notice of protest	Section 102 provides that notice of protest must be given instead of notice of dishonor in the same manner and subject to the same conditions but the notice may be given by the notary public who makes the protest.
Special Rules of evidence	Chapter XIII deals with this subject. Section 118 what are the presumptions that can be made as to negotiable instruments. Until the contrary is proved the following presumptions shall be made- • of consideration; • as to date; • as to time of acceptance; • as to time of transfer; • as to order of indorsement; • as to stamp; • that holder is a holder in due course. It can be presumed that- • every negotiable instrument was made or drawn for consideration and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted,

	indorsed, negotiated or transferred for consideration; • every negotiable instrument bearing a date was made or drawn on such date; • every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity; • every transfer of a negotiable instrument was made before its maturity; • the indorsement appearing upon a negotiable instrument were made in the order in which they appear thereupon; • a promissory note, bill of exchange of cheque was duly stamped; • the holder of a negotiable instrument is a holder in due course.
Onus of holder in due course	Where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon them.
Presumption on proof of protest	Section 119 provides that in a suit upon an instrument which has been dishonored, the Court shall, on proof of the protest, presume the fact of dishonor, unless and until such fact is disproved.
Estoppel **MODEL QUESTION**	Sections 120 to 122 deals with the following types of estoppels- • estoppel against denying original validity of instrument; • estoppel against denying capacity of payee to indorse; • estoppel against denying signature or capacity of prior party. Section 120 provides that no maker of a promissory note, and no drawer of a bill of exchange or cheque and no acceptor of a bill of exchange for the honor of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn. Section 121 provides that no maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same. Section 122 provides that no indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the indorsement.
INTERNATIONAL LAW **MODEL QUESTION**	Chapter XVI deals with the negotiable instrument in international law. Section 134 provides that in the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange, or cheque is regulated by the law of the place where he made the instrument and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable. Example – A bill of exchange was drawn by A in California, where the rate of interest is 25% accepted by B, payable in Washington where the rate of interest is 6%. The bill is indorsed in India and is dishonored. An action on the bill is brought against B in India. He is liable to pay interest at the rate 6% only; but if A is charged as drawer, A is liable to pay interest @ 25%.

	Section135 provides that where a promissory note, bill of exchange or a cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonor and what notice of dishonor is sufficient. **Example** – A bill of exchange is drawn and indorsed in India but accepted payable in France, is dishonored. The indorsee causes it to be protested for such dishonor and given notice in accordance with the law of France, though not in accordance with the rules herein contained in respect of bill which are not foreign. The notice is sufficient. Section 136 provides that if an instrument is made, drawn, accepted or indorsed outside India, but in accordance with the law of India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon within India. Section 137 provides that the law of any foreign country regarding promissory notes, bill of exchange and cheques shall be presumed to be the same as that of India unless and until the contrary is proved..
Penalties	Section 138 provides penalty for dishonor of cheque for insufficiency etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any money to another person from out of that account for the discharge, in whole or in part, of any 'debt or other liability' (a legally enforceable debt or other liability) is returned by the bank unpaid,- • either because of the amount of money standing to the credit of that account is insufficient to honor the cheque; or • that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to 2 years or with fine which may extend to twice the amount of the cheque, or with both. The penal provision in this cheque shall not apply unless- • the cheque has been presented to the bank within a period of three months (with effect from 01.04.2012, before that it is six months) from the date on which it is drawn or within the period of its validity, whichever is earlier; • the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheques as unpaid; and • the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice.
Conditions precedent	In 'Kusum Ingots & Alloys Limited V. Pennar Peterson Securities Limited' – AIR 2000 SC 954, the Supreme Court held that the ingredients which are to be satisfied for making out a case under Section 138 of the Act, are- • a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for discharge of any debt or other liability;

	• that cheque has been presented to the bank within a period of six months (now three months) from the date on which it is drawn or within the period its validity whichever is earlier; • that the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank; • the payee or holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days (now 30 days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; • the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.
Presumption in favor of holder	Section 139 provides that it shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability. In 'B. Mohan Krishna V. Union of India' – 1996 CrLJ 683 (AP DB), the Andhra Pradesh High Court Division Bench held that the presumption in Section 139 in favor of the holder of a cheque is not violative of Article 20(3) of the Constitution which incorporates immunity against self incrimination. Section 140 provides that it shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonored on presentment for the reasons stated in the section.
Offences by companies	Section 141 of the Act provides that a company and every person who was in charge of and responsible to the company for the conduct of the business of the company at the time of offence, the company and such person shall be liable to be proceeded against and punished accordingly. If such person proves that the offence was committed without his knowledge or that he has exercised such due diligence to prevent the commission of the offence he shall not be punishable. Where a person is nominated as a Director of the company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government as the case may be, he shall not be liable for prosecution under this Chapter. If it is proved that the offence has been committed with the connivance or consent of, it is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such persons shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
Cognizance of offence	Section 142 provides that no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or the holder in due course of the cheque. Such complaint shall be made within one month of the date on which the cause of action arises. The cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he has sufficient cause for not making a complaint within such period. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under Section 138. The offence shall be inquired and tried only by a court within those local jurisdiction-

	• if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course maintains the account, is situated; or • if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account is situated. Where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course maintains the account.
Summary trial	Section 143 provides that all the offences under this Chapter shall be tried by a Judicial Magistrate of the I class or by a Metropolitan Magistrate. The provisions of Section 262 to 265 of the Code of Criminal Procedure shall apply to such trials. In case of any conviction in a summary trial it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding `5000/-. When at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the Code of Criminal Procedure. The trial shall be continued from day to day until its conclusion, unless the court finds the adjournment of trial beyond the following day to be necessary for reasons to be recorded in writing. Every trial under this section shall be conducted as expeditiously as possible and an endeavor shall be made to conclude the trial within 6 months from the date of filing of the complaint. The Act was amended in August 2018. Section 143A has been inserted which empowers the court to direct the drawer to pay interim compensation upto 20% of the cheque value which the drawer pleads "no guilty". In case the drawer files an appeal, the appellate court may direct to the drawer to deposit 20% of the fine or compensation, in addition to what has been paid at trial stage.
Service of summons	Section 144 provides that a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or such courier services as are approved by a Court of Session. Where an acknowledgement purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorized by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons have been duly served.
Evidence on affidavit	Section 145 provides that the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any inquiry, trial or other proceeding under the Code of Criminal Procedure. The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.
Bank's slip – prima facie evidence	Section 146 provides that the Court shall, in respect of every proceeding, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been

	dishonored, presume the fact of dishonor of such cheque, unless and until such fact is disproved.
Compounding	Section 147 of the Act provides that every offence punishable under this Act is compoundable. In 'M. Rangaswamiah V. R. Shettappa'- 2002 CrLJ 4792 (Karn) the High Court held that there is no prohibition in this Act against compounding of an offence punishable under Section 138. In the absence of any such prohibition therefore, where the Court finds that the parties have settled the matter, where the complainant being present before the Court and submits before the Court that the accused has paid the money covered by the cheque it would be appropriate to allow the parties to compound, rather than negativing such a joint request made by the parties, and proceeding to inflict the sentence on the accused. Particularly when there is no prohibition against compounding, any rejection of request in that regard would not further the cause of the justice, and particularly where the commission of offence is not related to the society at large, but only against a particular person, viz., the complainant to whom certain sum is due under the cheque. Therefore it would be legally permissible for the parties to compound the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
Recent changes in The Negotiable Instruments (Amendment) Act 2018. Explain the background and purposes behind these changes.	As the central government pushes for a cashless economy, legislative steps are under way to fortify other instruments of financial transactions, including cheques. With the objective of reducing delay in proceedings pertaining to dishonour of cheques and to provide interim relief to the payee in such cases, the Negotiable Instruments (Amendment) Act 2018 has been introduced in August, 2018. In a move to prevent unscrupulous elements from holding back payment through an often long-drawn litigation in cheque bounce cases, the government has come up with a series of amendments to the N. I. Act, 1881. This law was enacted to define and amend the law relating to promissory notes, bills of exchange, and cheques. The Negotiable Instruments (Amendment) Act 2018 introduces a new clause which allows the payment of interim compensation to the aggrieved party as an immediate relief when the case reaches the court. In the statement of objects and reasons for the Act, the government points out that though the 1881 Act was amended from time to time to provide for the speedy disposal of cases relating to the offence of dishonour of cheques, it has been receiving several representations from the public, including from the trading community, relating to pendency of cheque dishonour cases. "This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings," the statement says. This delay has slowly eroded the faith of the traders in the use of cheques, it reasons. Injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions. The purpose of the Act is to provide interim relief to the aggrieved party till the final solution of the cheque dishonour case in court, and to discourage frivolous and unnecessary litigation which would save time and money. The new Section 143A provides for the court trying a cheque dishonour case under Section 138 may order the drawer of the cheque to pay interim

	compensation to the complainant at the time of framing of charges. The interim compensation shall not exceed 20% of the amount of the cheque. A second provision, Section 148, allows the Appellate Court to first order the party convicted in a cheque bounce case to deposit 20% of the of the fine or compensation awarded by the trial court. The above amendments will strengthen the credibility of cheques.

PRACTICE MANUAL

Fill in the blanks

1. The transaction of negotiable instrument requires at least _____ persons.

2. The person named in the instrument, to who or to whose order the money is by the instrument directed to be paid is, called the _____.

3. Negotiation is of two types, namely, _____,_____.

4. A cheque is a bill of exchange drawn on a specified_____on demand.

5. Clearing house is managed by_____.

6. Draft cannot be drawn on_____.

7. Indorsement is of two types, namely, _____,_____.

8. A negotiable instrument indorsed in blank is payable to the _____.

9. If the amount is paid after due date, the interest is payable at _____when no interest rate has been specified in the instrument.

10. The dishonor of the instrument may be due to _____and_____.

Choose the correct answer

1. One of the following is not a negotiable instrument. Identify the same.
(a) Share certificate;
(b) Bill of exchange;
(c) Cheque;
(d) Promissory note.

2**. Which one of the following is a Bill of Exchange?**
(a) A banker's draft;
(b) A demand draft;
(c) An order issued by a District Board Engineer on Government Treasury for payment to or order of a certain person;
(d) All the above.

3. Which one of the following is not the element of draft?
(a) It cannot be drawn on private individual;
(b) It cannot be countermanded easily;
(c) It is open to the person to stop payment;
(d) The bank undertakes the liability which it is bound to discharge in whose favor the draft is issued;

4. Holder in due course means any person-
(a) Drawing the instrument;
(b) Who for consideration became the possession of a promissory note;

(c) Named in the instrument to whom or to whom order the money is directed to be paid;
(d) None of the above

5. Who may negotiate?
(a) Drawer;
(b) Payee;
(c) All of the joint makers;
(d) None of the above
(e) Any of (a) to (c).

6. The liability on the instrument may be discharged-
(a) By cancellation;
(b) By release;
(c) By payment;
(d) By any one of the above methods.

7. A cheque shall be deemed to be crossed specially-
(a) On addition of the name of the banker;
(b) Drawing two lines parallel;
(c) Any of (a) or (b);
(d) None of (a) and (b).

State whether true or false
1. Currency note is a negotiable instrument.
2. Cheque is a bill of exchange.
3. The maker of the promissory note can also be called a drawer.
4. Handing over a negotiable instrument to an agent for safe custody is negotiation.
5. If the maturity date is a public holiday the instrument shall be deemed to be due on the next preceding business day.
6. Bill of exchange is an instrument in writing an unconditional order directing to pay a certain sum of money to the bearer of the instrument.
7. If the indorser signs his name only, the indorsement is called to be 'in full'.
8. Only drawee can be acceptor except in need for hour.
9. A holder is not having right to duplicate of lost bill, before it is overdue.
10. When an instrument is dishonored the holder must give notice that the instrument has been dishonored.

Model Questions
1. What are the elements to be present to hold an instrument on a promissory note?
2. Write not on 'bill of exchange'.
3. What are the differences between a cheque and a draft?
4. Discuss about the various types of instruments.
5. Who are the parties to an instrument?
6. How the maturity date of an instrument is calculated?
7. Discuss about the liability of drawer, agent, representative and drawee.
8. Where are the procedures involved in the presentment of negotiable instrument?
9. Under which circumstances the presentment of negotiable instrument is not necessary.
10. When an acceptance is said to be qualified?
11. Under which circumstances the notice for dishonor is not required?
12. Write notes on 'noting' and 'protest'.
13. Discuss about the contents to be incorporated in a protest.
14. Briefly discuss the various types of estoppels.
15. Discuss the provisions relating the negotiable instrument in International Law.

Answers:

Fill in the blanks

1. 2;
2. Payee;

3. Negotiation by delivery, negotiation by indorsement;
4. Banker;
5. Reserve Bank of India;
6. Private individual;
7. Indorsement in blank, indorsement in full;
8. Bearer; 9. 18%
10. Non acceptance, non-payment

Choose the correct answer

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

State whether true or false

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

Scanner Question:

2011 - June Question 1: Write short note on:

Inchoate instrument (Nl Act) **(4 marks)**

Answer:

Inchoate Instrument (Nl Act):

• An inchoate (means incomplete, unclear, tentative) instrument is one which is an incomplete instrument, for example, one not mentioning the amount payable, or leaving blank the name of the payee, or one without date.

• When a person gives to another person a blank signed instrument and stamped paper, the latter may convert it into a negotiable instrument by filling the blanks. When the instrument is so filled up, the signer becomes liable in the capacity in which he signs.

• The liability of the signer is restricted to the amount specified therein but not exceeding the amount covered by the stamp.

• But no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder. **(Section 120).**

2008 - Dec Question 2: Maker of a cheque is not liable under N. l. Act for dishonour of cheque under certain conditions. State such conditions. **(3 marks)**

Answer:

Make of the cheque is not liable under the following conditions under the Nl Act.

• If the cheque is not presented to the bank within the validity of the cheque.

• Where the cheque is issued not for the purpose of discharge of any debt or any other liability. A cheque given as gift or for any other purpose or reason but not for satisfaction of any debt and/or liability.

2010 - June Question 3: What is negotiation? (2 marks)

Answer:

Negotiable means transferable on delivery. When an instrument i.e. promissory note, bill of exchange or cheque is transferred to any person to make him holder, the instrument is said to be negotiated.

2011- Dec Question 4: Bill of Exchange dated 1st February, 2011 payable two months after date-was presented to the maker for payment 10 days after maturity. What is the date of maturity? (2 marks)

Answer:

Section 23 of the N.l. Act provides that the maturity of a bill of exchange or a promissory note is the date at which it falls due. **Section 22** states that normally 3 days of grace period is allowed also.

In this case, the date of maturity of the bill is 4th April 2011 provided it is not Sunday or Public Holidays (1st April + 3 days).

2012- June Question 5: There are in total two parties to a Promissory Note. (2 marks)

Answer:

The statement is False. There are Five Parties to a promissory note viz.

(1) **The maker**: The person who makes the "Note" promising to pay the amount Stated therein.

(2) **The Payee:** The person to whom the amount of the "Note' is payable.

(3) **The Holder:** i.e. either the original payee or any other persons in whose favour the "Note" has been endorsed.

(4) **The endorser:** The person who endorses the "Note" in favour of another person.

(5) **The endorsee:** The person in whose favour the "Note" is negotiated by endorsement.

2012 - Dec Question 6: What is 'Noting' (N. l. Act) (4 marks)

Answer:

"Noting" means recording the fact of dishonour by Notary Public upon the Instrument. **"Noting"** must contain the following:

(i) The fact of dishonor.

(ii) Date of dishonor.

(iii) Reasons if any, assigned for dishonor.

(iv) if the Instrument is not expressly dishonoured, reasons why the holder thinks so.

(v) Notary Charges.

2013- Dec Question 7: What will be the fate of a "Holder" of negotiable instrument if he fails to give notice of dishonour to prior parties? (2 marks)

Answer:

If the Holder does not give notice of dishonour of the bill, instrument or cheque (except when the notice of dishonour is excused,) ail the parties liable thereon are discharged of their liability.)

2014- Dec Question 8: State the circumstances under which the drawer of a cheque will be liable for an offence relating to dishonour of the cheque under the Negotiable Instrument Act, 1881. Examine, whether there is an offence under the Negotiable Instrument Act, 1881, if a Drawer of a cheque after having issued the cheque, informs the Drawee not to present the cheque as well as informs the Bank to stop the payment. (5 marks)

Answer:

On dishonour of a cheque the drawer is punishable with imprisonment for a term not exceeding two years or with a fine not exceeding twice the amount of a cheque or with both of the following conditions are fulfilled:

(a) if the cheque is returned by the bank unpaid due to insufficiency of funds in the account of drawer.

(b) If the cheque was drawn to discharge a legally enforceable debt or other liability in whole or part of it.

(c) If the cheque has been presented to the bank within a period of three months from the date on which it is drawn on or within the period of its validity, whichever is earlier.

(d) If the payee or the holder in due course of the cheque has given a written notice demanding payment within 30 days from the drawer on receipt of information of dishonour of cheque from the bank.

(e) If the drawer has failed to make payment within 15 days of the receipt of the said notice. **(Section 135)**

(f) If the payee or a holder in due course has made a complaint within ©ne month of cause of action arising under Section 138 (Section 142)

Case Laws: The Supreme Court held in ***Modi Cements Ltd. Vs. Kuchil Kumar Nandi*** held that once a cheque is issued by the drawer, a presumption under Section 139 follows (i.e. the cheque has been issued for the discharge of any debt or other liability) and merely because the drawer issued a notice thereafter to the drawee as to the bank for stoppage of payment, it will not preclude an action under Section 138. Hence, the drawer of the cheque will be liable for the offence under Section 138 for dishonour of cheque.

2014- Dec Question 9: A Bill of exchange dated 1st February, 2014 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of maturity? Explain with reference to the relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reasons of such delay. (3 marks)

Answer:

The due date of maturity is 4th April (i.e., 3rd day after two months) Promissory notes, bills of exchange and cheques must be presented for payment at the due date of maturity to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder. In default of such presentment, the other parties to the instrument (i.e., parties other than the parties primarily liable) are not liable thereon to such holder. If authorized by agreement or usage, a presentation through the post office by means of a registered letter is sufficient **(Section 64).** So, the Endorser is discharged due to delayed presentment for payment, and the primary party (i.e., Maker of the instrument) continues to be liable.

2015 - June Question 10: (a) 'A partial endorsement does not operate as a negotiation of the instrument'. Explain. (3 marks)

(b) Amrut draws a cheque payable to 'self or order'. Before he could

encash the cheque, one of his creditors, Bihari approaches him for payment. Amrut endorses the same cheque in Bihari's favour. The banker refuses payment to Bihari on account of insufficiency of funds in the account. Can Amrut be made liable to penalties for dishonour of cheque due to insufficiency of funds in the account under Section 138?

Answer:

(a) • **Section 56** provides that a negotiable instrument cannot be endorsed for a part of the amount appearing to be due on the instrument.

• In other words, a partial endorsement which transfers the right to receive only a part payment of the amount due on the instrument is invalid.

• Such an endorsement has been declared invalid because it would subject the prior parties to plurality of actions (one action by holder for part value and another action by endorsee for part value) and will thus cause inconvenience to them.

• Moreover, it would also interfere with the free circulation of negotiable instruments.

• It may be noted that an endorsement which purports to transfer the instrument to two or more endorsees separately and not jointly as also treated as partial endorsement and hence would be invalid.

• Thus, where A holds a bill for ` 2,000 and endorses it in favour of B for ` 1,000 and in favour of C for the remaining ` 1,000, the endorsement is partial and invalid.

Section 56, however further provides that where an instrument has been paid in part, a note to that effect may be endorsed on the instrument and it may then be negotiated for the balance. Thus, if in the above illustration the acceptor has already paid ` 1,000 to A, the holder of the bill, A can then make an endorsement saying "pay B or order ` 1,000 being the unpaid residue of the bill". Such an endorsement would be valid.

(b) • Section 138 **of Negotiable Instrument Act,** 1881,oreates statutory offence in the matter of dishonour of cheques on the ground of insufficiency of funds in the account maintained by a person with the banker.

• **Section 138** of the Act can be said to be falling either in the acts which are not criminal offense in real sense, but are acts which in public interest are prohibited under the penalty or those where although the proceeding may be in criminal form, they are really only a summai^ mode of enforcing a civil right.

• Normally in criminal law existence of guilty intent is an essential ingredient of a crime.

• However the Legislature can always create an offence of absolute liability or strict liability where ***'mens res'*** is not at all necessary.

• No, Amrut cannot be made liable to penalties for dishonour of cheque due to insufficiency of funds in the account since the cheque was not originally drawn payable to another person.

• A cheque drawn payable to self and later endorsed in favor of another person dies not seem to fall within the purview of the provisions of **Section 138** which lay down that the cheque should have been drawn for payment to another person.

2015 - Dec Question 11: "A cheque is a specie of a bill of exchange with two additional qualifications." Explain.

Answer: (3 marks)

According to Sec. 6 of Negotiable Instrument Act, "A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand."

A cheque is a bill of exchange with the following two distinctive features which are additional qualifications viz.:

(i) A cheque is always on a specified banker.

(ii) A cheque is always payable on demand.

Thus, a cheque is a bill of exchange drawn on a bank payable on demand. All cheques are bills of exchange, but all bills of exchange are not cheques. A cheque must have all the essential requisites of a bills of exchange.

2016 - June Question 12: State the circumstances under which a banker is bound to refuse the payment of a cheque. (8 marks)

Answer:

Circumstances when the banker must refuse the payment:

Following are the circumstances in which the banker is bound to refuse the payment of a cheque

1.	**When the customer has countermanded payment**	The term 'countermand' means the issue of instruction to the banker not to pay a particular cheque. Thus, where a customer issues instructions to the' banker not to make the payment of a particular cheque, the banker must not make the payment. A cheque, the payment of which is stopped by the customer is known as a 'stopped cheque'. And a

		stopped cheque is a piece of waste paper in the hands of payee.
2.	**When the customer has died**	Sometimes, the banker receives notice of customer's death. In such cases, he must refuse the payment of the cheque presented after the notice of death. However, if the payment is made before the banker receives the notice of death, the payment is valid and banker is justified in making such payment.
3.	**When the customer has become nsolvent**	Sometimes, the Danker receive; the notice of customer's insolvency. In such cases also he must refuse the payment of[1] the cheques presented after the notice.
4.	**When the customer has become a person of unsound mind**	Sometimes, the banker receives the notice that his customer has become insane. In such cases also, he must refuse payment of the cheque presented after the notice.
5.	**When a garnishee order has been received by the banker**	The term Garnishee order may be defined as a Court order attaching the balance in customer's account. When the banker receives such order then he is bound to refuse the payment of the customer's cheque.
6.	**When the cheque is lost**	Sometimes, the drawer informs the banker that a particular cheque is lost. In such cases, banker must refuse the payment of that cheque.
7.	**When the account is closed**	Sometimes, the customer closes his account and gives notice to the bankeP. In such cases that banker must not pay any cheque of the customer after the closure of the account.
8.	**When holder's title is defective**	Sometimes, the banker comes to know of any defect in the title of the person presenting the cheque. In such cases, he must refuse the payment of the cheque.
9	**When a customer gives notice of assignment of credit balance**	In his account, the banker must refuse the payment of cheque.

2016 - Dec Question 13: Which are the essential elements of a valid acceptance of a Bill of Exchange? An acceptor accepts a 'Bill of Exchange' but write on it 'Accepted but payment will be made when goods delivered to me is sold'. Decide the validity. (7 marks)

Answer:

Essentials of a Valid Acceptance of a Bill of Exchange: ***The essentials of a valid acceptance are as follows:***

1.	**Acceptance must be written**	The drawee may use any appropriate word to convey his assent, it may be sufficient acceptance even if just signatures are put without additional words. An oral acceptance is not valid in law.
2.	**Acceptance must be signed**	A mere signature would be sufficient for the purpose. Alternatively, the words 'accepted' may be written across the face of the bill with a signature underneath; if it is not so signed, it would not be an acceptance.
3.	**Acceptance must be on the bill**	The acceptance should be on the face of the bill normally but it is not necessary. An acceptance written on the back of a bill has been held to be sufficient in-law. What is essential is that must be written on the bill; else it creates no liability as acceptor on the part of the person who signs it.

4.	**Acceptance must be completed by delivery**	Acceptance would not be complete and the drawee would not be bound until the drawee has either actually delivered the accepted bill to the holder or tendered notice of such acceptance to the holder of the bill or some person on his behalf.
5.	**Where a bill is drawn in sets, the acceptance should be put on one pari only**	Where the drawee signs his acceptance on two or more parts, he may become liable on each of them separately.
6.	**Acceptance may be either general or qualified**	An acceptance is said to be general when the drawee assents without qualification order of the drawer. The qualification may relate to an event, amount, place, time etc. **(Explanation to Section 86 of the Negotiable Instruments Act 1881).**
In the above case, the acceptance is a qualified acceptance since a condition has been attached declaring the payment to be dependent on the happening of an event therein stated. As a rule, acceptance must be general acceptance and therefore, the holder is at liberty to refuse to take a qualified acceptance. Where, he refuse to take it, the bill shall be dishonoured by non-acceptance. But, if he accepts the qualified acceptance, even then it binds only him and the acceptor and not the other parties who do not consent thereto. (Section 86).		

2018 - June Question 14: Anil draws a bill of exchange payable to himself on Sushil, who accepts the bill without consideration just to accommodate Anil. Anil transfers the bill to Ajay for good consideration.

State the rights of Anil and Ajay. Would your answer be different if Anil transferred the bill to Ajay after maturity? (7 **Marks)**

Answer:

Section 43 of the Negotiable Instrument Act, 1881 states the following:

(i) Liability of parties if there is no consideration - A negotiable instrument made, drawn, accepted, endorsed ortransferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.

(ii) Rights of holder for consideration - but if any such party has transferred the instrument to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(iii) No right of accommodating party to recover from accommodating party - No party for whose accommodation a negotiable instrument has been made, drawn, accepted, endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

In the given case, Anil is not entitled to sue Sushil, since there is no consideration between Anil and Sushil and hence there is no obligation to pay.

Again Ajay is entitled to sue Anil and Sushil, since Aj'ay is a holder for consideration. Ajay is entitled to sue the transferor for consideration and every other party prior to him.

According to Section 59, in the case of accommodation bills, a defect in the title of the transferor does not affect the title of the holder acquiring after maturity. Hence, even if Ajay has acquired the bill for consideration after maturity, he is entitled to sue.

2018 - Dec Question 15: Rahul draws a cheque payable to 'sell or order'. Before he could encash the cheque, one of his creditors, Samrat approaches him for payment. Rahul endorses the same cheque in Samrat's favour. The banker refuses payment to Samrat on account of insufficiency of funds in the account. Can Rahul be made liable to penalties for dishonor of cheque due to insufficiency of funds in the account under section 138 of Negotiable Instruments Act, 1881? (7 marks)

Answer:

1. Section 138 of Negotiable Instrument Act, 1881, creates statutory offence in the matter of dishonour of cheques on the ground of insufficiency of funds in the account maintained by a person with the banker.

2. Section 138 of the Act can be said to be falling either in the acts which are not criminal offense in real sense, but are acts which in public interest are prohibited under the penalty or those where although the proceeding may be in criminal form, they are really only a summary mode of enforcing a civil right. Normally in criminal law existence of guilty intent is an essential ingredient of a crime.

3. Although, the Legislature -can always create an offence of absolute liability or strict where 'mens rea' is not at all necessary.

4. No, Rahul cannot be made liable to penalties for dishonour of cheque due to insufficiency of funds in the account since the cheque was not originally drawn payable to another person.

5. A cheque drawn payable to self and later endorsed in favour of another person does not seem to fall within the purview Of the provisions of **Section 138** which lay down that the cheque should have been drawn for payment to another person.

2009 - June Question 16: Mr. Paul gave a cheque dated 7.2.2009 for ` 10,000 to Mr. Roy for payment of Mr. Roy's tuition fees. Cheque was dishonoured for insufficiency of funds. Mr. Paul is liable for prosecution.

Answer: (2 **marks)**

Maker of the cheque is not liable under the following conditions under the Nl Act.

• If the cheque is not presented to the bank within the validity of the cheque.

• Where the cheque is issued not for the purpose of discharge of any debt or any other liability. A cheque given as gift or for any other purpose or reason but not for satisfaction of any debt and/or liability. Hence, Mr. Paul is not liable for prosecution.

2009 - Dec Question 17: (a) Mr. E draws a cheque in favour of Mr. F (a minor). Mr. F endorses it in favour of Mr. G. who in turn endorses it in favour of Mr. H. The cheque is dishonoured by the Bank. Discuss the rights of Mr. G and Mr. H and state against whom their rights can be exercised. **(2 marks)**

(b) A cheque for ` 10,000 was dishonoured. Drawer of the cheque submitted valid reasons and justification. Due to relevant reasons for dishonour, the drawer is not responsible. Answer with legal provisions. (2 marks)

Answer:

(a) The Negotiable Instruments Act 1881, declares that a minor may draw, endorse, deliver and negotiate an instrument so as to bind all parties except himself. Thus in the instant case, Mr. H, can claim the amount from Mr. G who in turn can claim the same from Mr. E (not from Mr. F, the minor).

(b) It has been decided by the Bombay High Court in Kumar Porwal vs Narayan Dhondu that "The law only takes cognizance of the fact that the payments are not forthcoming and it matters little that what reasons are behind such non payment". Whatever justification the drawer has offered for non payment of cheque, the drawer remains responsible. All such justifications are to be totally ignored.

2010 - June Question 18: **Cheque for 2,00,000 issued by Mr. Nair was returned unpaid with remarks "account closed". Hence drawee has no remedy. (2 marks)**

Answer:

The drawee has a remedy under the Negotiable Instruments Act and can serve a notice to the drawer within 15 days of dishonour of cheque and demand the payment.

2010 - Dec Question 19: Mr. Saxena received cheque dated 02.05.2010 for *i* 10,000/- from Mr. Malhotra towards cost of furniture. On 13.11.10 Mr. Malhotra closed the Bank Account. What action Mr. Saxena can take to receive the amount against the cheque which is still with him. (2 marks)

Answer:

Unless specified otherwise, the validity of cheque is three months in the present case, the cheque was issued on 02.05.2010, hence it was valid to be presented to the bank up to 02.08.2010.

The account was closed on 13.11.2010 i.e. beyond the lifetime of the cheque.

It means that the cheque was not presented in the bank during its validity period.

This is not fault of person drawing the cheque hence Mr. Malhotra is not responsible.

Legally Mr. Saxena cannot take any action against Mr. Malhotra because he (saxena) failed to present the cheque to the bank for payment.

However, he can request Malhotra to give fresh cheque in place of dead cheque.

2013- Dec Question 20: 'Anil' draws a bill on 'Susheel' for INR 10,000 payable to his order. 'Susheel' accepts the bill but subsequently dishonours it by nonpayment. 'Anil' sues 'Susheel' on the bill. 'Susheel' proves that it was accepted for value as of INR 8,000 and as accommodation to 'Anil' for INR 2,000. How much can 'Anil' recover from 'Susheel'? Decide in the light of the provisions of the Negotiable Instruments Act, 1881? **(3 marks)**

Answer:

According to the provisions of **Section 44 of Negotiable Instruments Act,1881**, when there is a partial absence or failure of money consideration for which a person signed a bill of exchange, the same rules applicable for total absence or failure of consideration will apply. Thus, the parties standing in immediate relation to each other cannot recover more than the actual consideration; Accordingly Anil can recover only INR 8000.

2014- June Question 21: **'A' issue an open 'bearer' cheque for ` 10,000 in favour of 'B' who strikes out the word 'bearer' and puts crossing across the cheque. The cheque is thereafter negotiated to 'C' and 'D'. When it is finally**

presented by D's banker, it is returned with remarks 'payment countermanded' by drawer. In response to this legal notice from 'D', A pleads that cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss whether A's argument is valid or not. (3 marks)

Answer:

• Effects of striking off the word bearer. It amounts to a material alteration. However, such material alteration is authorized by the Act.

• Therefore, the cheque is not discharged; it remains valid.

• . Effects of crossing the cheque. It amounts to a material alteration.

• However, such material alteration is authorized by the Act.

• Therefore, the cheque is not discharged; it remains valid. A's argument is not valid.

• Since the reason for dishonor of cheque is not 'material alteration 'but 'payment countermanded by drawer'.

• Therefore, A is liable for the payment of the cheque and he shall also be liable for dishonor of cheque in accordance with the provisions of **Sectio-138.**

2014 - June Question 22: On a Bill of Exchange for Rupees one lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from customer for value and in good faith before the bill becomes payable. State with reasons

whether 'A' can be considered as a "Holder in due course" and whether he can receive the amount of the Bill from 'X'? (4 marks)

Answer:

• According to the **Section 9 of the Negotiable Instruments Act, 1881**

"holder in due course" means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

• As 'A' in this case ***prima facie*** became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

• But where a signature on the Negotiable Instruments is forged the instrument is not at all an instrument in itself.

• The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment inspite of forgery, he cannot retain the money.

• The true owner may sue on tort (tort means wrongful act, misdeed, offence)the person who had received.

• The principle is universal in character; by reason where of even a holder in due course is not exempt from it.

• A holder in due course is protected when there is defect in the title.

• Bu; he derives no title when there is entire absence of title as in the case of forgery. Hence, "A" cannot receive the amount on the bill.

2014 - Dec Question 23: Mr. Punit obtains fraudulently from Rohan a crossed cheque "Not Negotiable". He transfers the cheque to Sunit, who gets the cheque encashed from ABC bank limited which is not the drawee bank. Rohan on coming to know about the fraudulent act of Mr. Punit sues ABC Bank for the recovery of the money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether Rohan will succeed in his claim. Would your answer be still the same in case Mr. Punit does not transfer the cheque and gets the cheque encashed from ABC Bank himself? (4 marks)

Answer:

• According to **Section 130 of the Negotiable Instruments Act 1881**, a

person taking a cheque crossed generally or specially bearing in either case the words, not negotiable shall not have or shall not be able to give a better title to the cheque than the title the person from whom he had.

• In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect.

• Thus, based on the above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title but if the transferor has a defective title, the transferee is affected by such defects and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith arid for value.

• As Mr. Punit in the given case had obtained the cheque fraudulently, he had no title to it and could not give to the bank any title to the cheque or money and the bank would be liable for the amount of the cheque for encashment. ***(Great Western Railway Co. Ltd. Vs. Londan and County Banking Co.)***

• The answer in the second case would not change and shall remain the same for the reasons given above. Thus, Rohan in both the cases shall succeed in his claim from ABC Bank.

2015 - June Question 24: Amit signs, as maker, a blank stamped paper and gives it to Sumit and authorizes him to fill it as a note for ` 500, to secure an advance which Namit is to make to Sumit. Sumit fraudulently fills it up as a note for ` 2,000, payable to Namit who has in good faith advanced ` 2,000. Decide, with reasons, whether Namit is entitled to recover the amount, and if so, upto what extent? (4 marks)

Answer:

• A duly signed blank stamped instrument is called an inchoate instrument. According to **Section 20** of the Negotiable Instruments Act, an Inchoate instrument is an incomplete Instrument in some respect.

• When a person signs and delivers blank or incomplete stamped paper to another, such other is authorized to complete it for any amount not exceeding the amount covered by the stamp.

• The person so signing is liable upon such instrument, to any holder in due course for any amount.

• But any other person can't claim more than the amount intended by the drawer of the instrument.

Thus, for Namit's claim to be valid and enforceable, two things are important:

(a) That Namit is a holder in due course, i.e., there should be valid consideration and he would have obtained it in good faith and before maturity.

(b) The amount filled in i.e., ` 2,000 is covered by stamp amount.

In Negotiable Instruments Act every holder is deemed to be a holder in due course. Thus, the other party has to establish that Namit is not a holder in due course.

2015- Dec Question 25: Parag issues an open 'bearer' cheque for ` 10,000 in favour of Qadir who strikes out the word 'bearer' and crosses the cheque. The cheque is thereafter negotiated to Raman and Suman. When it is finally presented by Suman's banker, it is returned with remarks 'payment countermanded' by drawer. In response to a legal notice from Suman, Parag pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881, decide, whether Parag's argument is valid or not? (3 marks)

Answer:

The cheque bears two alterations when it is presented to the paying banker One, the word 'bearer' has been struck off and two, the cheque has be' crossed. Although both the alterations amount to material alteration/ jut such alterations are authorized by the Act. So, it can be said that, ***Y*** ih of these alterations do not amount to material alteration under the ***y*** ^visions of the Act and hence the liability of any including the drawernot at all affected. Parag is liable to pay the amount of the cheque to the holder.

2015- Dec Question 26: A cheque payable to bearer is crossed generally and is marked 'not negotiable'. The cheque is lost and comes into the possession of Baldev, who takes it in good faith and for value. Baldev deposits the cheque into his own account and his banker collects the same. Discuss the liability of collecting banker and paying banker. Can Baldev be compelled to refund the money to the true owner of the cheque? (3 marks)

Answer:

Neither the collecting banker nor the paying banker incurs any liability to anyone because of special protection granted to the bankers under the Act. Yes, the true owner can compel Baldev to refund the money because the cheque bears 'not negotiable' crossing as a result of which the transferee • cannot get a better title than that of the transferor.

2017- June Question 27: A draws a bill on B. B accepts the bill without any consideration. The bill is.transferred to C without consideration. C transferred it to D for value, Decide - (i) Whether D can sue the prior parties of the bill,

(ii) Whether the prior parties other than D have any right of action intense? Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881. (6 marks)

Answer:

Section 43 of the Negotiable Instruments Act, 1881 provides that an instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder

for consideration, such holder, and every subsequent holder deriving title from him, may recover.the amount due on such instrument from the transferor for consideration or any prior party thereto.

(i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid **Section 43,** the bill ultimately has been transferred to D with consideration. Therefore. D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.

(ii) As regards to the second part of the. problem, the prior parties before D i.e., A, B and C have no right of action interse because first part of **Section 43** has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

2017- Dec Question 28: X, by inducing Y, obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the Bill as a holder in due course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity, the bill is dishonoured. X sues Y for recovery of money. With reference to the provisions of Negotiable Instruments Act, decide whether X will succeed in the case. MTP JUNE 19 SET 1

Answer: **(7 marks)**

Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, possessor or endorsee cannot receive the amount of instrument. Hence, normally X would not be entitled to sue Y as X has obtained instrument through fraud.

However, as per section 53, a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z (who is a holder in due course), X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence, X will succeed.

2019 - **June Question 29: Ajay draws a bill on Anoop. Anoop accepts the bill without any consideration. The bill is transferred to Udit without consideration. Udlt transferred it to Vicky for value.** **(8 marks)**

Decide -

(i) Whether Vicky can sue the prior parties of the bill?

(ii) Whether the prior parties other than Vicky have any right of action intense?

MTP Questions Answers

Question30 : June 2017 Set-1

When is presentment of an instrument not necessary under the Negotiable Instruments Act?

According to Section 76 of the Negotiable Instruments Act 1881, no presentment to payment is necessary in any one of the following cases:

i) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or

ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

iii) if the instrument being payable at some other specified place, neither he nor any other person authorised to pay it attends at such place during the usual business hours, or

iv) if the instrument not being payable at any specified place, if he (i.e. maker etc) cannot after due search be found;

v) as against any party sought to be charged therewith, if he (i.e maker, etc.) has engaged to pay notwithstanding non-presentment;

vi) as against any party if after maturity, with knowledge that the instrument has not been presented —he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment; as against the drawer, if the drawer could not suffer damage from want the of such presentment.

Question 31 June 2017
Write a note on: Crossing

Section 123 provides that where a cheque bears across its face an addition of the words _and company‘ or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words _not negotiable‘ that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Section 124 provides that where a cheque bears across its face an addition of the name of a banker, either with or without the words _not negotiable‘ that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Section 125 provides that where a cheque is not crossed, the holder may cross it generally or specially.

- Where a cheque is crossed generally, the holder may cross it specially;
- Where a cheque is crossed generally or specially, the holder may add the word not negotiable‘;
- Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Dec 2017
No question

Dec 2017
No question

June 2018
No question

Question 32 June 2018 Set-2
Write a note on: Negotiable Instruments

Section 13 of the Act defines the terms ‘negotiable instrument’ as a promissory note, bill of exchange or either payable either to order or to bearer. A promissory note, bill of exchange or cheque-

- is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable;
- is payable to the bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank;
- either originally or by endorsement, is expressed to be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

Section 13 shows that the Act is confined to three specific types of instruments most in common use, namely, promissory notes, bills of exchange and cheques. The Contract Act is a general statute dealing with contracts. The Negotiable instruments Act is a statute dealing with a particular form of the contract. The law laid down for special cases must always overrule the provisions of general character as held in ‘Kwong Hip Lone Saw Mill Co. V. C.A.M.A.L. Firms’

The following are not the negotiable instruments-

- share certificate passing from hand to hand with blank transfers –
- Deposit receipts
- Mate’s receipt
- Bill of lading
- A benefit under a letter of credit

Question 33 Dec 2018 Set- 1
When is presentment of an instrument not necessary under the Negotiable Instruments Act?

According to Section 76 of the Negotiable Instruments Act 1881, no presentment to payment is necessary in any one of the following cases:

i) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or

ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

iii) if the instrument being payable at some other specified place, neither he nor any other person authorised to pay it attends at such place during the usual business hours, or

iv) if the instrument not being payable at any specified place, if he (i.e. maker etc) cannot after due search be found;

v) as against any party sought to be charged therewith, if he (i.e maker, etc.) has engaged to pay notwithstanding non-presentment;

vi) as against any party if after maturity, with knowledge that the instrument has not been presented —he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment; as against the drawer, if the drawer could not suffer damage from want the of such presentment.

Dec 2018 Set- 2
Same as June 2017 Set-2

Question 34 June 2019
X, by inducing Y, obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters Into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z t a k e s the Bill as a holder in due coune. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity, the bill is dishonored. X sues Y for recovery of money. With reference t o the provisions of Negotiable Instruments Act, decide whether X will succeed in the case.

Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, posswssor or endorsee cannot receive the amount of instrument. Hence, normally X would not be entitled to sue Y as X has obtained instrument through fraud. However, as per section 53,a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z(who is a holder in due course0,X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence will succeed.

Question 35 June 2019
What are difference between Promissory Note and Cheque?

	Promissory Note	Cheque
1.	It is defined in Sec. 4 of NI Act, 1881.	It is defined in Sec. 6 of the NI Act, 1881.
2.	here are two parties: •Maker. •Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety".	here are three parties: •Drawer. •Drawee. •Payee.
3.	Promissory note contains a promise to pay the sum with interest or without interest at a later date.	A cheque is payable immediately on demand without any days of grace
4.	Promissory note is not crossed	Cheque can be crossed
5.	No protection is available to the payee of note	Statutory protection is given to the drawee banker. (Sec. 128)
6.	A promissory note cannot be self drawn.	A cheque can be self drawn or bearer cheque.
7.	No criminal liability shall be imposed on the maker.	Criminal Liability may be imposed on drawee for the dishonour of cheques in certain circumstances.
8.	Stamp is necessary.	Stamp is not necessary.
9.	Limitation: 3 years	Limitation: 6 months

RTP Questions

Question 36 RTP June 2018

Atul draws a bill of exchange payable to himself on Sidhartha, who accepts the bill without consideration just to accommodate Atul. Atul transfers the bill to Bikash for good consideration. State the rights of Atul and Bikash. Would your answer be different if Atul transferred the bill to Bikash after maturity.

Section 43 of Negotiable Instruments Act, 1881 states the following:

(i) Liability of parties if there is no consideration – A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.

(ii) Rights of holder for consideration – But if any such party has transferred the instrument to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(iii) No right of accommodating party to recover from accommodating party – No party for whose accommodation a negotiable instrument has been made, drawn, accepted or endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

In the given case, Atul is not entitled to sue Sidhartha, since there is no consideration between Atul and Sidhartha and hence there is no obligation to pay.

Again Bikash is entitled to sue Atul and Sidhartha, since Bikash is a holder for consideration. Bikash is entitled to sue the transferor for consideration and every other party prior to him.

Even if Atul has transferred the bill after maturity, Bikash would have the right to sue, since the right to sue the transferor for consideration and every other party prior to him, is available to holder for consideration, even though he is not the _holder in due course' i.e. even if the holder for consideration obtains the bill after maturity.

Question 37

Rahul accepted a bill of exchange and gave it to Keshav for the purpose of getting it discounted and handing over the proceeds to Rahul. Keshav having failed to discount it returned the bill to Rahul. Rahul tore the bill in two pieces with the intention of cancelling it and threw the pieces in the street. Keshav picked up the pieces and pasted the two pieces together, in such manner that the bill seemed to have been folded for safe custody rather

than cancelled. Keshav put it into circulation and it ultimately reached Sidhartha, who took it in good faith and for value. Is Rahul liable to pay the bill under the provisions of the Negotiable Instruments Act, 1881?

Sidhartha is a holder in due course, since he acquired the bill in good faith and for value; and since he became the possessor of the bill payable to bearer (assumed that the bill was payable to bearer) (Sec. 9)

Rahul cannot deny the validity of the bill, since no drawer or acceptor of a bill shall, in a suit by a holder in due course, be permitted to deny the validity of the bill as originally drawn, and thus, Sidhartha who is the holder in due course, acquires a good title to the bill (Sec. 120).

Sidhartha is entitled to recover the payment of the bill from Rahul and all prior parties, since a holder in due course has the right to sue all the prior parties (Sec. 36)

Question 38 RTP Dec 2018
State the circumstances on the basis of which a banker can dishonor a cheque under the provisions of Negotiable Instruments Act, 1881.

Grounds for dishonour of cheque –
A banker will be justified or bound to dishonour a cheque in the following cases:
1. If a cheque is undated
2. If the cheque is stale
3. If the instrument is inchoate or not free from reasonable doubt.
4. If the cheque is post -dated and presented for payment before its ostensible date.
5. If the customer‘s funds in the banker‘s hands are not _properly applicable‘ to the payment of cheque drawn by the former.
6. If the customer has credit with one branch of a bank and he draws a cheque upon another branch of the same bank in which either he has account or his account is overdrawn.
7. If the bankers receive notice of customer‘s insolvency or lunacy.

- If the customer countermands the payment of cheque for the banker‘s duly and authority to pay a cheque ceases.
- If a garnishee or other legal order from the Court attaching or otherwise dealing with the money in the hand of the banker, is served on the banker.
- If the authority of the banker to honour a cheque of his customer is undermined by the notice of the latter‘s death.
- If notice in respect of closure of the account is served by either party on the other
- If it contains material alterations, irregular signature or irregular endorsement

Question 39
‘Raju’ is the holder of a bill of exchange made payable to the order of „Ram‟. The bill of exchange contains the following endorsements in blank:
First endorsement „Ram‟
Second endorsement ‘Ganesh’
Third endorsement ‘Naresh’ and
Fourth endorsement ‘Bakul’

‘Raju’strikes out, without Bakul’s consent, the endorsements by ‘Ganesh’ and ‘Naresh’ Decide with reasons whether ‘Raju’ is entitled to recover anything from ‘Bakul’ under the provisions of Negotiable Instruments Act, 1881

According to section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser‘s remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.

In the given question, Raju is the holder of a bill of exchange of which Ram is the payee and it contains the following endorsement in blank:
First endorsement, Ram‘
Second endorsement, Ganesh‘

Third endorsement, Naresh‘
Fourth endorsement, Bakul

Raju‘, the holder, may intentionally strike out the endorsement by Ganesh‘ and Naresh‘; in that case the liability of Ganesh‘ and Naresh‘ upon the bill will come to an end. But if the endorsements of Ganesh‘ and Naresh‘ are struck out without the consent of Bakul‘, Raju‘ will not be entitled to recover anything from Bakul‘. The reason being that as between Naresh‘ and Bakul‘, Naresh‘ is the principal debtor and Bakul‘ is surety. If Naresh‘ is released by the holder under Section 39 of the Act, Bakul‘, being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser‘s remedy against a prior party, the endorser is discharged from liability to the holder.

Thus, if Raju‘ strikes out, without Bakul‘s consent, the endorsements by Ganesh‘ and Naresh‘, Bakul‘ will also be discharged.

Workbook Questions

Question: 40
What is Negotiable Instrument? Discuss the essential features of a Negotiable Instrument.
Section 13 of the Act defines the terms „negotiable instrument‟ as a promissory note, bill of exchange or either payable either to order or to bearer. A promissory note, bill of exchange or cheque-
• is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable;
• is payable to the bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank;
• Either originally or by endorsement, is expressed to be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. Section 13 shows that the Act is confined to three specific types of instruments most in common use, namely, promissory notes, bills of exchange and cheques. The Contract Act is a general statute dealing with contracts. The Negotiable instruments Act is a statute dealing with a particular form of the contract. The law laid down for special cases must always overrule the provisions of general character as held in „Kwong Hip Lone Saw Mill Co. V. C.A.M.A.L. Firms‟ – AIR 1933 Rang.131. The following are not the negotiable instruments-
• Share certificate passing from hand to hand with blank transfers – Hazarimaul V. Statis Chandra‟ – ILR 46 Cal.331;
• Deposit receipts – Anantharam V. O.L., of T.N.Q. Bank‟ – 1939 Mad W.N. 1096;
• Mate‟s receipt – Nacheppa Chetty V. Irravaddy Flotila & Co., - ILR 41 Cal. 670;
• Bill of lading – United Bank of India V. N.S. Bank – AIR 1959 Cal. 328;
• Promissory note - Khirodnath Gountia V. Arjun Panda‟ – (1971) 2 Cut. W.R. 223
• A benefit under a letter of credit – Joseph Pyke & Son V. Kedarnath- AIR 1962 Cal.326.
Essential Features of a Negotiable Instrument:
1. It must be in writing.
2. It should be signed by the maker or drawer.
3. There must be a promise or order to pay.
4. The promise or order must be unconditional.
5. It must call for payment in money and money only.
6. It should call for payment of a certain sum.
7. The property in the instrument may be passed in two ways by:
(a) mere delivery; and
(b) endorsement and delivery.
8. The consideration is also presumed to have been passed

Question 41
Distinguish between-
[A] Promissory Note and bill of exchange
[B] Promissory Note and Cheque
[C] Bill of Exchange and Cheque

[A] Distinction between Promissory Note and Bill of Exchange.

	Promissory Note		Bill of Exchange
1.	It is defined in Sec. 4 of NI Act, 1881.	1.	It is defined in Sec. 5 of the NI Act, 1881.
2.	There are **two** parties: • Maker. • Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety"	2.	There are **three** parties: • Drawer. • Drawee. • Payee.
3.	It contains a **Promise** to pay.	3.	It contains an **order** to pay.
4.	**No conditions** shall be made in a promissory note.	4.	A bill may be **accepted conditionally**.
5.	The liability of a maker of the promissory note is primary and absolute.	5.	The liability of the drawee of a bill of exchange is secondary and conditional.

[b] Distinction between Promissory Note and Cheque.

	Promissory Note		Cheque
1.	It is defined in Sec. 4 of NI Act, 1881.	1.	It is defined in Sec. 6 of the NI Act, 1881.
2.	There are two parties: • Maker. • Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety".	2.	There are three parties: • Drawer. • Drawee. • Payee.
3.	Promissory note contains a promise to pay the sum with interest or without interest at a later date.	3.	A cheque is payable immediately on demand without any days of grace.
4.	Promissory note is not crossed.	4.	Cheque can be crossed.
5.	No protection is available to the payee of note.	5.	Statutory protection is given to the drawee banker. (Sec. 128)
6.	A promissory note cannot be self drawn.	6.	A cheque can be self drawn or bearer cheque.
7.	No criminal liability shall be imposed on the maker.	7.	Criminal Liability may be imposed on drawee for the dishonour of cheques in certain circumstances.
8.	Stamp is necessary.	8.	Stamp is not necessary.
9.	Limitation: 3 years	9.	Limitation: 6 months

Distinction between bill of exchange and Cheque

	Bill of Exchange		Cheque
1.	It is defined in Sec. 5 of NI Act, 1881.	1.	It is defined in Sec. 6 of the NI Act, 1881.
2.	There are three parties: • Drawer. • Drawee. • Payee.	2.	There are three parties: • Drawer. • Drawee. • Payee.
3.	Bills of exchange are not crossed.	3.	Cheques may be crossed.
4.	Generally three days of grace are given for the payment in case of a bill of exchange. However, this convenience is not allowed in case of bill of exchange payable on demand.	4.	Immediate payment is required in case of cheque. No grace days are allowed.
5.	Anybody including banker may be a drawee in case of bill of exchange.	5.	The drawee is always a baker.
6.	It must be accepted before the acceptor can be made liable upon it.	6.	It requires immediate payment. It does not require acceptance of the maker. Thus the question of acceptance does not arise in case of cheque.
7.	Where a Bill of Exchange is not paid and not honoured, a notice of dishonour should be sent to the drawer to charge him.	7.	Where a cheque is dishonoured, Notice of Dishonour is not strictly necessary. The banker can return the cheque with the memo "Refer to Drawer" which is a sufficient notice.
8.	Statutory protection is not available.	8.	Sec. 85 of the N.I Act, 1881 affords protection to bankers.
9.	Civil Liability in case of dishonour of bill of exchange.	9.	Criminal liability in case of dishonour of a cheque/bouncing of a cheque and is liable to be prosecuted under Sec. 138 of the N.I. Act, 1881.

Question 42

What do you mean by Holder? What is Holder in due course? Discuss the difference between holder and holder-in-due course.

Section 8 defines the term „holder". The holder of a promissory note or a bill of exchange or cheque is any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

In „Anjaniaih V. Nagappa" – AIR 1967 AP 61 it was held that the term „holder" as defined in Section 8 of the Act would not include a person, who, though in possession of the instrument, had no right to recover the amount due from the parties thereto, such as the finder of a lost instrument payable to bearer or a thief in possession of such an instrument, or even the payee himself, is he is prohibited by an order of court from receiving the amount due on the instrument. Where a plaintiff sued not as a holder in possession of the promissory note but claimed to recover the debt, on the basis of a succession certificate, he would be the only person entitled to recover the debt.

Holder in due course – Section 9 defines the term „holder in due course. It means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or the endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In „Braja Kishore Dikshit V. Purna Chandra Panda" – AIR 1957 Ori. 153 the High Court held that the holder in due course under Section 9 has to satisfy the following three conditions-

• An endorsee becomes a holder in due course for consideration;
• He can become an endorsee before the amount mentioned in the promissory note became payable; and
• He should have no sufficient cause to believe that any defect existed in the title of the person from whom he was to derive his title.

As regard to the second condition the promissory note becomes payable either on demand or at maturity.

Question 43

Difference between holder and holder-in-due course.

Holder	Holder in due course
1. Holder is entitled in his own name to possess the instrument and the amount thereon from parties involved.	1. Holder in due course possesses the instrument for consideration before maturity and in good faith.
2. Title of the holder is subject to title of the transferor.	2. Holder in due course gets a better title than transferor.
3. Holder may receive the instrument without consideration.	3. Holder in due course always receives the instrument for consideration.
4. Holder does not get certain privileges available to the holder in due course.	4. Holder in due course always gets privileges not available to holder.

Question 44
What are the different types of Instruments provided in NI Act?

There are various types of instruments mentioned in the NI Act as follows:
• **Inland instrument** – a promissory note, bill of exchange or cheque drawn or made in India and made payable in or drawn upon any person resident in, India shall be deemed to be an inland instrument.
• **Foreign instrument** – a promissory note, bill of exchange or cheque not drawn, made or made payable, in India, shall be deemed to be a foreign instrument
. • **Ambiguous instrument** – where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election, treat it as either and the instrument shall be thenceforward treated accordingly
. • **Instruments payable on demand** – A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.
• **Inchoate stamped instruments** – Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments for the time being in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the mount intended by him to be paid there under.

Question 45
What is Notice? When notice is not essential?

Section 93 provides that when an instrument is dishonored the holder must give notice that the instrument has been dishonored. In „Union bank V. Dina Nath" – AIR 1953 All. 637 it was held that this section was intended to confine the holder"s right of enforcing the liability to only those who are otherwise liable under the law and to whom notice has been given; it was not intended to enlarge the holder"s right so as to enable him to claim damages from persons against whom he has no remedy under the Act.

Notice – when not necessary?
Section 98 provides that in the following circumstances there is no requirement to issue notice-
• When it is dispensed with by the party entitled thereto;
• In order to charge the drawer, when he has countermanded payment;
• When the party charged could not suffer damage for want of notice;
• When the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
• To charge the drawers, when the acceptor is also a drawer;
• In the case of a promissory note which is not negotiable;
• When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Question 46
Briefly narrate the recent changes in The Negotiable Instruments (Amendment) Act 2018. Explain the background and purposes behind these changes.

Briefly narrate the recent changes in The Negotiable Instruments (Amendment) Act 2018. Explain the background and purposes behind these changes. As the central government pushes for a cashless economy, legislative steps are under way to fortify other instruments of financial transactions, including cheques. With the objective of reducing delay in proceedings pertaining to dishonour of cheques and to provide interim relief to the payee in such cases, the Negotiable Instruments (Amendment) Act 2018 has been introduced in August, 2018. In a move to prevent unscrupulous elements from holding back payment through an often long-drawn litigation in cheque bounce cases, the government has come up with a series of amendments to the N. I. Act, 1881. This law was enacted to define and amend the law relating to promissory notes, bills of exchange, and cheques.

The Negotiable Instruments (Amendment) Act 2018 introduces a new clause which allows the payment of interim compensation to the aggrieved party as an immediate relief when the case reaches the court. In the statement of objects and reasons for the Act, the government points out that though the 1881 Act was amended from time to time to provide for the speedy disposal of cases relating to the offence of dishonour of cheques, it has been receiving several representations from the public, including from the trading community, relating to pendency of cheque dishonour cases."This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings," the statement says.

This delay has slowly eroded the faith of the traders in the use of cheques, it reasons. Injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

The purpose of the Act is to provide interim relief to the aggrieved party till the final solution of the cheque dishonour case in court, and to discourage frivolous and unnecessary litigation which would save time and money.

The new Section 143A provides for the court trying a cheque dishonour case under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant at the time of framing of charges. The interim compensation shall not exceed 20% of the amount of the cheque.

A second provision, Section 148, allows the Appellate Court to first order the party convicted in a cheque bounce case to deposit 20% of the of the fine or compensation awarded by the trial court. The above amendments will strengthen the credibility of cheques.

Indian Partnership Act, 1932

Introduction	The Indian Partnership Act was enacted during the year 1932. Before the enactment of this Act, the provisions relating to partnership were contained in Chapter XI, consisting of Section 239 to 266 of the Indian Contract Act, 1872. A necessity of a new legislation on partnership was deeply felt. The Act is principally based on the English Partnership Act, 1890, with such minor modifications as were necessary for the Indian conditions
Applicability	This Act extends to the whole of India except the State of Jammu and Kashmir.
Effective	The provisions of this Act came into effect from 01.10.1932 except Section 69 which deals with the effect of non registration. Section 69 of this Act came into effect with effect 01.10.1933.
WHAT IS PARTNERSHIP? **MODEL QUESTION** **WORKBOOK**	Section 4 defines the term 'partnership' as the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The term 'partners' is defined as persons, who have entered into partnership with one another are called individually 'partners'. A 'firm' is the collective of the partners. The 'firm name' is the name under which the business is carried on. The following are the essential ingredients for the constitution of a partnership- • There should be an agreement between the parties; • The agreement must be to share the profits of the business; and • The business must be carried on by all or any of them acting for all; • The existence of an agency between the concerned persons inter-se. The agreement need not be in writing. It may be oral. It may be express of implied.
Different types of partnership	There are four types of partnership which are as detailed below- • General Partnership; • Limited Partnership; • Partnership at will; • Particular Partnership In a **general partnership,** the liability of each partner is unlimited. It means that the firm's creditors can realize their dues in full from any of the partners by attaching their personal property if the firm's assets are found to be inadequate to pay off its debts. An exception is made in the case of a minor partner whose liability is limited to the amount of his share in the capital and profits of the firm. In India all partnership firms are general partnerships. Each partner of a general partnership is entitled to take active part in the management of the firm, unless otherwise decided by the other partners. A **limited partnership** is a partnership consisting of some partners whose liability is limited to the amount of capital contributed by each. The personal property of a limited partner is not liable for the firm's debts. He cannot take part in the management of the firm. His retirement, insolvency, lunacy or death does not cause dissolution of the firm. There is at least one partner having unlimited liability. A limited partnership must be registered. Limited partnership is now allowed in India under the Limited Liability Partnership Act. In England limited partnership can be formed under the Limited Partnership Act, 1907 and in the USA under the Partnership Act, 1890. **Partnership at will** is a partnership formed for an indefinite period. The time period or

	the purpose of the firm is not mentioned at the time of its formation. It can continue for any length of time depending upon the will of the partners. It can be dissolved by any partner by giving a notice to the other partners of his desire to quit the firm. **Particular Partnership** is a partnership formed for a specific time period or to achieve a specified objective. It is automatically dissolved on the expiry of the specified period or on the completion of the specific purpose for which it was formed
Different types of partners **MODEL QUESTION**	The following are the various types of partners- • Working partner or Active partner; • Sleeping or dormant partner; • Secret partner; • Limited partner; • Partner in profits only; • Nominal or ostensible or quasi partner; • Minor as a partner. Active partner contributes capital and also takes active part in the management of the firm. He bears an unlimited liability for the firm's debts. He is known to outsiders. He shares profits of the firm. He is a full-fledged partner. A sleeping or inactive partner simply contributes capital. He does not take active part in the management of the firm. He shares in the profits or losses of the firm. His liability for the firm's debts is unlimited. He is not known to the outside world. Secret partner contributes capital and takes active part in the management of the firm's business. He shares in the profits and losses of firm and his liability is unlimited. However, his connection with the firm is not known to the outside world. The liability of such a partner is limited to the extent of his share in the capital and profits of the firm. He is not entitled to take active part in the management of the firm's business. The firm is not dissolved in the event of his death, lunacy or bankruptcy. Partners in profit only share in the profits of the firm but not in the losses. But his liability for the firm's debts is unlimited. He is not allowed to take part in the management of the firm. Such a partner is associated for his money and goodwill. Nominal Partner neither contributes capital nor takes part in the management of business. He does not share in the profits or losses of the firm. He only lends his name and reputation for the benefit of the firm. He represents himself or knowingly allows himself to be represented as a partner. He becomes liable to outsiders for the debts of the firm. A nominal partner can be of two types - Partner by estoppels and partner by holding out. A person who by his words (spoken or written) or conduct represents himself as a partner becomes liable to those who advance money to the firm on the basis of such representation. He cannot avoid the consequences of his previous act. Suppose a rich man, Jalal, is not a partner but he tells Ramu that he is a partner in a firm called Alpha Enterprises. On this impression, Ramu sells good worth ` 20,000 to the firm. Later on the firm is unable to pay the amount. Ramu can recover the amount from Jalal. Here, Jalal is a partner by estoppels. When a person is declared as a partner and he does not deny this even after becoming aware of it, he becomes liable to third parties who lent money or credit to the firm on the basis of such a declaration. Suppose, Alpha tells Ramu in the

presence of Jalal that Jalal is a partner in the firm of Alpha Enterprises. Jalal does not deny it. Later on Ramu gives a loan of ` 20,000 to Alpha Enterprises on the basis of the impression that Jalal is a partner in the firm. The firm fails to repay the loan to Ramu. Jalal is s liable to pay ` 20,000 to Ramu. Here, Jalal is a partner by holding out.

Partnership is a creation of contract

MODEL QUESTION

WORKBOOK

Section 5 provides that the relation of partnership arises from contract and not from status. The members of a Hindu Undivided Family carrying on a family business as such, or a Burmese Buddhist husband and wife, carrying on business as such, are not partners in such business.

This section lays down that partnership is not a status, but a creation of contract. The partnership is entirely different from a company, Limited Liability partnership, Hindu Undivided Family.

Difference between a partnership and a company

The following are the differences between the partnership and a company:

Basis	Partnership	Company
Legal entity	It is not a separate legal entity.	A company is a separate legal entity.
Liability	The liability of the partners is unlimited.	The liability of the members of the company is limited.
Number of members	Minimum required is two. Maximum number can be 100 subject to some exceptions present Rules provide 50.	Minimum number of members for a private company is 2 and maximum 200. Minimum number of members for a public limited company is 7 and there is no limited for maximum.
Transfer of shares	A partner cannot transfer his share without the consent of other members	Transfer of shares in a public limited company is not a restricted one.
Management	The firm can be run by all or any of the partners.	The Board of Directors is having responsibility to run the management
Relationship	The relationship with partners is of that of agency.	No such relationship in the company.
Profit distribution	Profit is distributed according to the agreement entered between partners; if no agreement equal distribution.	No requirement of profit distribution to members. It is at the discretion of the management to declare dividend that too only out of profits.
Remedy to creditors	The creditors of a firm can proceed against the partners jointly and severally.	The creditors can proceed only against the company and not against shareholders.
Audit	Audit is not compulsory for the partnership firm.	Various types of audit are compulsory for the company
Dissolution	Firm can be dissolved on the eve of death of partner, retirement of partner etc., unless otherwise than agreed to in the agreement.	A company can be dissolved only by the winding up process as ordered by the Court.

In 'Gurugubilli Chendran Naidu V. Achanti Pydisetti' – AIR 1985 NOC 135 (AP) it was held that right to share the profits of the partnership in equal shares can arise only when there is no contract between the partners regarding it. But there is no specific provision in the Indian Partnership Act, 1932 to share capital equally.

Difference between partnership and limited liability partnership

Base	Partnership	Limited Liability Partnership
Legal entity	It is not a separate legal entity	It is a separate legal entity
Liability	The liability of the partners is unlimited.	The liability of the members of the LLP is limited.
Number of members	Minimum required is two. Maximum number is 100 subject to some exceptions	Minimum number of members for a LLP is 2 and no limit for maximum numbers.
Entering into contracts	Partnership is not a separate person and enter into contract on behalf of its partners	LLP is capable of entering into contracts and holding property in its own name
Compliance of law	Lesser compliance	More compliance under LLP Act.
Dissolution	Firm can be dissolved on the eve of death of partner, retirement of partner etc., unless otherwise than agreed to in the agreement.	LLP can be dissolved by complying with the provisions of LLP (Winding up and Dissolution) Rules, 2012.

The following are the differences between the partnership and Hindu Undivided Family.

Base	Partnership	Hindu undivided family
Relationship	Relation subsists between the partners.	It is a single person and it cannot have a partnership by itself.
Management	All of the partners may involve in the management	Karta of HUF is managing the business
Share of profit	Partners can share profit as per the agreement	No such sharing of profits in HUF
Property	The properties even though in the name of partnership firm belongs to all partners	This business is a species of ancestral joint property in which every member of a family acquires
Authority	Each partner is the agent of others	It has implied authority to contract debts and pledge the properties and credit of the family for the ordinary purposes of the family business
Dissolution	Firm can be dissolved on the eve of death of partner, retirement of partner etc., unless otherwise than agreed to in the agreement.	The death of Karta will not lead to the dissolution of the HUF business.

Determining existence of partnership **RTP DEC 18**	Section 6 provides that in order to determine- • Whether a group of persons is or is not a firm; or • Whether a person is or is not a partner in a form Regard shall be had to the real intention between the parties, taking into the facts together. The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not make such persons as partners. The receipt- • Of a share of the profits of a business; or • Of a payment contingent upon the earning of profits; or • Varying with the profits earned by a business, by a person does not of itself, make him a partner with the persons carrying on the business. The receipt of such share or payment- • by a lender of money to persons engaged or about to engage in any business; • by a servant or agent as remuneration; • by the widow or child of a deceased partner, as annuity, or • by a previous owner or part owner of the business as consideration for the sale of the goodwill or share thereof does not make the receiver a partner with the persons carrying on the business. In 'S.K. Parthasarathy Naidu V. K. Rama Naidu' – AIR 2001 Mad 399 (405) it was held that the legal existence of a partnership is proved by facts to support such a claim. There need not be any particular form of document and in fact, the partnership can even be oral, but, whether a relationship of partners exists or does not exist depends on what was intended by parties. In 'Shiv Narain & Sons V. Commissioner of Income Tax' – AIR 1935 Lah 896 it was held that a partnership firm is not a 'person', but merely a collective name for the individuals who are members of the partnership, and as such it cannot be a partner in another partnership firm. A partnership is a relationship which subsists between persons. A partnership firm is not a legal entity, is incompetent to enter into a partnership with another partnership firm.
Partnership at will	Section 7 defines the expression 'partnership at will'. According to this section, where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is 'partnership at will'. Such a partnership could be dissolved by any partner giving notice in writing to all other partners, of his intention to dissolve the firm. On such notice being given, the firm is dissolved from the date mentioned in the notice as the date of dissolution or if not date is so mentioned, as from the date of communication of the notice. The following are the essential ingredients of a 'partnership-at-will'- • deed of partnership should contain any provision, whether express of implied as to the duration of partnership; and

	• for the determination of the partnership. If either of the above said provision exists, the partnership would not be a partnership-at-will.
Particular partnership	Section 8 provides that a person may become a partner with another person in particular adventures or undertakings.
RIGHTS AND LIABILITIES OF PARTNERS **Duties of partners** **MODEL QUESTION**	Section 9 of the Act deals with the general duties of partners. Partners are bound- • to carry on the business of the firm to the greatest common advantage; • to be just and faithful to each other; and • to render true accounts and full information of all things affecting the firm, to any partner or his legal representative. • Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.
Rights and duties of partners	Section 11(1) provides that the mutual rights and duties of the partners of a firm may be determined by contract entered between the partners. Such contract may be expressed or may be implied by a course of dealing. Such contract may be varied by consent of all partners. Such consent may be expressed or may be implied by a course of dealing.
Agreements in restraint of trade	Section 11(2) of the Act provides that the contracts entered between partners may provide that a partner shall not carry on any business other than that of the firm while he is a partner. Section 36 (2) provides that a partner may make an agreement with his partners on ceasing to be a partner, he will not carry on any business similar to that of the firm within a specified period or within specified local limits. Such agreement shall be valid if the restrictions imposed are reasonable. Section 54 provides that the partners may, upon or anticipation of the dissolution of the firm, make an agreement that some of them will not carry on a business similar to that of a firm within a specified period or within specified local limits. Section 55(3) provides that any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits.

Conduct of business	Section 12 provides that subject to the contract between the partners- • every partner has a right to take part in the conduct of the business; • every partner is bound to attend diligently to his duties in the conduct of the business; • any difference, arising as to ordinary matters connected with the business, may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; • every partner has a right to have access to, and to inspect and copy, any of the books of the firm; and • in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm. In 'Rajnikanth Hasmukhlal Golwala V. Nataraj Theatre, Navsari' – AIR 2000 Guj 80 (88) it was held that Section 12 of the Act gives right to every partner to take part in the conduct of the business. Of course, the right which is enshrined in the Act takes effect subject to any express or implied contract amongst the partners. This right cannot be fettered by any court unless there is a contract to the contrary arrived at amongst the partners themselves. Further their transferees have no right to do the business sin view of the Section 29 of the Act. In 'Sasthi Kenker V. Man Gobinda' – AIR 1919 Pat 419 IC 2 it was held that a partner is not liable for negligence if he can show that used such skill and intelligence as he possessed in the conduct of the business.

Mutual rights and liabilities **MODEL QUESTION**	Section 13 provides that subject to the contract between the partners- • a partner is not entitled to receive remuneration for taking part in the conduct of the business; • the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm; • where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits; • a partner, making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at 6% per annum; • the firm shall indemnify a partner in respect of payments made, and liabilities incurred, by him- ■ in the ordinary and proper conduct of the business, and ■ in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and • a partner shall indemnify the firm or any loss caused to it by his willful neglect in the conduct of the business of the firm. When the profits are not shared equally, the losses are, in the absence of the agreement, to be borne in the same proportion as the profits are shares, regardless, whether one partner has put up more capital than other. In 'Bhagchand V. Kaluram @ Moolchand' – AIR 1966 Raj 24 (25) it was held that in the absence of a stipulation in the partnership agreement to the effect that the interest would be paid on all the investments, irrespective of the fact as to whether there was any profit or loss, Section 13 comes into play and interest is, therefore, payable only out of the profits earned by the partnership business. An advance by a partner to a firm is not treated as an increase of his capital but rather as loan on which interest ought to be paid. An agreement to pay a different rate may be inferred if a different rate is payable by the custom of the particular trade, or has been charged and allowed in the books of the particular partnership. Compound interest may be allowed if there is an agreement, whether express of implied, to that effect as held in 'Chandrika Prasad Ram Swarup V. Commissioner of Income Tax' – AIR 1939 All 341. In 'Banwari Lal V. Shaikh Shukrullah' – AIR 1940 Pat 2014: 19 it was held that a partner, who is guilty of willful negligence in the conduct of partnership business, is liable to indemnify the firm for any loss, caused to it, by his willful neglect and is not himself entitled to be indemnified by his co-partners
Property of the firm	Section 14 provides that subject to contract between the partners, the property of the firm includes all property and rights and interests in property, originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm and includes also the goodwill of the business. The property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm, unless the contrary intention appears. In 'Arjun Kanaji Tankar V. Shantaram' –(1969) 3 SCC 555 a contention was raised that

	in any event, by virtue of Section 14 of the Partnership Act, all the assets with the aid of which the business was carried on by the plaintiff must be deemed in law to have become the partnership assets under the deed of partnership. It was held that under Section14, the property belonging to a person, in the absence of any agreement to the contrary, does not, on a person entering into a partnership with others, become the property of the partnership merely because it is used for the business of the partnership. It will become the property of the partnership only if there is an agreement, express or implied, that the property was, under the agreement of partnership, to be treated as the property of the partnership. Section 15 provides that subject to the contract between the partners, the property of the firm shall be held and used by partners exclusively for the purposes of the business. In 'Reddi Verraju V. Chittori Lakshminarasamma' AIR 1971 AP 266 it was held that no partner can claim an exclusive right in any article of the partnership property. But upon on a dissolution, any part of the partnership property may, by contract of the partners, be converted into the separate individual property of either. It, therefore, follows, so long as there is a partnership in existence, no partner has any right to take any portion of the partnership property or to say that it belongs to him exclusively so as to assign or transfer the partnership property. The right, that he possesses in the partnership property, is as a member of the partnership, and not a right which can claim in his individual capacity.
Personal profits	Section 16 provides that if a partner derives any profit for himself- • from any transaction of the firm; or • from the use of the property; or • business connection of the firm; or • the firm name he shall account for that profit and pay it to the firm. If a partner carries on any business of the same nature as, and competing with, that of the firm, he shall account for and pay, to the firm, all profits made by him in that business.
Rights and duties of partners **MODEL QUESTION**	Section 17 of the Act provides for the rights and duties of partners. Subject to the contract between the partners- • where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be; • where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership-at-will; and • where a firm constituted to carry out one or more adventures or undertakings carry out other adventures or undertaking, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.
Partner to be agent of the firm	Section 18 provides that a partner is the agent of the firm for the purpose of the business of the firm.

Implied Authority **MODEL QUESTION** **MTP DEC 18 SET 1** **MTP JUNE 17 SET 1**	Section 22 provides that in order to bind a firm, an act or instrument, done or executed by a partner or other person on behalf of the firm, shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm. Section 19 provides that subject to the provisions of Section 22, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by firm, binds the firm. The authority of a partner to bind the firm, conferred by this section, is called his 'implied authority'. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to- • submit a dispute relating to the business of the firm to arbitration; • open a banking account on behalf of the firm in his own name; • compromise or relinquish any claim or portion of a claim by the firm; • withdraw a suit or proceeding filed on behalf of the firm; • admit any liability in a suit or proceeding against the firm; • acquire immovable property on behalf of the firm; • transfer immovable property belonging to the firm; or • enter into partnership on behalf of the firm.
Extension and restriction of implied authority	Section 20 provides that the partners may extend or restrict the implied authority of any partner by contract between the partners. Despite such restrictions, any act done by a partner on behalf of the firm, which falls within his implied authority, binds the firm unless the person, with whom he is dealing, knows of the restriction or does not know or believe that partner to be a partner.
Authority in emergency	Section 21 provides that in case of emergency a partner has authority to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case acting under similar circumstances, and such acts bind the firm.
Effect of admission	Section 23 provides that an admission or representation made by a partner about the affairs of the firm is the evidence against the firm, if it is made in the ordinary course of business.
Effect of notice	Section 24 provides that a notice issued to a partner, who habitually acts in the business of the firm, of any matter, relating to the affairs of the firm, will be the notice issued to the firm unless in the case of a fraud on the firm committed by, or with the consent of the partner.
Liability of a partner	Section 25 provides that every partner is liable, jointly with all other partners and also severally, for all acts of the firm done while he is a partner.+
Liability of the firm	Section 26 provides that where, by the wrongful act or omission of a partner, acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner. Section 27 provides that the firm is liable for misapplication by partners. If,-

	• a partner, acting within his apparent authority, receives money or property from a third party and misapplies it; or • a firm, in the course of its business, receives money or property from a third party and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.
Holding out/Deemed Partners **MTP JUNE 17 SET 1** **MTP DEC 18 SET 1** **RTP JUNE 18**	Section 28 provides that any person, who,- • by words spoken or written; or • by conduct, represents himself; or • knowingly permits himself to be represented to be a partner in a firm, is liable as a partner in that firm to anyone who has, on the faith of any such representation, given credit to the firm, whether the person, representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. Two or more persons doing some activity with common understanding and for gain shall be deemed as partners even when they themselves deny to be partners when they are liable to third parties. If the business is continued, after the death of a partner, in the old firm name, the continued use of that name, or of the deceased partner's name, as a part thereof, shall not, of itself, make his legal representative, or his estate, liability for any act of the firm done after his death.
Rights of Transferee of a partner's interest **MODEL QUESTION**	Section 29 deals with the rights of transferee of a partner's interest. This section allows a partner to transfer his interest in the firm, either absolutely or by mortgage or by the creation of a charge on such interest during the continuance of the firm. The transferee who receives such interest in the firm, does not entitled to- • interfere in the conduct of the business; or • to require accounts; or • to inspect the books of the firm He is entitled to receive the share of profits of the transferring partners and the transferee is to accept the account of profits agreed to by the partners. If the firm is dissolved or the transferring partner ceases to be a partner, the transferee is entitled to receive the share of the assets of the firm to which the transferring partner is entitled and for the purpose of ascertaining that share, to an account as from the date of dissolution.
Minors as partners **MODEL QUESTION**	Section 30 of the Indian partnership act provides that though a minor cannot be a partner of a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of the partnership by an agreement executed through his guardian with the other partners.
Rights and liability of minor	A minor in a partnership has a right to such share of the property and of the profits of the firm as may be agreed upon. He is having power to have access to and inspect and to get copy, any of the accounts of the firm.

	The share of a minor in a partnership firm is liable for the acts of the firm. But he is not personally liable for any such act. When a minor severs his connection with the firm he may not sue the partners for an account or payment of his share of the property or profits of the firm. The account of his share shall be determined by a valuation made, as far as possible. All the partners of a firm together or any partner entitled to dissolve the firm, upon notice to other partners, may elect to dissolve the firm. The Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.
Election on majority	On attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership whichever date is later, a minor may within six months from such date give public notice that he has elected to become or that he has elected not to become a partner in the firm. Such notice shall determine his position as regards to the firm. If a minor fails to give such notice, he shall become a partner in the firm on the expiry of the said six months. If a minor elects to become a partner- • his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of the partnership; and • his share in the property and profits of the firm shall be the share to which he was entitled as a minor. If a minor does not elect to become a partner- • his rights and liabilities shall continue to be those of a minor up to the date on which he gives public notice; • his share shall not be liable for any acts of the firm done after the date of the notice; and • he shall be entitled to sure the partners for his share of the property. Holding out is not applicable in these cases. Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person, asserting the fact.
FORMATION OF A PARTNERSHIP **MTP DEC 19 SET 2** **MTP JUNE 18 SET 1**	Partnership is one of the modes of business. It is governed under the Indian Partnership Act, 1932. For constituting a partnership, the following ingredients are necessary- • There should be an agreement between the parties; • The agreement must be to share the profits of the business and the business must be carried on by all or any of them acting for all; • The existing of an agency between the concerned persons inter-se. All the above ingredients must exist before a partnership come into existence. Actual starting of business to registration is not a condition precedent. In 'Meenakshi Achi V. P.S.M. Subramanian Chettiar' – AIR 1957 Mad 8 the High Court held that in determining whether a particular group of persons constitutes a partnership,

	regard has to be had to the real relationship between the parties as drawn by all relevant facts taken together. However, it is often a difficult question to decide. There are several indicators for testing the existence of a partnership like books of account, existence of other employees of the partnership, proof of business dealing etc., While sharing of profits is an important criterion, it is not conclusive. The first element relates to the voluntary contractual nature of partnership; the second gives the motive which leads to the formation of firms, i.e., the acquisition of gain; and the third shows that the persons of the group, who conduct the business, do so as agents for the persons in the group and therefore liable to account to all. If any of the said essential ingredients is lacking there can be no partnership.
Procedure to form a partnership	The first step is to decide the number of partners of a firm. The law provides for minimum 2 number of partners. The upper limit is 10 in case of banking business and 20 in respect of other business. • First decide to who are the partners of the firm, considering the limit envisaged in the Act; • The name of the partnership firm is selected subject to the provisions of the partnership Act; • Select the business to be done by the partnership and object of the business; • Decide the capital to be brought by each and every partner; • Prepare the agreement deed of the firm – the deed is the vital and most significant document. The deed shall contain all aspects of the partnership firm. This documents prescribes the 'a to z' of the partnership firm to be formed; • The agreement should invariably in writing and signed by all partners; • The provisions contained in the agreement are binding all partners; • The partnership firm is to be registered. According to the Act the partnership firm may be registered or may not be registered. Unregistered firms have no legal protection and therefore registration of partnership firm is to be preferred. • Open bank account in the name of the partnership firm; • In the present scenario obtaining PAN is necessary and get the PAN from the Income Tax Authority; • Acquire all mandatory licences from the respective authorities for the conduct of the business; • Registration with required tax authorities i.e., direct tax as well as indirect tax such as central excise, service tax, VAT etc., • The Registration certificate is the conclusive evidence of the formation of the partnership firm.
RECONSTITUTION OF FIRM	Partnership is an agreement between the members of a firm for sharing the profits of the business carried on by all or any of them acting for all. Any change in this relationship amounts to reconstitution of the partnership firm. Any change in the existing agreement of partnership amounts to reconstitution of a firm. A change in the partnership agreement brings to an end the existing agreement and a new agreement comes into being. This new agreement changes the relationship among the members of the partnership firm. Hence,

	whenever there is a change in the partnership agreement, the firm continues but it amounts to the reconstitution of the partnership firm. The reconstitution of a partnership firm may take place in the following occasions- • Change in profit sharing ratio of the existing partners; • Admission of a new partner; • Retirement of existing partner; • Death of a partner; • Amalgamation of two partnership firm.
Change in profit sharing ratio	When all the partners of a firm agree to change their profit sharing ratio, the ratio may be changed. For example Ram, Mohan and Sohan are partners in the firm sharing profits in the ratio of 3:2:1. With effect from April 1, 2001, they decided to share profits equally. Here, change in the existing profit sharing ratio results into reconstitution of the firm. In this case one profit is purchasing a share of partner from another one. In other words, share of one partner may increase and share of another partner may decrease. In case of change in profit sharing ratio, the gaining partner must compensate the sacrificing partner by paying the proportionate amount of goodwill. At the time of change in profit sharing ratio, if there are some reserves or accumulated profits/losses existing in the books of the firm, these should be distributed to partners in their old profit sharing ratio. Partners may decide that reserves and accumulated profits/losses will not be affectedand remains in the books with same figure. In this case, the gaining partner must compensate the sacrificing partner by the share gained by him. At the time of change in profit sharing ratio of existing partners' assets and liabilities of a firm must be revalued because actual realizable value of assets and liabilities may be different from their book values. Change in the assets and liabilities to the period prior to change in profit sharing ratio and therefore it must be share in old profit sharing ratio.
Admission of a new partner **MTP JUNE 18 SET 1**	Admission of a partner is one of the modes of reconstitution of a partnership firm. A new partner may be admitted in a partnership firm either for the increase of capital of the firm or to strengthen the management of the firm. A new partner may be admitted with the consent of all existing partners as per the provisions of the agreement of the firm. For example, Hari and Haqque are partners sharing profit in the ratio of 3:2. On April 1, 2013 they admitted John as a new partner with 1/6th share in the profits of the firm. In this case, with the admission of John the firm is reconstituted. The new partner is entitled the following rights- • The right to share in the assets of the partnership firm; and • The right to share the profits in the business.
	The following are to be taken care of while admitting a new partner- • Computation of new profit sharing ratio and sacrifice ratio; • Accounting treatment of goodwill; • Revaluation of assets and liabilities;

	• Treatment of undisbursed profits and accumulated losses; • Adjustment of capital accounts.
Retirement of an existing partner	Retiring of a partner from the firm amounts to reconstitution of the firm. On the retirement of a partner, the existing partnership deed comes to an end. In its place the new partnership deed needs to be framed, i.e. the firm requires reconstitution. The remaining partners shall continue to do their business but on the different terms and conditions. For example, Roy, Ravi and Rao are partners in the firm sharing profit in the ratio of 2:2:1. Ravi retires from the firm on March 31, 2003. Retirement of Ravi from the firm of Roy, Ravi and Rao results into reconstitution of firm. A partner can retire from the firm in three ways- • Retirement through mutual consent – A partnership firm may take its shape through mutual consent of partners in the same way. A partner may retire if all the partners agree on the decision of his retirement; • When there is a provision in the partnership deed for retirement of a partner, in that case the partner may retire from the firm by expressing his intention of leaving the firm through a notice to the other partners of the firm. • When partnership is at will a partner may retire by giving notice in writing to all other partners informing them about his intention to retire. The outgoing partner's account is settled as per the terms of partnership deed i.e., in lump sum immediately or in various installments with or without interest as agreed or partly in cash immediately and partly in installment at the agreed intervals. In the absence of any agreement, Section 37 of the Indian Partnership Act, 1932 is applicable, which states that the outgoing partner has an option to receive either interest @ 6% p.a. till the date of payment or such share of profits which has been earned with his/her money (i.e., based on capital ratio). Hence, the total amount due to the retiring partner which is ascertained after all adjustments have been made is to be paid immediately to the retiring partner. In case the firm is not in a position to make the payment immediately, the amount due is transferred to the retiring Partner's Loan Account, and as and when the amount is paid it is debited to his account.
Liability of a retiring partner	A retiring partner may be discharged from any liability to any third part for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm. Such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement. Despite the retirement of a partner of a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement. He is not liable to any third party who deals with the firm without knowing that he was a partner. The notice may be given by the retired partner or any partner of the reconstituted firm.
Death of a partner	The death of a partner in partnership firm amounts to reconstitution of the firm since the vacant of one partner arises. For example, X, Y and Z are partners in a firm sharing profits in the ratio 3:2:1. X dies on March 31, 2003. Y and Z decide to carry on the business sharing future profits equally. In this case, continuity of business by Y and Z sharing future profits equally amounts to reconstitution of the firm. The accounting treatment for disposal of amount due to retiring partner and deceased partner is similar with a difference that in case of death of a partner, the amount credited

	to him/her is transferred to his Executors' Account and the payment has to be made to him/her. However, there is one major difference that, while the retirement normally takes place at the end of an accounting period, the death of a partner may occur any time. Hence, in case of a partner, his claim shall also include his share of profit or loss, interest on capital, interest on drawings (if any) from the date of the last Balance Sheet to the date of his death of these, the main problem relates to the calculation of profit for the intervening period (i.e., the period from date of the last balance sheet and the date of the partner's death. Since, it is considered cumbersome to close the books and prepare final account, for the period, the deceased partner's share of profit may be calculated on the basis of last year's profit (or average of past few years) or on the basis of sales.
Liability of estate of deceased partner	Section 35 provides that where, under a contract between the partners, the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.
Expulsion of a partner	Section 33 provides that a partner may not be expelled from a firm by any majority of the partners, save in the exercise, in good faith, of powers conferred by contract between the partners. The provisions of retired partners will be applicable to such expelled partner.
Insolvency of a partner	Section 34 provides that where a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved. Where the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.
Rights of outgoing partners **MODEL QUESTION MTP JUNE 19 SET 2**	Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not- • use the firm name; • represent himself as carrying on the business of the firm; or • solicit the custom of persons who were dealing with the firm before he ceased to be a partner. Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option- • to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm; or • to interest at 6% per annum on the amount his share in the property of the firm. Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.
Revocation of continuing guarantee	Section 38 provides that a continuing guarantee given to a firm or to a third party in respect of the transactions of a firm, is revoked as to future transactions from the date of any change in the constitution of the firm, in the absence of agreement to the contrary.

Amalgamation of two partnership firms	When two or more firms merge into one firm and makes a new firm , then this is called amalgamation of firms . For example, Rai and Sanjeev are partners in the firm sharing profits in the ratio of 4:1. To avoid competition and bring down administrative expenses their firm was amalgamated with the firm of Sohan and Ashok who are sharing profits in the ratio of 1:2. It was decided that the new profit sharing ratio of Rai, Sanjeev, Sohan and Ashok will be 4:1:1:2. In this case, two firms have amalgamated into one which amounts to reconstitution of the firm of Raj and Sanjeev on the one hand and the firm of Sohan and Ashok on the other hand to form a new reconstituted firm. When two firm amalgamate with each other, at this time we treat following accounting in the books of old firms so that all doubt solves- • Revaluation of Assets and Liabilities - All entries same as at the time of admission and retirement; • Transferring reserve to old partners capital account into their old ratio; • Treatment of Good will - the goodwill is evaluated according to the condition of agreement and then goodwill will open with agreed value in the books; • Treatment of Assets and liabilities not taken by new firm - If assets and liabilities are not taken by new firm, then these item will transfer to the capital accounts of partners of old firm and close these accounts. The firm, reconstituted by any of the above methods, is required to be get registered with the Registrar of Firms.
REGISTRATION OF FIRMS **Exemption from the Act**	Section 56 gives power to the State Government to give exemptions either fully or any part thereof the State from the provisions of this Act by means of notification in the Official Gazette.
Registrars of Firms	Section 57 provides that the State Government may appoint Registrars of Firms for the purposes of this Act and may define the areas within which they shall exercise their powers and perform their duties.
Application for registration **MODEL QUESTION**	Section 58 provides that for the purpose of registration a statement in the prescribed form stating- • the name of the firm; • the place, or principal place, of business of the firm; • the names of any other places where the firm carries on business; • the date when each partner joined the firm; • the names, in full, and permanent address of the partners; and • the duration of the firm shall be prepared and duly signed by all partners, or by their agents specifically authorized in this behalf. The prescribed fee is also paid for registration. Each person, signing the statement, shall also verify it in the manner prescribed.
Name of the Firm	A firm name shall not contain any of the following words – Crown, Emperor, Empress, Empire, Imperial, King, Queen, Royal or words expressing or implying the sanction, approval or patronage of Government when the State Government signifies its consent to

	the use of such words as part of the firm name by order in writing.
Procedure	The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated. Section 59 provides that when the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the Statement in a register call the Register of Firms and shall file the statement.
Alteration in firm name or place of business	Section 60 provides that when there is an alteration in firm name or the principal place of business name, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration and signed and verified in the prescribed manner. When the Registrar is satisfied that the provisions of Section 60 have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the Statement and shall file it along with the statement relating to the firm.
Closing and opening of branches	Section 61 provides that when a registered firm discontinues its business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation to the Registrar. The Registrar shall make a note of such intimation in the entry relating to the firm and file the intimation.
Changes in names and addresses of partners	Section 62 provides that when any partner of a firm alters his name or permanent address an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall take note of the same in the entry relating to the firm and file the intimation.
Recoding dissolution of a firm	Section 63 provides that when a change occurs in the constitution of a firm, any incoming, continuing or outgoing partner and when a registered firm is dissolved, any person who was a partner immediately before the dissolution may give notice to the Registrar of such change or dissolution, specifying the date of charge or dissolution. The Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms and shall file the notice along with the statement.
Withdrawal of a minor	When a minor who has been admitted to the benefits of the partnership in a firm, attains majority and elects to become or not to become a partner then he may give notice to the Registrar that he has or has not become a partner. The Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms and shall file the notice along with the Statement.
Rectification of mistakes	Section 64 provides that the Registrar shall have the power to rectify any mistake at all times to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm. On application made by all the parties, who have signed any document, the Registrar may rectify any mistake in such document or in the record or note made in the Register of firms.
Amendment by order of Court	Section 65 provides that a Court, deciding any manner, relating to a registered firm, may direct that the Registrar shall make any amendment, in the entry in the Register of Firms, relating to such firm, which is consequential upon its decision and the Registrar shall amend the entry accordingly.
Inspection	Section 66 provides that the Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed. All statements, notices and intimations, filed shall be open to inspection subject to such conditions and on payment of such fee, as may be prescribed. Section 67 provides that the Registrar shall, on application, furnish to any person, on payment of such fee, as may be prescribed, a copy, a certified under his

	hand, of any entry or portion thereof in the Register of Firms.
Rules of evidence	Section 68 provides that any statement, intimation or notice, recorded or noted in the Register of Firms, shall, as against any person, by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.
Effect of non registration **MODEL QUESTION**	Section 69 of the Act place an unregistered firm under some disadvantages as a result of which firms go for compulsory registration. The consequences of non-registration of a firm are as under; (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. (2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm. (3) The provisions of sub-sections (1) and (2) shall apply also to claim of set- off or other proceeding to enforce a right arising from contract, but shall not affect- (a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or (b) the powers of an official assignee, receiver or Court under the Presidency- towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920. to realise the property of an insolvent partner.
Penalty	Section 70 provides that any person who signs any statement, amending statement, notice or intimation, containing any particular, which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to 3 months or with fine or with both.
Mode of giving public notice	Section 72 provides the mode of giving public notice. A public notice is given- • if it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partners, by notice to the Registrar of Firms and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm, to which it relates, has its place or principal place of business; and • in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the District where the firm, to which it relates, has its place of principal place of business.
DISSOLUTION OF A FIRM (SECTION 39-47)	Section 39 provides that the dissolution of partnership between all the partners of a firm is called the 'dissolution of the firm'.

Modes of Dissolution of a firm **MODEL QUESTION**	**1. Dissolution without the order of the court or voluntary dissolution** **(a) Dissolution by agreement** Section 40 provides that a firm may be dissolved with the consent of all partners or in accordance with a contract between the parties. In 'Hakmaji Meghaji V. Punnaji Devichand' – AIR 1938 Bom 453 (456) it was held that mere cessation of business by a partnership does not mean dissolution of partnership. A deed of dissolution, signed by five out of six partners cannot amount to a deed of dissolution with the consent of all the partners as designed in Section 40 of the Act. Dissolution and winding up are two different concepts. Realization of the assets is a part of winding up and not of dissolution, unless, perhaps, it was, expressly or by necessary implication, agreed upon by the parties that the life of the partnership should be co-terminus with the collection of the last debt. **(b) Compulsory dissolution** Section 41 provides that a firm is dissolved- • By the adjudication of all the partners or of all the partners but one as insolvent; or • By the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership. Where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not cause the dissolution of the firm in respect of its lawful adventures and undertakings. **(c) Dissolution on the happenings of certain contingencies** Section 42 provides that subject to the contract between the partners, a firm is dissolved • if constituted for a fixed term, by the expiry of that term; • if constituted to carry out one or more adventures or undertakings, by the completion thereof; • by the death of a partner; and • by the adjudication of a partner as an insolvent. In 'Chainkaram Sidhakaran Oswal V. Radhakisan Vishwanath Dixit' – AIR 1956 Nag 46 it was held that though there was no direct evidence of an express agreement to the effect that the partnership would not be dissolved on account of death of a partner, the evidence on record established that at the time of death of each of the two partners, the heirs of the deceased partner stepped into his shoes. This course of conduct between the parties was held to be sufficient to raise an inference that there was a contract between them that the partnership was not to be dissolved on the death of a partner.

	(d) Dissolution by notice of partnership at will(section 43) Section 43 provides that where the partnership is at will, the firm may be dissolved by any partner giving notice, in writing, to all the other partners, of his intention to dissolve the firm. The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, as from the date of the communication of then notice. In 'Lilabati Rana V. Lalit Mohan Dey' – AIR 1952 Cal 499 it has been pointed out that the provisions contained in Section 43 of the Partnership Act, do not control the firm dissolved even when no notice in writing has been given as required under Section 43. **(2) Dissolution by the court (section 44)** Section 44 prescribes the grounds on which the Court may direct dissolution of a firm in a suit as discussed below: • if a partner has become of unsound mind; • if a partner has become permanently incapable of performing his duties as partner; • if a partner is guilty of conduct which is likely to affect prejudicially the carrying on of business, regarding being had to the nature of business; • if a partner wilfully or persistently commits breach of agreements relating to- • the management of the affairs of the firm or the conduct of its business; or • the conduct of its business; or • otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him; • If a partner has in any way- • transferred the whole of his interest in the firm to a third party; or • has allowed his share to be charged; or • has allowed it to be sold in the recovery of the arrears of land revenue; or • of any dues recoverable as arrears of land revenue due by the partner; • the business of the firm cannot be carried on save at a loss; or • on any other ground which renders it just and equitable that the firm should be dissolved. In 'Sheoram V. Prem Chand' – AIR 1943 Nag 13 it was held that to a suit for dissolution of partnership and rendition of accounts, all the partners and legal representatives of the deceased partner/partners are necessary parties. The suit is to be dismissed if a necessary party is not impleaded or is impleaded beyond the period of limitation.
Liability of partners after dissolution	Section 45 provides that the liability of the partners will continue for the acts done before the dissolution, even after the dissolution, until public notice is given of the dissolution. The following partner is not liable for the acts after the date on which he ceases to be a partner-

	• a deceased partner; • a partner who is adjudicated as an insolvent; • a partner, who not having been known to the person, dealing with the firm, to be a person, retires from the firm In 'Rajagopala Pillai V. Krishnaswai Chetti' – 8 Mad LJ 261 it was held that the legal representatives of a deceased partner cannot be validly bound by an acknowledgement made by the surviving partner after dissolution caused by death. Once the partnership is dissolved, even the theory of implied agency disappears. After the jural relationship of partners having been put an end, there can be no question of any partner, acting in any representative capacity, so as to bind the firm.
Right of partners after dissolution **MODEL QUESTION**	Section 46 provides that on the dissolution of a firm, every partner or his representative is entitled as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights.
Continuing authority of partners	Section 47 provides that after the dissolution of a firm, the authority of each partner to bind the firm and the other mutual rights and obligations of the partners continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. The firm is, in no case, bound by the acts of a partner who has been adjudicated insolvent. This will not affect the liability of any person who has, after the adjudication, represented himself, or knowingly permitted to be represented as partner of the insolvent.
Mode of settlement **MTP DEC 17 SET 1**	Section 48 provides the mode of settlement of accounts between the partners after the dissolution. In this regard, the following shall be observed, subject to the agreements by the partners- • losses, including deficiencies of capital, shall be paid first out of profits, next out of capital and lastly if necessary by the partners individually in the proportions in which they were entitled to share profits; • the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital shall be applied in the following manner and order- • in paying the debts of the firm to the third parties; • in paying to each partner ratably what is due to him from the firm for advances as distinguished from capital; • in paying to each partner ratably what is due to him on account of capital; and • the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.
Payment of firm debts	Section 49 provides that where there are joint debts due from the firm and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the dues of the firm. If there is any surplus then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts and the surplus, if any, in the payment of the debts of the firm.

Personal profits after dissolution	Section 50 provides that the personal profits earned by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before the affairs have been completely wound up, then such personal profits shall be accounted to the firm. Where any partner or his representative has bought the goodwill of the firm, he shall have right to use the firm name.
Return of premium	Section 51 provides that where a partner has paid a premium on entering into partnership for a fixed term and the firm is dissolved before the expiration of that term otherwise than by the death of the partner, such partner is entitled to repayment of the premium or of such part there of as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he is a partner, unless- • the dissolution is mainly due to his own misconduct; or • the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.
Rescinding of contract	Section 52 provides that where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties, the party entitled to rescind is, without prejudice to any other right, entitled- • to a lien, or a right of retention of, the surplus of the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him; • to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and • to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.
Restrain to use firm name	Section 53 provides that after a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner from carrying on a similar business in the firm name, or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up. Where any partner or his representative has brought the goodwill of the firm he has the right to use the firm name. In 'Ramesh Kumar V. Smt. Lata Devi' AIR 2007 MP 153 it was held that in order to exercise an option under Section 53, it is necessary to establish that firm has been dissolved and after dissolution of the firm contract has to be seen. In the absence of contract to the contrary there is option available to restrain any other partner or his representative from carrying on the business in the firm name or using anyof the property of the firm. The object underlying this section is to restrain a partner from doing anything, while the liquidation proceedings are pending which may prejudice the saleable value or otherwise affect the property of the firm until its use.
Agreements in restraint of trade	Section 54 provides that partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of them within a specified period of within the specified local limits and notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable. In 'Premji Damodar V. L.V. Govindji & Co' – AIR 1943 Sind 197 it was held that an agreement between the two separating partners restrained one of them from doing any craft insurance business of any kind whatsoever, directly or indirectly, as agent or as broker, throughout the whole world except at Karachi, and except as broker and ecept through the other partner. It was held that the said agreement was void under Section 27

	of the Contract Act,1872 and not saved by Section 54 because the agreement subjected the partner to a species of slavery as far as the insurance was concerned.
Goodwill	Section 55 provides that after the dissolution of a firm the goodwill shall be included in the assets and it be sold either separately or along with other property of the firm. Where the goodwill of the firm is sold a partner may carry on a business competing with that of the buyer and he may advertise such business, subject to agreement between him and the buyer, he may not- • use the firm name; • represent himself as carrying on the business of the firm; or • solicit the custom of persons who were dealing with the firm before its dissolution. Goodwill of a business is the property of the firm and is often a very valuable asset. In a suit for dissolution, while taking accounts goodwill of the firm should be included in the assets and should be brought into common account. The goodwill of a business is inclusive of positive advantage such as carrying on the commercial undertaking at a particular place and in a particular name and also its business connections, its business prestige and several other intangible advantages with a business may acquire.

Fill in the blanks

1. Partnership is the creation of _____.

2. The liability of a partner in a firm is _____.

3. Nominal partner is of two types, _____and_____.

4. Maximum no. of partners in banking is_____.

5. In particular partnership a person may become a partner with another person in particular _____.

6. Partner is the _____of the firm for the purpose of the business of the firm;

7. Where a partner in a firm is adjudicated as insolvent, he ceases to be a partner on the date on which _____.

8. A partnership firm is to be registered with _____.

9. Partnership at will is a partnership formed for_____period.

10. A firm is a collective of _____partners.

Choose the correct answer

1. Who can take active part in the management of the firm?
(a) Sleeping partner;
(b) Secret partner;
(c) Working partner;
(d) Nominal partner

2. A new partner can be introduced as a partner into a firm-

(a) At the discretion of active partner;
(b) At the decision of partners authorized in this behalf;
(c) With the consent of all existing partners;
(d) None of the above.

3. A partner may retire-
(a) With the consent of all partners;
(b) In accordance with an express agreement by the partners;
(c) By giving notice in writing to all partners;
(d) Any one of the above.

4. Intimation of the reconstitution of change in a registered partnership is to be given to the Registrar of firms-
(a) No time limit;
(b) Within 30 days;
(c) Within 60 days;
(d) Within 90 days.

5. A firm shall not contain any name-
(a) King;
(b) Queen;
(c) Empire;
(d) All the above.

State whether true or false

+

1. A sleeping partner is not entitled to share profits of the firm.

2. Partners in profits only share in the profits of the firm but not losses.

3. Audit is compulsory for the partnership firm.

4. Creditors of a firm can proceed against the partners jointly and severally.

5. Partnership firm is a separate legal entity.

6. The death of karta will not lead to the dissolution of the HUF business.

7. Every partner has a right to take part in the conduct of the business.

8. A partner is not required to indemnify the firm or any loss caused to it by his willful neglect in the conduct of the business of the firm.

9. An advance by a partner to a firm is not treated as increase of his capital.

10. If a partner derives any profit for himself from any transaction of the firm, he shall account for the profit and pay it to the firm.

11. An outgoing partner may, carrying on a business, use the firm name.

12. After the dissolution of a firm the goodwill shall be included in the assets and it be sold either separately or along with the property.

13. If a firm closes a branch or open a branch the same should be intimated to the Registrar of Firms.

14. A unregistered firm can file a suit to enforce a right, arising from a contract, in any court against any third party.

15. A minor has to elect, on his attaining or majority as to become a partner or not.

Model Questions

1. What are the essential ingredients for the constitution of a partnership?
2. Write a note on different types of partners.
3. Differentiate the partnership from a company.
4. What are the differences between partnership and limited liability partnership?
5. In which way the partnership is different from Hindu Undivided Family?
6. Describe the duties and rights of partners.
7. Write a note on implied authority of a partner of a firm.
8. Whether a partner's interest may be transferred to another person? If so what are the entitlements of the recipient?
9. Minor as a partner – discuss his rights and liabilities.
10. What are the rights of outgoing partners?
11. What are the various types of dissolution of a firm? Write a note on them.
12. What are the rights and liabilities of partners after dissolution?
13. Describe the procedure for registration of a firm.
14. What are the effects of non registration of a firm?
15. Write note on alteration in firm name or place of business.

Answers:

Fill in the blanks

1. Contract;
2. Unlimited;
3. Partner by estoppel, partner by holding out;
4. 50; 5. Adventure or undertaking;
6. Agent;
7. The order of adjudication is made;
8. Registrar of firms;
9. An indefinite;
10. Partners.

Choose the correct answer

1. E;
2. C;
3. D;
4. A;
5. D.

State whether true or false

1. FALSE;
2. TRUE;
3. FALSE;
4. TRUE;
5. FALSE;
6. TRUE;
7. TRUE;
8. FALSE;
9. TRUE;
10. TRUE;
11. FALSE;
12. TRUE;
13. TRUE;
14. FALSE;
15. TRUE.

SCNNNER Question:

Question: 1
2014 - June Briefly explain the difference between Partnership and Co-ownership. (4 marks)

Answer:
Difference between Partnership and Co-ownership

	Basis of Distinction	Partnership	Co-ownership
1.	Agreement	It arises from an agreement.	It may or may not arise from an agreement.
2.	Business	It is formed to carry on a business.	It may or may not involve carrying on a business.
3.	Profit or Loss	It involves profit or loss.	It may or may not involve profit or loss.

4.	Mutual agency	Partners have a mutual agency relationship.	Co-owners do not have a mutual agency
			relationship.'
5.	Name of persons involved	The persons who form partnership are called partners.	The persons who own some property jointly are called owners..
6.	Maximum limit	The Maximum limit of partners is 10 for a banking business and 20 for any other business.	There is no maximum limit of owners.
7.	Transfer of interest	A partner cannot transfer his sha'a to a stranger without the consent of other partners.	A co-owner can transfer his share to a stranger without the consent of other co-owners.
8.	Right' to claim partition	A partner has no right to claim partition of property but he can sue the other partners for the dissolution of the firm and accounts.	A co-owner has the right to claim partition of property.
9.	Lien on property	A partner has a lien on the partnership property for expenses incurred by him on behalf of the firm.	A co-owner has no such lien.

Question: 2

2013- **Dec** [3] **Who is a Partner by "Holding Out" or "Estoppels?** **(2 marks)**

Answer:

If any person behaves and/or poses or presents in such a way that others consider him to be a partner, he will be held liable to those persons who have been misled, suffered or lent finance to the firm on assumption that he is a partner. Such a person is known as "Partner by Holding out or Estoppels." He is not a true partner and he is not entitled to any share in the profit in the firm.

Question: 3

2015 - June [2] What tests would apply for determining the existence of partnership? Discuss. **(3 marks)**

Answer:

• As must be clear from the discussion of various elements of partnership, there is no single test of partnership.

• For ejxample, in one case there may be sharing of profits but may not be any business, in the other case there may be business but there may not be sharing of profits, in yet another case there may be both business and sharing of profits but the relationship between persons sharing the profits may not be that of principal and agent. And in either case, therefore, there is no partnership.

• Thus, all the essential elements of partnership must coexist in order to constitute a partnership.

• To emphasize this fact, **Section 6** expressly provides that "in determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm, regard shall be given to the real relation between the parties, as shown by all relevant facts taken together."

• Thus, the existence of partnership has to be determined with reference to the real intention of the parties, which must be gathered from all the facts of the case and the surrounding circumstances.

Question: 4

2016- **June** [2] **A partner is not an agent of other partners in a partnership firm.** **(2 marks)**

Answer:

Incorrect: The basis of the partnership is mutual agency, hence a partner is an agent of all other partners.

Question: 5
2017- June [3] What are the rights of outgoing partners? (9 marks)

Answer:
Rights of outgoing partners
Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not:

• use the firm name;

• represent himself as carrying on the business of the firm; or

• solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option:

• to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm; or

• to interest at 6% per annum on the amount his share in the property of the firm.
Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is iiable to account under the provisions of this section.

Question: 6
2014- June [5] A, B and C were partner in a firm of drapers. The partnership deed authorized the expulsion of a partner when he was found guilty of flagrant breach of duty. A was convicted of travelling without ticket. On this ground, he was expelled by the other partners B and C. Is the expulsion justified? (3 marks)

Answer:
Yes, the expulsion is justified. In this case, the partnership deed authorized expulsion on the ground of flagrant breach of duty. Doing an act which brings a partner within the penalties of criminal law is flagrant breach of duty. Also, the expulsion decision was taken by majority of partners ***(Carmichel Vs. Evans (1904) 90 LT573).***

Question: 7
2014 - Dec [2] A, B, C are partners in a firm. As per terms of the partnership deed, A is entitled to 20% of the partnership property and profits. A retires from firm and dies after 15 days. B, C continue business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932? (3 **marks)**

Answer:
Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased
partner or the firms with the property of the firm, then in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner entitled to claim either.

(a) such shares of the profits earned after the death or retirement of the partner which is attribute to the use of his share in the property of the firm; or

(b) interest at the rate of 6 per cent per annum on the amount of his share in the property.
Based on the aforesaid provisions of the **Section 37 of the Indian Partnership Act, 1932** in the given problem, A's representative, at his option, can claim:

(i) the 20% shares of profits (as per the partnership deed); or

(ii) Interest at the rate of 6 per cent per annum on the amount of A's share in the property.

Question: 8

2015 - June [2] (i) Rohit and Anurag are partners in a firm. They borrowed a sum of ` 10,000 from Parul. Later on, Rohit becomes insolvent but his assets are sufficient to payback the loan. Parul compels Anurag for the payment of entire loan. Referring to the provisions of the Indian Partnership Act, 1932, examine the validity of Parul's claim and decide as to who may be held liable for the above loan. (3 marks)

(ii) Arun, Varun and Tarun started a Kirana business in Chennai on 1st January, 2012 for a period of five years. The business resulted in a loss of ` 20,000 in the first year, ` 25,000 in the second year and ` 35,000 in the third year, Varun and Tarun wish to dissolve the firm while Arun wants to continue the business. Advise Varun and Tarun. (2 marks)

Answer:

(i) • The present problem is concerned with the contractual liability of the Partners. As stated in the **Section 25 of the Indian Partnership Act, 1932,** in partnership the liability of the partners is unlimited.

• The share of each partner in the partnership property along with his private property is liable for the discharge of partnership liabilities.

• The liability of the partners is not only unlimited but is also stated that a partner is both jointly and severally liable to third parties.

• However, every partner is liable jointly with other partner and also severally for the acts of the firm done while he is a partner.

• On the basis of above provisions, Parul can compel Anurag for the payment of entire loan. Anurag must pay the said loan and then he can recover the share of Rohit's loan from his property.

(ii) As per provisions of Sec. 44(f) of Indian Partnership Act, 1932, Varun and Tarun are advised to make a petition to the Court for the dissolution of the firm on the ground that the firm cannot be carried on except at a loss. Since the firm was constituted for fixed term of five years it cannot be dissolved without the consent of all the partners and as such Varun and Tarun cannot compel Arun -to dissolve the firm.

Question: 9

2015 - Dec [2] Akash, Ashish and Anil were partners in a firm. By his willful neglect and misconduct Anil caused serious loss to the business of the firm. After several warnings to Anil, Akash and Ashish passed a resolution expelling Anil from the firm. By another resolution they admitted Abhishek as a partner in place of Anil. Anil objects to his expulsion as also to the admission of Abhishek. Is he justified in his objections?

Answer: (3 marks)

• A partner may be expelled from a firm by majority of the partners only if,

(a) The power to expel has been conferred by contract between the partners, and

(b) Such a power has been exercised in good faith for the benefit of the firm.

• The partner who is being expelled must be given reasonable notice and opportunity to explain his position and to remove the cause of his expulsion. Yes, Anil is justified in his objections.

• In the absence of an express agreement authorizing expulsion, the expulsion of a partner is not proper and is without any legal effect.

• **[Section 33(1)]** Anil's objection to the admission of Abhishek is also justified as a new partner can be admitted only with the consent of all the partners.**[Section 31 (i)]**

Question:10
2015- Dec [2] Mayur and Nupur purchased a taxi to ply it in partnership. They had done business for about a year when Mayur, without the consent of Nupur, disposed of the taxi. Nupur brought an action to recover his share in the sale proceeds. Mayur's only defence was that the firm was not registered. Will Nupur succeed in her suit? (3 marks)
Answer:
As per **Section 69(3)** of Indian Partnership Act, the term set off may be defined as the adjustment of debts by one party due to him from the other party who files a suit against him. It is another disability of the partners and of an unregistered firm that it cannot claim a set-off when a suit is filed against it.
Yes, Nupur will succeed in her suit. As the business had been closed on the sale of the taxi, the suit in the question is for claiming share of the assets of a dissolved firm.
Section 69(3) specially protects the right of a partner of an unregistered firm to sue for the realization of the property of a dissolved firm.

Question: 11
2016 - June [2] ABC & Co., a firm consists of three partners A, Band C having one- third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act. (5 marks)

Answer:
Expulsion of a partner (Sec. 33):
Expulsion of a partner is another event necessitating reconstitution of a firm. A partner may be expelled from a firm if the following conditions are satisfied:

(a) expulsion should be as per the express provisions in the agreement;

(b) power of expulsion should be exercised by majority of partners;

(c) expulsion should be in good faith.

Only when all the above three conditions are satisfied a partner can be expelled from a firm.
As stated above expulsion should be in good faith. The test of good faith may be:

(i) expulsion is in the interest of the firm

(ii) expelled partner has been given notice

(iii) an opportunity of being heard has been afforded to'the partner.

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed. Further the invalid expulsion of a partner does not put an end to the partnership and it will be deemed to continue as befbre.

Question: 12
2016 - Dec [2] X and Y were partners carrying on a banking business. X had committed adultery on several women in the city and his wife had left on this ground. Y applied to the court for dissolution of the firm on this ground. Will he succeed? (5 marks)

Answer:
As per **Section 44(c) of Indian Partnership Act, 1932** sometimes, a partner is guilty of misconduct. When the Court is satisfied that the misconduct adversely affect the partnership business the Court may allow the dissolution of the firm. Y will not succeed. In this case, though X is guilty of misconduct but his misconduct does not have any adverse affect on their business as bankers ***[Snow v. Milform (1868) 18 LT142],***

In the above case, the Court observed that how can it be said that a man's money is less safe because one of the partner commits adultery. It was further observed that in those cases where the moral conduct of a partner would affect the firm business, it can be a ground for dissolution of the firm, e.g. where a medical man had entered into

partnership with another and it was found that his conduct was very immoral towards some of his patients, the firm can be dissolved on the ground of misconduct by the partner.

MTP Question

MTP June 19
Question:13. What are the rights of outgoing partners?

Answer:
Rights of outgoing partners
Section 36 provides that an outgoing partner may carry on a business competing with that of the firm.
He may advertise such business, but, subject to contract to the contrary, he may not-
• use the firm name;
• represent himself as carrying on the business of the firm; or
• solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option-

• to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm; or

• to interest at 6% per annum on the amount his share in the property of the firm. Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

MTP Dec 18
Question:14. State the rules of partnership by holding out, as per Indian Partnership Act, 1932.

As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

MTP Dec 18
Question:15 Write a note on: Restrictions on the implied authority of the partner
Restrictions on the implied authority of the partner

The authority of a partner to bind the firm, conferred by Section 22 of Indian Partnership Act, is called his implied authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
 submit a dispute relating to the business of the firm to arbitration;
 open a banking account on behalf of the firm in his own name;

 compromise or relinquish any claim or portion of a claim by the firm;
 withdraw a suit or proceeding filed on behalf of the firm;
 admit any liability in a suit or proceeding against the firm;
 acquire immovable property on behalf of the firm;
 transfer immovable property belonging to the firm; or
 enter into partnership on behalf of the firm.

MTP June 18
Question:16 Elucidate the steps to form a partnership. Does admission of a partner lead to reconstitution of a partnership firm?

Steps to form a partnership
 The first step is to decide the number of partners of a firm.
 Then decide to who are the partners of the firm, considering the limit envisaged in the Act;
 The name of the partnership firm is selected subject to the provisions of the partnership Act;
 Select the business to be done by the partnership and object of the business;
 Decide the capital to be brought by each and every partner;
 Prepare the agreement deed of the firm – the deed is the vital and most significant document. The deed shall contain all aspects of the partnership firm. This documents prescribes the a to z of the partnership firm to be formed;
 The agreement should invariably in writing and signed by all partners;
 The provisions contained in the agreement are binding all partners;
 Open bank account in the name of the partnership firm;
 The partnership firm is to be registered. According to the Act the partnership firm may be registered or may not be registered. Unregistered firms have no legal protection and therefore registration of partnership firm is to be preferred.
 In the present scenario obtaining PAN is necessary and get the PAN from the Income Tax Authority;
 Acquire all mandatory licences from the respective authorities for the conduct of the business;
 Registration with required tax authorities i.e., direct tax as well as indirect tax such as central excise, service tax, VAT etc.,
 The Registration certificate is the conclusive evidence of the formation of the partnership firm

Admission of new partner
Admission of a partner is one of the modes of reconstitution of a partnership firm. A new partner may be admitted in a partnership firm either for the increase of capital of the firm or to strengthen the management of the firm. A new partner may be admitted with the consent of all existing partners as per the provisions of the agreement of the firm. For example, Hari and Haqque are partners sharing profit in the ratio of 3:2. On April 1, 2013 they admitted John as a new partner with 1/6th share in the profits of the firm. In this case, with the admission of John the firm is reconstituted.

The new partner is entitled the following rights –

 The right to share in the assets of the partnership firm; and
 The right to share the profits in the business.

The following are to be taken care of while admitting a new partner –

 Computation of new profit sharing ratio and sacrifice ratio;
 Accounting treatment of goodwill;
 Revaluation of assets and liabilities;
 Treatment of undisbursed profits and accumulated losses;
 Adjustment of capital accounts

MTP June 17
Question:17 Write a note on: Mode of settlement of accounts between partners

Mode of settlement of accounts between partners

Section 48 provides the mode of settlement of accounts between the partners after the dissolution. In this regard, the following shall be observed, subject to the agreements by the partners -

1. losses, including deficiencies of capital, shall be paid first out of profits, next out of capital and lastly if necessary by the partners individually in the proportions in which they were entitled to share profits;

2. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital shall be applied in the following manner and order-

• in paying the debts of the firm to the third parties;

• in paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;

• in paying to each partner ratably what is due to him on account of capital; and

• The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profit.

MTP June 17
Question:18 Write a note on: Restrictions on the implied authority of the partner

Restrictions on the implied authority of the partner
The authority of a partner to bind the firm, conferred by Section 22 of Indian Partnership Act, is called his implied authority'. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- submit a dispute relating to the business of the firm to arbitration;
- open a banking account on behalf of the firm in his own name;
- compromise or relinquish any claim or portion of a claim by the firm;
- withdraw a suit or proceeding filed on behalf of the firm;
- admit any liability in a suit or proceeding against the firm;
- acquire immovable property on behalf of the firm;
- transfer immovable property belonging to the firm; or
- enter into partnership on behalf of the firm.

MTP June 17
Question 19 State the rules of partnership by holding out, as per Indian Partnership Act, 1932.

As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Revisionary Question

Revisionary Dec 18

Question20 Sunil, Bikash and Rishi were partners under the agreement that they were to share equally in the profits and losses of the firm. In a suit between them for dissolution and accounts, it is ascertained that contributions of Sunil, Bikash and Rishi to the capital of the firm, were ` 10,000, ` 5,000 and ` 1,000 respectively. The assets of the firm after paying debts of the firm and advances made by the partners, as distinguished from their contributions to the capital of the firm, are ` 7,000. Comment on the settlement of this partnership Account.

The deficiency of capital (which must be regarded as loss) being ` 9,000, each partner must contribute to the assets an equal share of the deficiency, i.e. ` 3,000. After this is done, the assets then available, ` 7,000 + 9,000 or 16,000 will be distributed among the partners with the result that each will have suffered a loss of ` 3,000.

In actual practice, it will not be necessary for Sunil and Bikash to pay 3,000 each but the matter will be settled on the basis of notional contributions so that Rishi whose capital is 1,000 only will pay ` 2,000 out of 9,000 with the firm. Sunil will take 7,000 and Bikash 2,000. Assuming that Sunil and Bikash contribute to the capital deficiency 3,000 each and Rishi cannot, Sunil and Bikash will share ` 13,000, i.e. 7,000 plus 6,000 in the proportion of 10,000: 5,000. Sunil will suffer a loss of ` 4,333 in all and Bikash 3,667.

Question:21 How can the existence of partnership be determined.

Section 6 provides that in order to determine –

• whether a group of persons is or is not a firm; or

• whether a person is or is not a partner in a

form regard shall be had to the real intention between the parties, taking into the facts together.

The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not make such persons as partners.

The receipt –

• of a share of the profits of a business; or

• of a payment contingent upon the earning of profits; or

• varying with the profits earned by a business,

by a person does not of itself, make him a partner with the persons carrying on the business.

The receipt of such share or payment –

• by a lender of money to persons engaged or about to engage in any business;

• by a servant or agent as remuneration;

• by the widow or child of a deceased partner, as annuity, or

• by a previous owner or part owner of the business as consideration for the sale of the goodwill or share thereof does not make the receiver a partner with the persons carrying on the business.

Revisionary Dec 18

Question 22 Write short notes on: Rights of outgoing partners

Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not-

• use the firm name;

• represent himself as carrying on the business of the firm; or

• solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option-

• to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm; or
• to interest at 6% per annum on the amount his share in the property of the firm.

Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

Revisionary June 2018
Question:23 Sunil, Bikash and Rishi were partners under the agreement that they were to share equally in the profits and losses of the firm. In a suit between them for dissolution and accounts, it is ascertained that contributions of Sunil, Bikash and Rishi to the capital of the firm, were ` 10,000, ` 5,000 and ` 1,000 respectively. The assets of the firm after paying debts of the firm and advances made by the partners, as distinguished from their contributions to the capital of the firm, are ` 7,000. Comment on the settlement of this partnership Account.

The deficiency of capital (which must be regarded as loss) being 9,000, each partner must contribute to the assets an equal share of the deficiency, i.e. 3,000. After this is done, the assets then available, 7,000 + 9,000 or 16,000 will be distributed among the partners with the result that each will have suffered a loss of 3,000.
In actual practice, it will not be necessary for Sunil and Bikash to pay 3,000 each but the matter will be settled on the basis of notional contributions so that Rishi whose capital is 1,000 only will pay 2,000 out of 9,000 with the firm. Sunil will take 7,000 and Bikash 2,000. Assuming that Sunil and Bikash contribute to the capital deficiency 3,000 each and Rishi cannot, Sunil and Bikash will share 13,000, i.e. 7,000 plus ` 6,000 in the proportion of 10,000: 5,000. Sunil will suffer a loss of ` 4,333 in all and Bikash 3,667.

Question: 24 State the rules of partnership by holding out, as per Indian Partnership Act, 1932
As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Revisionary June 2018
Question:25 Write short notes on: Admission of new partner

Admission of a partner is one of the modes of reconstitution of a partnership firm. A new partner may be admitted in a partnership firm either for the increase of capital of the firm or to strengthen the management

of the firm. A new partner may be admitted with the consent of all existing partners as per the provisions of the agreement of the firm. The new partner is entitled
the following rights-
 The right to share in the assets of the partnership firm; and
 The right to share the profits in the business.

The following are to be taken care of while admitting a new partner –
 Computation of new profit sharing ratio and sacrifice ratio;
 Accounting treatment of goodwill;
 Revaluation of assets and liabilities;
 Treatment of undisbursed profits and accumulated losses;
 Adjustment of capital accounts.

Workbook Question

Question 26 What is partnership? State the difference between partnership and company.

Section 4 defines the term 'partnership' as the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The term 'partners' is defined as persons, who have entered into partnership with one another are called individually 'partners'. A 'firm' is the collective of the partners. The 'firm name' is the name under which the business is carried on. The following are the essential ingredients for the constitution of a partnership-

• There should be an agreement between the parties;
• The agreement must be to share the profits of the business; and
• The business must be carried on by all or any of them acting for all;
• The existence of an agency between the concerned persons inter-se.

The agreement need not be in writing. It may be oral. It may be express of implie

Question 27 Difference between a partnership and a company

The following are the differences between the partnership and a company:

Basis	Partnership	Company
Legal entity	It is no. It is not a separate legal entity.	It is a separate legal entity.
Liability	The liability of the partners is unlimited.	The liability of the members of the company is limited.
Number of members	Minimum required is two. Maximum number is 50 subject to some exceptions	Minimum number of members for a private company is 2 and maximum 200. Minimum number of members for a public limited company is 7 and there is no limited for maximum.
Transfer of shares	A partner cannot transfer his share without the consent of other members	Transfer of shares in a public limited company is not a restricted one.
Management	The firm can be run by all or any of the partners.	The Board of Directors is having responsibility to run the management
Relationship	The relationship with partners is of that of agency.	No such relationship in the company.
Profit distribution	Profit is distributed according to the agreement entered between partners; if no agreement equal distribution.	No requirement of profit distribution to members. It is at the discretion of the management to declare dividend that too only out of profits.
Remedy to creditors	The creditors of a firm can proceed against the partners jointly and severally.	The creditors can proceed only against the company and not against shareholders.

Suggested Question

Question28 What are the rights of outgoing partners?

Rights of outgoing partners:
Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not-

- use the firm name;.
- represent himself as carrying on the business of the firm; or
- solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option-

- to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm; or

- to interest at 6% per annum on the amount his share in the property of the firm.

Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

LIMITED LIABILITY PARTNERSHIP ACT, 2008

Introduction	The Partnership Act was enacted during the year 1932. The business scenario has been changed drastically. The entire world is brought as one economic village. The Partnership Act has not been made in consonance with the development of world economy. The Partnership Act, 1932 suffers from certain disadvantages, as detailed below: • The liability of each partner is unlimited; • The partners are jointly and severally liable for the debts and liabilities of the firm to the risk of the personal assets of the partners; • The partner is not having right to transfer his holding in the partnership unless he retires from partnership and other partners agree to admit the same; • The number of members is limited by which more investments will not be there which results inhibiting the growth of the business. A need has been felt for a long time to provide for a business format that would combine the flexibility of a partnership and the advantages of the limited liability of the company at a low compliance cost. During the financial crisis of the late 1980s and early 1990s hundreds of US saving and loan firms were declared insolvent. As a result of the collapse many accountancy and legal firms faced legal claims instigated by the US government. Successful claims could have resulted in all partners, including those who were not responsible for the failure of the savings and loan firms, being liable to repay millions of dollars in compensation. In 1991 Texas introduced the concept of a limited liability partnership (LLP). The concept was popular and the majority of US states eventually passed LLP legislation. The LLP structure is available in countries like **United Kingdom**, **United States of America, various Gulf countries, Australia and Singapore.** In India on the advice of experts who have studied LLP legislations in various countries, the **LLP Act** is broadly **based on UK LLP Act 2000 and Singapore LLP Act 2005.** Both these Acts allow creation of LLPs in a body corporate form i.e. as a separate legal entity, separate from its partners/members.
CONCEPT OF LLP **MODEL QUESTION** **MTP-J 18- SET 2** **MTP-D 17- SET 1**	The concept of LLP is explained as below: • It is an alternative corporate business from that gives the benefit of limited liability of a company and the flexibility of the partnership; • It can continue its existence irrespective of changes in partners; • It is capable of entering into contracts and holding property in its own name; • It is a separate Legal entity and is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP; • No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct; • Mutual rights and duties of the partners within a LLP are governed by an

	agreement between the partners or between the partners and the LLP as the case may be. It is a hybrid between a company and partnership.
LLP Act	The Government introduced the 'Limited Liability Partnership Bill, 2006' in the Rajya Sabha on 15.12.2006. The bill was referred to the Department Related Parliamentary Standing Committee on Finance for examination and report. The Committee presented its report on 27.11.2007. The Committee made several recommendations which were examined and considered by the Government. The bill was made an Act in the year 2009. The Act contains 14 chapters with 81 sections and four schedules. • First Schedule – Provisions regarding matters relating to mutual rights and duties of partners and limited liability partnership and its partners applicable in the absence of any agreement of such matters; • Second Schedule – Conversion from firm into limited liability partnership; • Third Schedule – Conversion from private company into limited liability partnership; • Fourth Schedule – Conversion from unlisted company into limited liability partnership. To implement the provisions of this Act, the Central Government made 'Limited Liability Partnership Rules, 2009' which came into 01.04.2009 except Rules 32 and 33, Rules 38 to 40 which came into effect from 22.05.2009. For the purpose of winding up of Limited Liability Partnership, the Central Government made 'The Limited Liability Partnership (Winding up and Dissolution) Rules, 2012.
Date of effect of the provisions	Section 1(3) of the Act provides that the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Different dates may be appointed for different provisions of the Act. The following are the date of effect of the provisions- • Sections 55 to 58, Second Schedule, Third Schedule and Fourth Schedule – Effect from 31.05.2009; • Sections 51, 55 to 58, 72 to 73, 81 (b) and (c) dealing with the National Company Law Tribunal have not yet been notified; • Other Sections and Schedule came into effect from 31.03.2009.
Limited liability partnership	Section 2(1)(n) defines the expression 'limited liability partnership' as a partnership formed and registered under LLP Act.
Who may be a partner in LLP? **MODEL QUESTION**	Section 5 provides that any individual or body corporate may be a partner in a LLP. The expression 'body corporate' is defined under Section 2(1)(d) of the Act as a company as defined in Section 3 of the Companies Act, 1956 and includes- • a limited liability partnership registered under the Act;

	• a limited liability partnership incorporated outside India; and • a company incorporated outside India; but does not include- • a corporation sole; • a co-operative society registered under any law for the time being in force; and • any other body corporate, not being a company, or a LLP, which the Central Government may, by notification in the Official Gazette, specify in this behalf. An individual shall not be capable of becoming a partner of LLP, if- • he has been found to be of unsound mind by a Court of competent jurisdiction and the findings is in force; • he is undischarged insolvent; or • he has applied to be adjudicated as an insolvent and his application is pending.
Minimum number of members	Section 6(1) prescribes that every LLP shall have at least two partners.
Reduction in minimum number of members [Section 6(2)]	If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.
Designated partner **MODEL QUESTION** **RTP DEC-18** **MTP DEC 17 SET 2**	Section 7(1) provides that every LLP shall have at least two designated partners. The designated partners shall be individual and at least one of them shall be a resident of India, who has stayed in India for a period not less 182 days during the preceding one year. In case all the partners of the LLP are bodies corporate or one or more partners are individuals and bodies corporate then at least two individual partners or nominees of bodies corporate shall act as designated partners. • If the incorporation document specifies who are to be designated partners, such persons shall be designated partners on incorporation; • If the incorporation document states that each of the partners from time to time of LLP is to be designated partner, every partner shall be a designated partner; • Any partner may become or cease to be a designated partner in accordance with LLP agreement;
Filing requirement	Section 7(4) provides that- • An individual shall give his consent to become a designated partner in Form – 9; • The particulars of an individual who has given his consent to act as designated partner shall be filed in Form No.-4;

	• The individual who has given consent to act as partner or a designated partner shall file consent in Form -2 along with fee.
Disqualification to become designated partner	Rule 9 prescribes that a person shall not be capable of being appointed as a designated partner of a LLP, if he- • has at any time within the preceding five years been adjudged insolvent; or • suspends, or has at any time within the preceding five years suspended payment to his creditors and has not any time within the preceding five years made, a composition with them; or • has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or • has been convicted by a Court for an offence involving section 30 of the Act.
Liabilities of designated partners	Section 8 provides the liabilities of designated partners. It provides that unless expressly provided otherwise in this Act, a designated partner shall be – • responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the Act including filing of any document, return, statement, report under this Act and as specified in the agreement; • liable to all penalties imposed on the LLP for any contravention of those provisions
Vacancy	Section 9 provides that a LLP may appoint a designated partner within 30 days of the vacancy arising for any reason. If no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.
Punishment	Section 10(1) provides the LLP contravenes the provisions of Sections 7(1) the LLP and its every partner shall be punishable with fine which shall not be less than `10,000/- but which may extend to `5 lakhs. Section 10(2) provides that if the LLP contravenes the provisions of Section 7(4) and (5), Section 8 or Section 9 the LLP and every partner shall be punishable with fine which shall not be less than `10000/- but which may extend to `1 lakh.
Incorporation of LLP	The incorporation of an LLP involves the following steps: • Reservation of name; • Submission of incorporation documents with Registrar; • Registration of LLP.
Reservation of name	Section 16 of the Act provides that a person may apply in LLP Form No. 1 along with the payment of fee of `200/- to the Registrar having jurisdiction where the registered office of the LLP is to be situate. The application shall indicate the

	name of the proposed LLP. Rule 18(1) provides that the name of the LLP shall not be one prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950. Rule 18(2) gives the list of names that are not generally reserved. Upon receipt of an application along with the fee the Registrar may, if he is satisfied, subject to the rules, that the name to be reserved is not one which may be rejected on any ground, reserve the name. The Registrar shall inform to the applicant for reservation or non reservation of the changed name or the name with which the proposed LLP is to be registered within seven days of the receipt of the application. The said name shall be available for reservation for a period of three months from the date of intimation by the Registrar. Rule 19(1) provides that a LLP or a body corporate or any other entity which has already a name which is similar to or which too nearly resembles the name of a LLP incorporated subsequently, may apply to the Registrar in Form 23 to give a direction to that LLP to change its name. The application for this purpose shall state- • The LLPIN of LLP, or the CIN of the company or the registration number of the other entity as the case may be; • The name with which the LLP or the company or any other ground was incorporated or registered; • The grounds of objection to the name of the LLP incorporated subsequently. The application shall be verified by the person making it. The following documents are to be attached with the application- • The authority under which he is making such an application; • A copy of the incorporation certificate of the LLP or the company or the registration certificate of the entity as the case may be.
Submission of incorporation document **MODEL QUESTION**	Section 11(1) provides that two or more person associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document. The incorporation document shall be in LLP Form No. 2. According to Section 11(2) the incorporation document shall- • State the name of the LLP; • State the proposed business of the LLP; • State the address of the registered office of the LLP; • State the name and address of each of the persons who are to be partners of the LLP on incorporation; • State the name and address of the persons who are to be designated partners of the LLP on incorporation; • Contain such other information as may be prescribed.

	The fee payable for registration of LLP is as detailed below: • LLP whose contribution does not exceed ` 1 lakh – `500/- • LLP whose contribution exceeds `1 lakh but does not exceed `5 lakhs – `2000/-;  • LLP whose contribution exceeds ` 5 lakhs but does not exceed `10 lakhs – `4000/- • LLP whose contribution exceeds `10 lakhs – `5000/- The Statement in the prescribed form, made by either an Advocate or a Company Secretary or a Chartered Accountant or a Cost Accountant who is engaged in the formation of the LLP and by anyone who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made there under have been complied with, in respect of incorporation and matters precedent and incidental thereto, is also to be furnished. Section 11(3) provides that if a person makes such a statement which he knows to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than `10000/- but which may extend to ` 5 lakhs. The incorporation document duly complying with the required provision shall be filed with the Registrar having jurisdiction over the State in which the registered office of the LLP is to be situated.
Incorporation by registration	Section 12(1) provides that when the requirements have been complied, the Registrar shall retain the incorporation document. If the requirements have not been complied with, he shall within a period of 14 days- • Register the incorporation document; and • Give a certificate that the LLP is incorporated by the name specified therein. The Registrar may accept the statement furnished by a Professional engaged in the formation of the LLP, as sufficient evidence that the requirement imposed has been complied with. The Certificate shall be signed by the Registrar and authenticated by his office. This certificate is the conclusive evidence that the LLP is incorporated by the name specified therein. No LLP shall be registered by a name which, in the opinion of the Central Government is- • Undesirable; or • Identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trade mark or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999. The Registrar shall maintain a Register of LLP in which the names of LLPs shall be entered in the order in which they are registered. Every LLP so registered shall be assigned a LLP identification Number (LLPIN) in one consecutive series.

Registered Office	Section 13(1) provides that every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
Effect of Registration	Section 14 provides that on registration, a LLP shall, by its name, capable of- • Suing and being sued; • Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible; • Having a common seal, if it decides to have one; and • Doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.
Name	Every LLP shall have either the words 'limited liability partnership' or the acronym 'LLP' as the last words of its name. Section 21 provides that every LLP shall ensure that its invoices, official correspondence and publications bear the following- • The name, address of its registered office and registration number of the LLP; and • A statement that is registered with LLP. Any LLP which contravenes the provisions of Section 13 and 21 shall be punishable with fine which shall not be less than `2000/- but which may extend to `25,000/-. Section 20 provides that if any person or persons carry on business under any name or title of which the words 'limited liability partnership' or 'LLP' or any contraction or imitation thereof is or are the last or words, that person of each of those persons shall, unless duly incorporated as LLP, be punishable with fine which shall not be less than `50,000/- but which may extend to `5 lakhs.
Service of documents	Section 13(2) provides that a document may be served on a LLP or a partner or a designated partner by sending it by post under a certificate of posting or by registered post or electronic communication or courier at the registered office and any other address specifically by declared by the LLP for this purpose. Rule 16 provides that a LLP shall give an address for service of documents within the jurisdiction of the Registrar where its registered office is situate. Such address shall include the PIN code and e-mail address. The LLP may, in addition to the registered office address, declare any other address as its address for service of documents as laid down in the LLP agreement. Where the agreement does not provide for such manner, consent of all partners shall be required for declaring any other address as the address for service of documents. The intimation of other address for service of document shall be given to the Registrar in Form No. 12 within 30 days of complying with the requirements along with the fee. The effective date for service of documents to LLP at the addressed declared by LLP cannot be prior to the date of filing of the document.

Change of registered office **MODEL QUESTION** **RTP JUNE 18 (RAJASTHAN TO HARYANA)** **RTP DEC 18 (RAJASTHAN TO HARYANA)**	Section 13(3) provides that a LLP may change the place of its registered office and file the notice of such change with the Registrar by following the procedure as laid down in the LLP agreement. If there is no such agreement, consent of all partners shall be required for changing the place of registered office of a LLP to another place. If the change in place is from one State to another State, the LLP having secured creditors shall also obtain the consent of such secured creditors. The notice for change of registered office shall be given to Registrar in Form No. 15, within 30 days of complying with the requirements in case of change of registered office is within the same State and within 30 days of complying in the case of registered office from one State to another State, along with the fee. If the change in place of registered office is from one State to another State, the LLP shall publish a general notice, not less than 21 days before filing any notice with Registrar, in a daily newspaper published in English and in the principal language of the District in which the registered office of the LLP is situated and circulating in that district giving notice of change of registered office. If the change is within the State from the jurisdiction of one Registrar to the jurisdiction of another Registrar or from one State to another State the LLP shall file the notice in Form 15 with the Registrar from where the LLP proposes to shift its registered office with a copy thereof for the information to the Registrar under whose jurisdiction the registered office is proposed to be shifted.
Change of name	Rule 20 provides that any LLP may change its name by following the procedure as laid down in the LLP agreement. Where the LLP agreement does not provide such procedure, the consent of all partners shall be required for changing the name of LLP. Notice of change of name shall be given to the Registrar in Form No. 5 within 30 days of complying with the requirement along with the required fee. The Registrar, on being satisfied that the changed name is the one as reserved by him shall issue a fresh certificate of incorporation in the new name and the change name shall be effective from the date of such certificate.
Change of name by Central Government	Section 17 provides that where the Central is satisfied that a LLP has been registered, whether through inadvertence or otherwise and whether originally or by a change of name, under a name which is undesirable or is identical with or too nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it, the Central Government may direct such LLP to change its name. The LLP shall comply with the said direction of the Central Government within 3 months after the date of direction or such longer period as the Central Government may allow. Any LLP which fails to comply with the above direction, shall be punishable with fine which shall not be less than `10000/- but which may extend to `5 lakhs and the designated partner of such LLP shall be punishable which shall not be less than `10,000/- but which may extend to `1 lakh.
Partners and their relations (SCHEDULE I) **MODEL QUESTION**	Chapter IV of the Act deals with the partners of LLP and the relations prevailing between them. The LLP is governed by the LLP agreement made between the partners. The persons who subscribed their names to the incorporation document shall be its partners on the incorporation of LLP. Any other person may become partner of LLP in accordance with the LLP agreement. The agreement is a vital document in LLP transactions.

WORKBOOK	An agreement made in writing before the incorporation of a LLP between the persons who subscribe their names to the incorporation document may impose obligations on the LLP. For this such agreement is to be ratified by all the partners after the incorporation of the LLP. The LLP shall file such information in Form 3 with the Registrar within 30 days of the ratification by all the partners along with the fee. The mutual rights and duties of the partners of a LLP and the mutual rights and duties of a LLP and its partners shall be governed by the LLP agreement between the partners or between the LLP and its partners, save as otherwise provided by the Act. Every LLP shall file information with regard to the LLP agreement in Form 3 with the Registrar within 30 days of the date of incorporation along with the required fee. Any change is made in the LLP agreement the same shall be informed in Form 3 within 30 days of such change along with the fee. In the absence of agreement as to any matter- • the mutual rights and duties of the partners; and • the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to the matter as set out in the First Schedule which is as follows: • All the partners of a LLP are entitled to share equally in the capital, profits and losses of the LLP; • The LLP shall indemnify each partner in respect of payments made and personal liabilities incurred by him- • in the ordinary and proper conduct of the business of the LLP; or • in or about anything necessarily done for the preservation of the business or property of the LLP; • Every partner shall indemnify the LLP for any loss caused to it by his fraud in the conduct of the business of the LLP; • Every partner may take in the management of the LLP; • No partner shall be entitled to remuneration for acting in the business or management of the LLP; • No person may be introduced as a partner without the consent of all existing partners; • Any matter or issue relating to the LLP shall be decided by a resolution passed by a majority in number of the partners. Each partner shall have one vote. However no change may be made in the nature of the business of the LLP without consent of all the partners; • Every LLP shall ensure that decisions taken by it are recorded in the minutes within 30 days of taking such decisions and are kept and maintained at the

	registered office of the LLP; • Each partner shall render true accounts and full information of all things affecting the LLP to any partner or his legal representatives; • If a partner carries on any business of the same nature as and competing with the LLP without the consent of the LLP, he must account for and pay over to the LLP all profits made by him in that business; • Every partner shall account to the LLP for any benefit derived by him without the consent of the LLP from any transaction concerning the LLP or from any use by him of the property, name or any business connection of the LLP; • No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners; • All disputes between the partners arising out of the LLP agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of Arbitration and Conciliation Act, 1996.
Cessation of partnership interest **MODEL QUESTION WORKBOOK**	Section 24 provides the circumstances under which the interest of the partnership is ceased. The cessation of a partner of a LLP is in accordance with the agreement entered with the other partners. In the absence of such agreement a partner who intends to resign may give a notice in writing of not less than 30 days to the other partners. A person shall cease to be a partner of a LLP on the following grounds- • on his death or dissolution of the LLP; or • if he is declared to be of unsound mind by a competent court; or • if he has applied to be adjudged as an insolvent or declared as an insolvent;
Liability of the ceased partner	Section 24(3) provides that where a person has ceased to be a partner of LLP he is to be regarded as still being a partner of the LLP unless- • the person has notice that the former partner has ceased to be a partner of the LLP; • notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar. Section 24(4) provides that the cessation of a partner from the LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while he is a partner.
Entitlement to the ceased partner	Section 24(5) provides that where a partner of a LLP ceases to be a partner, unless provided in the agreement, he or a person entitled to his share in case of death or insolvency, shall be entitled to receive from the LLP the following- • an amount equal to the capital contribution of the former partner actually made to the LLP; and • his right to share in the accumulated profits of the LLP, after the deduction of

	accumulated losses of LLP, determined as at the date the former partner ceased to be a partner;
Restrictions on ceased partner	Section 24(6) provides that a former partner or a person who is entitled to receive the benefits of the LLP, shall not have any right to interfere in the management of the LLP.
Registration of changes in partners	Section 25 provides the procedure to be followed by the LLP and the partners in case there is a change in partners. Section 25(1) provides that every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change in Form No. 6. Section 25(5) provides that if any partner contravenes the same he shall be punishable with fine which shall not be less than `2000/- but which may extend to `25,000. Section 25(2) provides that a LLP shall file a notice with the Registrar where a person becomes or ceases to be a partner in Form No. 4. Where there is any change in the name or address of a partner, the LLP shall file a notice with the Registrar within 30 days of such change in Form No. 4 along with the fee. The form shall be signed by the designated partner of LLP and authenticated in a manner as may be prescribed. If the change is related to an incoming partner, it shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed. Form 4 shall be accompanied by a certificate from a Chartered Accountant in practice or Cost Accountant in practice or a Company Secretary in practice that he has verified the particulars from the books and records of the LLP and found them to be true and correct. Section 25(4) provides that the LLP fails to file notice in Form 4, the LLP and every designated partner of the LLP shall be punishable with fine which shall not be less than `2000 but which may extend to `25,000. Section 25(6) provides that a ceased partner of a LLP may himself file with the Registrar the notice if he has reasonable cause to believe that the LLP may not file the notice with the Registrar. In case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice. If no confirmation is given by the LLP within 15 days the Registrar shall register the notice made by the ceased partner.
Liability of LLP	Section 27, in Chapter V, provides the liabilities of the LLP. The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of LLP or with its authority. An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP. A LLP is not bound by anything done by a partner in dealing with a person if- • the partner has no authority to act for the LLP in doing a particular act; and • the person knows that he has no authority or does not know or believe him to be a partner of the LLP. Section 29(2) provides that where any credit is received by the LLP as a result of

	the representation of a person to be a partner of LLP, shall also be liable to the extent of credit received by it or any financial benefit derived thereon. The liabilities of the LLP shall be met out of the property of the LLP.
Partner as agent	Section 26 provides that every partner of a LLP is the agent of the LLP. He is not the agent of other partners.
Liability of partner	The liabilities of the partner are discussed in detail as below: • Section 28 provides that a partner is not personally liable solely by reason of being a partner of LLP. But he will be personally liable for his own wrongful act or omission. But he shall not be personally liable for the wrongful act or omission of any other partner of the LLP; • Section 29 provides that any person, who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented to be a partner in a LLP is liable to any person, who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representatives has reached the person so giving credit.
Unlimited liability	Section 30 provides that any act with intent to defraud creditors of the LLP or any other person, the liability of LLP and partners shall be unlimited for all or any of the debts or other liabilities of the LLP. If such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.
Punishment	Section 30(2) provides that where any business is carried on with such intent to defraud the creditors of LLP, every person who was knowingly a party to the carrying on the business shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than `50000/- but which may extend to `5 lakhs. In such cases the LLP or any partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct. Section 31 provides for reduction of penalty awarded under Section 30(2). According to Section 31 the Court or Tribunal may reduce or waive any penalty imposed on any partner or employee of a LLP, if it satisfied that- • such partner or employee of a LLP has provided useful information during investigation of such LLP; or • when any information given by any partner or employee leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act. No partner or employee of any LLP may discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided by him.

Contributions	It is the obligation of a partner of LLP to make contribution as per the LLP agreement. A partner may contribute to the LLP- • tangible or intangible property; or • moveable or immovable property; or • other benefit including money, promissory notes, other agreements to contribute cash or property and contracts for services performed or to be performed. The money value of contribution of each partner shall be accounted for and disclosed in the accounts of the LLP. The same shall be valued by a practicing Chartered Accountant or practicing Cost Accountant or by approved valuer from the panel maintained by the Central Government.
Maintenance of books and accounts	Section 34 requires the LLP to maintain proper books of account relating to its affairs for each year and for filing of an annual Statement of Account and solvency with the Registrar. The accounts of LLP shall be audited. The Central Government is given power to exempt any class or classes of LLP from the requirements of this section. Rule 24 provides that every LLP shall keep books of accounts which are sufficient to show and explain the LLP's transactions to- • disclose with reasonable accuracy, at any time, the financial position of the LLP at that time; and • enable the designated partners to ensure that any Statement of Account and Solvency prepared complies with the requirements of the Act;
Books of accounts	The books account shall contain- ● particulars of all sums of money received and expended by the LLP and the matters in respect of which the receipt and expenditure takes place; ● a record of the assets and liabilities of the LLP; ● statements of cost of goods purchased, inventories, work-in-progress, finished goods and cost of goods sold; and ● any other particulars which the partners may decide. The books of account of a LLP are required to preserve for eight years from the date on which they are made.
Statement of Account and Solvency **MODEL QUESTION**	Every LLP shall file a Statement of Account and Solvency in Form No. 8 with the Registrar, within a period of 30 days from the end of six months of the financial year to which the Statement of Account and Solvency relates, along with the prescribed fee. If a LLP has closed the financial year on 31.03.2011, it shall file the Statement of Account and Solvency in Form No.8 with the Registrar within a period of 60 days from the date of end of six months of the financial year to which the Statement of Account and Solvency relates. The Statement of Account and Solvency of an LLP shall be signed on behalf of the LLP by its designated partners. Each designated partner shall be taken to be a

	party to its approval unless he shows that he took all reasonable steps to prevent their being approved and signed.
Audit of accounts **WORKBOOK**	Rule 24(8) provides that the accounts of every LLP shall be audited. If the turnover of a LLP does not exceed, in any particular year `40 lakhs, or whose contribution does not exceed `25 lakhs shall not be required to get its accounts audited. But if the partners of such LLP wants to get the accounts audited the same shall be audited in accordance with the rules. If they decide not to audit, then the Statement of Account and Solvency shall include a statement by the partners to the effect that the partners acknowledge their responsibilities for complying with the requirements of the Act and the Rules with respect to preparation of books of account and a certificate in the Form No.8.
Appointment of auditor **WORKBOOK**	A Chartered Accountant in practice is qualified for appointment as an auditor. The auditor(s) shall be appointed for each financial year of the LLP for auditing its accounts. The designated partners may appoint an auditor(s)- ● at any time for the first financial year but before the end of the first financial year; ● at least 30 days prior to the end of each financial year (other than the first financial year); ● to fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of LLP exceeds the limits; or ● to fill up the vacancy caused by removal of an auditor. If the designated partners have failed to appoint auditor(s), the partners may appoint an auditor or auditors. An auditor appointed shall hold office in accordance with the terms of his or their appointment and shall continue to hold such office till the period- ● the new auditors are appointed; or ● they are re-appointed. Rule 24 (14) provides that where no auditor has been appointed, any auditor in office shall be deemed to be re-appointed unless- ● the LLP agreement requires actual reappointment; or ● the majority of partners have determined that he should be reappointed and have given a notice to this effect to the LLP. A notice may be in hard copy or electronic form and must be authenticated by the person or persons giving it. The above shall be applicable to removal and resignation of auditors. The remuneration of an auditor may be fixed by the designated partners or in accordance with the procedure laid down in the LLP agreement.

Removal of auditor **WORKBOOK**	Rule 24(18) provides that the partners of a LLP may remove an auditor from office at any time by following the procedure as laid down in the LLP agreement. If the agreement does not provide for the removal of an auditor, consent of all partners shall be required for removal of the auditor from his office.
Resignation of auditor **WORKBOOK**	Rule 24(19) provides that an auditor of an LLP may resign his office by depositing a notice in writing to that effect at the LLP's registered office. If an auditor is not willing to be re-appointed he shall give a notice in writing to the LLP not less than 14 days before the end of the time allowed for appointing the new auditor. The notice is not effective unless it is accompanied by the statement of the circumstances connected with his ceasing to hold office. The auditor's term comes to an end as on the date on which the notice is deposited or on such later date as may be specified in the notice.
Annual return **MODEL QUESTION**	Section 35 seeks that every LLP shall be required to file with the Registrar an Annual Return duly authenticated every year in Form No. 11 along with the fees. The annual return of an LLP having turnover up to `5 crore during the corresponding financial year or contribution up to `50 lakhs shall be accompanied with a certificate from a designated partner, other the signatory to the annual return, to the effect that the annual return contains true and correct information. In all other cases, the annual return shall be accompanies with a certificate from a Company Secretary in practice to the effect that he has verified the particulars from the books and records of the LLP and found them to be true and correct. The Central Government is given power to prescribe, by rules, the contents and manner for filing of such return. If any LLP fails to comply with the filing of Annual Return shall be punishable with fine which shall not be less than `10000/- but which may extend to Re.1 lakh.
Inspection of documents	Section 36 provides that the following documents of LLP shall be available with the Registrar for inspection by any person on payment of fee- ● incorporation document; ● names of partners and changes, if any made therein; ● statement of account and solvency; and ● annual return.
Penalty for false statement	Section 37 provides that if in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement- ● which is false in any material particular, knowing it to be false; or ● which omits any material fact knowing it to be material, he shall, save as otherwise expressly provided in the Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to `5 lakhs but which shall not be less than `1 lakh.
Powers of Registrar	Section 38 gives powers to Registrar, to obtain such information, may require any person including any present or former partner or designated partner or employee of a LLP to answer any question or make any declaration or supply any details or

	particulars in writing to him within a reasonable period. If any person does not answer such question or make such declaration or supply such details or particulars within a reasonable time or time given by the Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person, the Registrar shall have power to summon that person to appear before him or an inspection or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be. Any person who, without lawful excuse, fails to comply with any summons or requisitions of the Registrar shall be punishable with fine which shall not be less than `200 but which may extend to `25000.
Compounding of offences **MODEL QUESTION**	Section 39 provides that the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine prescribed for the offence.
Preservation of records **MODEL QUESTION**	The following records are to be preserved permanently: ● incorporation document; ● notice of situation of registered office; ● information with regard to LLP agreement or any change made therein; ● notice of other address of any LLP partnership at which documents to be served. The following documents are to be preserved for 21 years- ● all papers, registers, refund orders and correspondence relating to the LLP liquidation accounts; The following documents are to be preserved for 5 years- ● copies of Government orders relating to LLP; ● registered documents of LLP which have been fully wound up and finally dissolved together with the correspondence relating to such LLP; ● papers relating to legal proceedings from the date of disposal of the case and appeal; if any; ● copies of statistical returns furnished to Government; ● all correspondences including correspondences relating to scrutiny of accounts, annual returns, prosecutions, reports to the Central Government and the Tribunal and the correspondences relating to complaints; ● Statement of compliance with the requirements of the Act by an Advocate or Company Secretary or Chartered Accountant or Cost Accountant in while time practice and by any person who subscribed his name to the incorporation document;' ● Notice of a person ceasing to be a partner and any change in the name or address

	of a partner; ● Registered documents relating to LLP struck off under Section 75 together with correspondence or copy of the order of restoration of the LLP into the register; ● Annual Return of a LLP; ● Consent of candidate to act as designated partner to be filed with the Registrar; ● Consent to act as a partner; ● Statement by all the partners of firm containing particulars of firm along with application for its conversion into LLP; ● Statement by all shareholders containing particulars of private company/unlisted company along with the application for its conversion into LLP; ● Certified copy of the order(s) of the Tribunal under Section 60/61/62; ● Copy of the order of dissolution of LLP by Tribunal; ● Statement of Account and Solvency; In case of prosecution matter, the date is to be recorded from the date of disposal of the case appeal, if any. The following records to be preserved for three years- ● All books, records and papers, other than those specified above; ● Routine correspondence regarding payment of fees, additional filing fees and correspondences about the return of documents.
Destruction of old records	Rule 27 provides that subject to previous orders of the Registrar, the records in the office of the Registrar may be destroyed after the expiry of the period of their preservation as discussed above. The Registrar shall maintain a Register of destroyed documents in two parts wherein he shall center brief particulars of the records destroyed and shall certify therein the date and mode of destructions.
Conversion to LLP	Chapter X of the Act deals with the conversion to LLP from other r types of business types The Act allows the following conversion- ● Conversion from firm into LLP; ● Conversion from private company into LLP; ● Conversion from unlisted company into LLP. The second schedule deals with the procedure of conversion of firm into LLP. The third schedule deals with the procedure of conversion from private company into LLP. The fourth schedule deals with the procedure of conversion from unlisted public company into LLP.
Conversion of firm	Para 1(a) of the second schedule defines the term 'firm' as a firm as defined in

into LLP **MODEL QUESTION**	Section 4 of the Indian Partnership Act, 1932. Para 1(b) defines the term 'convert' in relation to a firm converting into a LLP as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to LLP. A firm may convert into a LLP on the condition that the partners of the firm shall be bound by the provisions of the second schedule that are applicable to them. A firm may apply to convert into a LLP if and only if the partners of the LLP into which the firm is to be converted, comprise, all the partners of the firm. Except the partners in the partnership no other person will be allowed to be a partner in LLP after its conversion. A firm may apply to the Registrar by filing- ● A statement by all of its partners in Form No. 17 and accompanied by fee containing the following particulars- • the name and registration number, if applicable, of the firm; and • the date on which the firm was registered under the Indian Partnership Act, 1932 or under any other law, if applicable; and ● Incorporation document and statement. On receipt of the above said documents, the Registrar shall register the documents and issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under the Act. The Registrar may require the documents to be verified in such manner, as he considers fit. The LLP shall within 15 days of the date of the registration, inform the concerned Registrar of Firms with which it was registered under the provisions of Indian Partnership Act about the conversion and the particulars of the LLP . The Registrar may refuse registration if he is not satisfied with the particulars or other information furnished. In such cases appeal may be filed before the Tribunal.
Conversion from private limited company into LLP **MODEL QUESTION** **MTP JUNE 19 SET 2**	Para 1(b) of the third schedule defines the term 'convert' in relation to a private company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP in accordance with the third schedule. A company may apply to convert itself into a LLP if and only if- • there is no security interest in its assets subsisting or in force at the time of application; and • the partners of the LLP to which it converts comprise all the shareholders of the company and no one else. Upon the conversion of a private company into an LLP, the company and its shareholders, the LLP and the partners of the LLP shall be bound by the provisions of this schedule that are applicable to them.

	The company has to apply with the Registrar by filing the following documents: • A statement by all its shareholders in Form No. 18 and fees containing the following particulars- ● The name and registration number of the company; ● The date on which the company was incorporated; and • Incorporation document and statement; On the receipt of the above said documents, the Registrar shall register the documents subject to the provisions of the Act and the rules made there under. The Registrar may require the documents to be verified as he considers fit. The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate. The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and of the particulars of LLP in Form along with the fees. If the Registrar is not satisfied with the particulars or other information furnished the Registrar may refused to register. Against this order appeal may be made before the Tribunal.
Conversion from unlisted public company into LLP **MODEL QUESTION**	Para 1(b) of the fourth schedule defines the term 'convert' in relation to a company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the company to the LLP in accordance with the provisions of the schedule. Para 1(c) defines the term 'listed company' as defined in SEBI (Disclosure and Investor Protection) Guidelines, 2000 issued by SEBI under Section 11 of the SEBI Act, 1992 which defines as a company which has any of its securities offered through an offer document listed on a recognized stock exchange and also includes Public Sector Undertakings whose securities are listed on a recognized stock exchange. Para 1(d) defines the term 'unlisted company' as a company which is not a listed company. A company may apply to convert into a LLP if and only if- • there is no security interest in its assets subsisting or in force at the time of application; and • the partners of the LLP to which it converts comprise all the shareholders of the company and no one else. A company is also to file the following documents- • A statement by all its shareholders in Form No.18 along with fee containing the following particulars-

	● the name and registration number of the company; ● the date of which the company was incorporated; and • Incorporation document and statement; On receipt of the above statements the Registrar shall register the documents, subject to the provisions of the Act and the rules made there under. The Registrar may require the documents to be verified as he considers fit. The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under the Act. The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and the particulars of the LLP in Form The Registrar, if is he is not satisfied with the particulars or other information furnished, may refuse to register. Against this order an appeal may be filed before the Tribunal.
Effect of registration	On registration of conversion from a partnership firm into a LLP, a private company into a LLP and an unlisted public company into a LLP the following will be the effects- • There shall be a LLP by the name specified in the certificate of registration registered under this Act; • All tangible and intangible property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the LLP without further assurance, act or deed; and •The partnership firm/private limited company/unlisted public company shall be deemed to be dissolved and removed from the records of the Registrar of firms/Registrar of Companies.
Registration in relation to property	If any property is registered with any authority, the LLP shall, as soon as practicable, after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the LLP in such form and manner as the authority may determine.
Pending proceedings	All proceedings by or against the partnership firm/company which was pending before any Court or Tribunal or before an authority on the date of registration may be continued, completed and enforced by or against the LLP.
Continuance of conviction, ruling, order of judgment	Any conviction, ruling, order or judgment of any Court, Tribunal or other authority in favor of or against the firm/company may be enforced by or against the LLP.
Existing agreements	Every agreement to which the firm/company was a party immediately before the date of registration, whether or not of such nature that the rights and the liabilities could be assigned shall have the effect as from that date as if- • the LLP were a party to such an agreement instead of the company; and

	• for any reference to the firm/company, there were substituted in respect of anything to be done on or after the date of registration a reference to the LLP.
Existing contracts	All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the company or to which the company is a party shall continue in force on and after that date as if they relate to the LLP and shall be enforceable by or against the LLP as if the LLP were named therein or were a party thereto instead of the firm/company.
Continuance of employment	Every contract of employment shall continue in force on or after the date of registration as if the LLP were the employer there under instead of the firm/company.
Existing appointment, authority or power	Every appointment of the company in role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the LLP were appointed. Any authority or power conferred on the company which is in force immediately before the date of registration shall take effect and operate from that date as if ti were conferred on the LLP The above shall apply to any approval, permit or licence issued to the company under any other Act which is in force immediately before the date of registration of the LLP, subject to the provisions of such other Act under which such approval, permit or licence has been issued.
Notice of conversion in correspondence	The LLP shall ensure that for a period of 12 months commencing not later than 14 days after the date of registration, every official correspondence of the LLP bears the following- • A statement that it was, as from the date of registration, converted from a company into a LLP; and • The name and registration number of the company from which it was converted Any LLP which contravenes the above shall be punishable with fine which shall not be less than `10000/- but which may extend to `1 lakh and with a further fine which shall not be less than `50 rupees but which may extend to `500/- for every day after the first day after which the default continues.
Foreign LLP	Chapter XI deals with foreign LLP. The term 'foreign LLP' is defined under Section 2(m) of the Act as a LLP formed, incorporated or registered outside India which establishes a place of business within India. Rule 34(1) provides that a foreign LLP shall file with the Registrar in Form No. 27 within 30 days of establishing a place of business in India- • a copy of the certificate of incorporation or registration and other instrument(s) constituting or defining the constitution of the LLP; • the full address of the registered or principal office of the LLP in the country of its incorporation; • the full address of the LLP in India which is to be deemed as its principal place of business in India; and

	• list of partners and designated partners, if any, and the names and addresses of two or more persons resident in India, authorized to accept on behalf of the LLP, service of process and any notices or other documents required to be served on the LLP. Rule 34(2)(i) provides that if the LLP is incorporated in any country which is a part of the commonwealth, the copies of the documents mentioned in Section 34(1) shall be certified as true copies- • by an official of the Government to whose custody the original is committed; or • by a Notary (Public) in that Part of the Commonwealth; or • by an officer of the LLP, on oath before a person having authority to administer an oath in that part of the Commonwealth. Rule 34(2)(ii) provides that if the LLP is incorporated in a country falls outside the Commonwealth but is a party to the Hague Apostile Convention, 1961- • the copies of the document mentioned in Section 34(1) shall be certified by an official of the Government to whose custody the original is committed and be duly apostillised in accordance with the Hague Convention; • a list of partners and designated partners of the LLP, if any, the name and address of persons resident in India, authorized to accept notice on behalf of the LLP shall be duly notarized and be apostillized in the country of their own in accordance with Hague Convention. Rule 34(2)(iii) provides that if the LLP is incorporated in a country outside the Commonwealth and is not a party to the Hague Convention, the copy of the incorporation document shall be certified- • by an official of the Government to whose custody the original is committed; or • a Notary (Public) of such country; or • by an officer of the LLP. Rule 34(2) (iv) provides that the signature or seal of the official or the certificate of Notary shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 or where there is no such officer, by any of the officials mentioned in Section 6 of the Commissioners of Oaths Act, 1889 or in any Act amending the same. Rule 34(2)(v) provides that the certificate of the officer shall be signed before a person having authority to administer an oath provided under Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 or as the case may be, by Section 3 of the Commissioners of Oaths Act, 1889 the status of the person administering the oath in the latter case being authenticated by any official specified in Section 6 of the Commissioners of Oaths Act, 1889 or in any Act amending the same.
Alteration	Rule 34(3) provides that if any alteration is made or occurs in-

	• the instrument constituting or defining the constitution of a LLP incorporated or registered outside India; • the registered or principal office of a LLP incorporated or registered outside India; or • the partner or designated partner, if any, of a LLP incorporated or registered outside India the foreign LLP shall file in Form No. 28 such alterations with the Registrar within 60 days of the close of the financial year. If any alteration is made or occurs in- • the certificate of incorporation or registration of LLP incorporated or registered outside India; • the name or address of any of the persons authorized to accept service on behalf of a foreign LLP in India; or • the principal place of business of foreign LLP in India, the foreign LLP shall file in Form 29 such alterations with the Registrar within 30 days from the date on which the alteration was made or occurred.
Translated document	Rule 34(5) provides if any document mentioned above is not in the English language, there shall be annexed to it a certified translation thereof. Where the translation is made outside India, it shall be authenticated. If such translation is made within India, it shall be authenticated- • by an Advocate, Chartered Accountant, Company Secretary or Cost Accountant; or • by an affidavit of a person who, in the opinion of the Registrar has adequate knowledge of the language of the original and of English.
Filing with Registrar	Rule 34(4) provides that every foreign LLP shall file with the Registrar the Statement of Account and Solvency in Form 8 duly signed by the authorized representatives within a period of 30 days from the end of six months of the financial year. Rule 34(5)(ii) provides that the translation of documents into English are required to be filed with the Registrar or shall be certified to be correct.
Name to be made known	Rule 34(6) provides that every foreign LLP shall cause the name of the foreign LLP and of the country in which the LLP is incorporated, to be stated in the legible English characters in all invoices, official correspondence and publications of the LLP.
Service of document	Rule 34(7) provides that where any foreign LLP makes default in delivering to the Registrar the name and addresses of persons resident in India who are authorized to accept on behalf of the LLP service of process, notices or other documents; or if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the LLP or for any reason, cannot be served, a document may be served on the LLP by leaving it at or sending it by post to, any place of business established by the LLP

	in India.
Registration	Rule 34(10) provides that the Registrar shall, on registration of Form 27, issue a certificate for establishment of place of business in India by the foreign LLP in Form No. 30.
Cessation	Rule 34(8) provides that if any foreign LLP ceases to have a place of business in India, it shall give notice to the Registrar in Form 29 within 30 days of its intention to close the place of business and as from the date on which notice is so given, the obligation of the LLP to file any document to the Registrar shall cease, provided it has no other place of business in India and it has filed all the documents due for filing as on the date of the notice.
Compromise or arrangement	Section 60(1) provides that a compromise or arrangement may be proposed- • between a LLP and its creditors; or • between a LLP and its partners. The following may apply before the Tribunal for compromise, rearrangement- • the LLP; or • any creditor of the LLP; or • any partner of the LLP; or • in the case of a LLP which is being wound up, of the liquidator The application shall be supported by an affidavit. A copy of the proposed compromise or arrangement shall be annexed to the affidavit in Form 20. Where the LLP is not the applicant a copy of the summons and of the affidavit shall be served on the LLP or where the LLP is being wound up it shall be served on liquidator. This shall be served not less than 14 days before the date fixed for the hearing of the summons. The summons shall be in Form 21. Upon the hearing of the summons or any adjourned hearing, the Tribunal shall give such directions as it may think necessary in respect of the following matters- • determining the creditors and/or of partners whose meeting is have to be held for considering the proposed compromise or arrangement; • fixing the time and place of meeting; • appointing a Chairman for the meeting to be held; • fixing the quorum and the procedure to be followed at the meeting including voting by proxy; • determining the values of the creditors and/or of the partners, whose meetings have to be held; • notice to be given of the meeting and the advertisement, if any of such notice;

	• the time within which the Chairman of the meeting is to report to the Tribunal the result of the meeting; and • such other matters as the Tribunal may deem necessary.
Procedure of meeting of creditors/partners **MODEL QUESTION**	• The notice of the meeting is to be given to the creditors and/or partners individually by the Chairman or by the LLP, if the Tribunal or any other person as the Tribunal may direct; • The notice shall be sent by post under certificate of posting to their last known address not less than 21 clear days before the date fixed for the meeting; • The notice shall be accompanied by a copy of the proposed compromise or arrangement along with statement material interest of the designated partners, if any, and a form of proxy in Form No. 26; • The notice of the meeting shall be advertised, if so decided by the Tribunal, in such newspapers and in such manner as the Tribunal may direct; • Every creditor or partner entitled to attend the meeting shall be furnished by the LLP, free of charge, within 48 hours of a requisition made for the same, with a copy of the proposed compromise or arrangement; • The Chairman shall file an affidavit not less than 7 days before the date fixed for the holding of the meeting showing that the directions regarding the issue of notices and the advertisement have been duly complied with; • In default the summons shall be posted before the Tribunal for such orders as the Tribunal may think fit to make. • The proxy shall be signed by the person entitled to attend and vote at the meeting shall be filed with the LLP at its registered office not later than 48 hours before the meeting; • A body corporate may authorize any person to act as its representative at the meeting. A copy of authorization of such person to act as its representative at the meeting and certified to be a true copy by a designated partner or other authorized officer of such body corporate shall be lodged with LLP at its registered office not later than 48 hours before the meeting; • The Chairman of the meeting shall, within the time fixed by the Tribunal or where no time has been fixed, within 7 days after the conclusion of the meeting, report the result of the meeting to the Tribunal; • The report shall state accurately the number of creditors or the partners, who were present and who voted at the meeting either in person or by proxy, their individual values and the way they voted; • Where the proposed compromise or arrangement is agreed to with or without modification by the creditors/partners three fourth of its value, the LLP or liquidator shall present a petition to the Tribunal for confirmation of the compromise or arrangement within 7 days of the filing of the report by the Chairman to the Tribunal;

	• Where a compromise or arrangement is proposed for the purposes a scheme for reconstruction of any LLP or the amalgamation of any two or more LLP, the petitioner shall pray for appropriate orders and directions of the Tribunal; • If the LLP fails to present the petition for confirmation of the compromise or arrangement, it shall be open to any creditor or partner, with the leave of the Tribunal to present the petition for confirmation and LLP shall be liable for the costs thereof; • Where no petition for confirmation is presented to or where the compromise or arrangement has not been approved by the requisite majority the report of the Chairman shall be placed for consideration before the Tribunal for such orders as may be necessary; • If the Tribunal is satisfied that the LLP or any other person by whom an application has been made, has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the LLP including its latest financial position and the pendency of any investigation proceedings in relation to the LLP the Tribunal may sanction the scheme; • The order of the Tribunal is binding on all the creditors or of all the partners and also on LLP; or in the case of LLP which is being wound up, binding on the liquidator and contributories of the LLP; • An order may be the Tribunal shall be filed by the LLP with the Registrar within 30 days of making such an order in Form 22 along with the fee. In computing the period of 30 days from the date of order the requisite time for obtaining a certified copy of the order shall be excluded; • An order shall have effect only after it is filed with the Registrar.; • The Tribunal may, at any time after an application has been made stay the commencement or continuation of any suit or proceeding against the LLP on such terms as the Tribunal thinks fit until the application is disposed of;
Penalty	Section 60(4) provides that if default is made in complying with filing of order of Tribunal with Registrar, the LLP and every designated partner shall be punishable with fine which may extend to `1 lakh.
Power of the Tribunal	Section 61 provides that where the Tribunal makes an order sanctioning a scheme or an arrangement in respect of a LLP it shall have power to supervise the carrying out the compromise or an arrangement and may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement, as it may consider necessary, for the proper working of the compromise or arrangement. If the Tribunal is satisfied that a compromise or arrangement sanctioned cannot be worked satisfactorily, it may make an order for winding up of the LLP.
Reconstruction or amalgamation	Rule 12(i) provides that an arrangement for revival and rehabilitation of any LLP may be proposed – • Where on a demand by the creditors of the LLP representing 50% or more of its outstanding amount of debt, the LLP has failed to pay the debt, within 30 days of

	the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors; or • Where a petition for winding up of a LLP is pending before the Tribunal, in terms of the directions given by the Tribunal on the winding up petition; or • Where the liquidator has failed his report before the Tribunal, in terms of directions given by the Tribunal on the report of the liquidator. The LLP or any creditor or partner of the LLP, or in the case of LLP which is being wound up, the Liquidator may make application for sanction of the arrangement for revival and rehabilitation before the Tribunal.
Application before Tribunal	Rule 35 (13) provides that an application shall be accompanied by- ● Statement of account and solvency of LLP for the immediately preceding financial year; ● Particulars and documents relevant to the scheme, proposed restructuring or rescheduling of the debts or any undertaking or undertaking, in case from bank or financial institution through a letter or any other case through an affidavit of concerned party or parties or in any other form as may be directed by the Tribunal; ● Proposed scheme of revival and rehabilitation of the LLP including proposal for appointment of an LLP Administrator. The application is to be made to the Tribunal within 90 days from the date of expiry of demand notice or from the date of direction of the Tribunal. The Tribunal may hear all the parties concerned within 60 days of receipt of application. The Tribunal may admit or dismiss the application. If the Tribunal admits the application it may make provisions for all or any of the following matters- ● Holding of meetings of the creditors for approval of scheme proposed for revival and rehabilitation of LLP; ● Procedure to be followed by the LLP Administrator proposed in the scheme in connection with holding of the meeting including the appointment of Chairman for such meeting; ● Any other direction as may be considered necessary.
LLP Administrator	Rule 35(17) provides that the LLP Administrator shall be appointed from a panel maintained by the Central Government for winding up and dissolution of LLPs. The terms and conditions of the appointment including the fee of LLP Administrator shall be such as may be ordered by the Tribunal. The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the LLP Administrator and may appoint another LLP Administrator. In case of removal, death or incapacity of the LLP Administrator, the Tribunal may appoint another LLP Administrator.
Report of LLP Administrator	The LLP Administrator shall submit his preliminary report including the decision of the meeting to the Tribunal within 60 days of order by the Tribunal. On

	consideration of his report and other materials available, if the Tribunal is satisfied that the creditors representing three fourths in value of the amount outstanding against that LLP have, with or without modification of the scheme, resolved that it is not possible to revive and rehabilitate the LLP, the Tribunal may, within 60 days of the receipt of such report, order • that the proceedings for the winding up of the LLP be initiated; or • the LLP be wound up, or the liquidator to continue; or • sanction for arrangement for revival and rehabilitation of LLP as approved by such creditors with such modifications considered necessary by the Tribunal and make orders for continuation of the LLP Administrator or appointment of a new LLP Administrator. The Tribunal may consider for its approval including the appointment of any other LLP Administrator if the arrangement is approved by three fourth majorities, in value of creditors.
Order of Tribunal	The order of sanction of the arrangement by the Tribunal may make provisions for all or any of the following- • powers and functions of the LLP Administrator; • the time period within which various actions proposed in the arrangement to be completed; • any such direction to the LLP or its officers or to the creditors, or to the LLP Administrator or to any other person, as may be considered necessary, for the purpose of implementation of the arrangement of revival and rehabilitation; and • any other order or orders as may be considered necessary. The LLP Administrator shall complete all the actions relating to the implementation of the scheme and submit his final report before the Tribunal within such time directed by the Tribuna but not exceeding 180 days of the order. The LLP Administrator shall, within 30 days of the making or order or orders cause certified copy to be filed with the Registrar concerned in Form 22 along with the fee. Section 62 provides that where an application is made to the Tribunal for sanctioning of a compromise or arrangement which relates to reconstruction of LLP or the amalgamation of two or more LLPs and under a scheme the whole or any part of the undertaking, property or liabilities of any LLP in the scheme is to be transferred to another LLP, the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for matters like transfer to the transferee LLP of the whole or any part of the undertaking, property or liabilities of any transferor LLP, the continuation by or against the transferee LLP of any legal proceedings pending by or against any transferor LLP. The dissolution without winding of any transferor LLP, the provisions to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement and such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out. It also provides that if default is made in complying with provisions relating to filing

	of such order of Tribunal with the Registrar, the LLP and every designated partner of the LLP shall be punishable with fine which may extend to `50000.
Enforcement of duty to make returns etc.,	Section 41 provides that in case any LLP is in default in complying with the provisions relating to filing with the Registrar of any return, account or other document or giving of any notice to him, the Registrar may make an application before the Tribunal for making an order for directions in order to make good the default within a time frame.
Assignment and transfer of partnership rights	Section 42 provides that the rights of a partner to a share of the profits and losses of the LLP and to receive distributions shall be transferable in accordance with the LLP agreement. Such transfer shall not by itself cause the disassociation of the partner or a dissolution and winding up of the LLP. Such transfer would not entitle the transferee to participate in the management of LLP.
Investigation	Chapter IX of the Act deals with the investigation procedure against LLPs. The Central Government is to appoint inspectors to cause investigations against the LLPs. The investigation is of two types – one is on the order of Court or Tribunal and the other is by the Central Government itself.
Investigation on orders of Court or Tribunal	Section 43(1) provides that the Central Government shall appoint one or more Inspectors to investigate the affairs of a LLP if- • the Tribunal, either suo motu or on an application received from not less than one fifth of the total number of partners of LLP, by order, declares that the affairs of the LLP ought to be investigated; or • any Court, by order, declares that the affairs of a LLP ought to be investigated.
Investigation by Central Government	Section 43(2) provides that the Central Government may appoint one or more Inspectors to investigate the affairs of a LLP and to report on them in such manner as it may direct. Such appointment may be made- • if not less than one fifth of the total number of partners of LLP make an application with supporting evidence and security amount as may be prescribed; or • if the LLP makes an application that the affairs of the LLP ought to be investigated; or • if, in the opinion of the Central Government, there are circumstances suggesting- ● that the business of the LLP is being or has been conducted- o with an intent to defraud its creditors, partners or any other person; or o for a fraudulent purpose; or o unlawful purpose; or o in a manner oppressive; or o unfairly prejudicial to some or any of its partners; or the LLP was formed for any fraudulent or unlawful purpose; or ● that the affairs of the LLP are not being conducted in accordance with the

	provisions of this Act; or ● that, on receipt of a report of the Registrar or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the LLP ought to be investigated.
Inspectors and their powers	No firm, body corporate or other association shall be appointed as an Inspector. The Inspector shall have the power to carry out investigation into the affairs of related entities and shall report on the affairs of the other entity or partner or designated partner, so far as he thinks that the results of his investigation are relevant to the investigation of the affairs of the LLP. For that the Inspector has to get the prior approval of the Central Government. Before according approval the Central Government shall give the entity or partner or designated partner a reasonable opportunity to show cause why such approval should not be accorded. The Inspector may require any entity to furnish such information to, or produce such books and papers before him or any person authorized by him in this behalf, if the production of such books and papers is relevant or necessary for the purposes of his investigation. An Inspector may examine on oath- ● any of the entity, partner, designated partner etc.,; ● the affairs of the LLP or any other entity; and ● may administer an oath accordingly and for that purpose he may require any of the persons to appear before him personally. In the course of investigation, if the Inspector has reasonable ground to believe that the books and papers of, or relating to the LLP or other entity or partner or designated partner of such LLP may be destroyed, mutilated, altered, falsified or secreted, the Inspector may make an application to the Judicial Magistrate for an order for the seizure of such books and papers. The Magistrate may, by order, authorize the Inspector- • to enter, with such assistance, the place or places where such books and papers are kept; • to search that place or those places in the manner specified in the order; and • to seize books and papers which the Inspector considers it necessary for the purposes of his investigation.
Inspector's report	Section 49 provides that the Inspectors shall make interim reports to the government and on the conclusion of the investigation shall make a final report to the Central Government in the mode as directed by the Government. The Central Government shall forward a copy of any report to the LLP and to any person at their request.
Prosecution	Section 50 provides that the Central Government based on the report of the Inspection if it appears to it that any person in relation to the LLP or in relation to any other entity has been guilty of any offence for which he is liable, the Central

	Government may prosecute such person for the offence. It shall be the duty of all partners, designated partners and other employees and agents of the LLP or other entity to give the Central Government all assistance in connection with the prosecution which they are reasonable able to give. Section 51 provides that if it appears to the Central Government from the report made by an Inspector that it is expedient to do so by reason that the business of the LLP is being conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the LLP are not being conducted in accordance with the provisions of the Act may take action for the winding up of the LLP.
Recovery of damages	Section 51 provides that the Central Government may bring an action against the LLP for the recovery of- • damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation or the management of the affairs; or • any property of such LLP which has been misapplied or wrongfully retained.
Expenses of investigation	Section 52 provides that the expenses of and incidental to an investigation by an Inspector appointed by the Central Government shall be defrayed by the Central Government in the first instance and reimbursed from the concerned LLP or entity. Any amount for which a LLP or other entity is liable, shall be a first charge on the sums or property recovered by such LLP or other entity during investigation. The amount to be recoverable from LLP and other persons may be recovered as arrears of land revenue.
Inspector's report to be evidence	Section 54 provides that a copy of any report of any Inspector or Inspectors appointed shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
Striking off name of defunct LLP	Rule 37 provides that where a LLP is not carrying on any business of operation for a period of 2 years or more and the Registrar has reasonable cause to believe the same, suo motu action for striking of the name of the LLP. In this case the Registrar shall send a notice to the LLP and all its partners intimating his intention to strike off the name the LLP from the register and requesting them to send their representation along with relevant copies of documents within a period of one month from the date of receipt of notice. If the LLP is regulated under a special law, the notice shall be accompanied by approval of regulatory body under that law. The notice and its contents shall also be displayed in the web site of Ministry of Corporate Affairs for the information of general public for a period of one month. On the expiry of the notice period, the Registrar may, by an order, unless cause to the contrary is shown by the LLP, or the Registrar is satisfied that the name should not be struck off the register, and shall publish notice in the Official Gazette. On this the LLP shall stand dissolved. The Registrar before passing such order, shall, where he has sufficient cause to believe that the LLP has any asset or liability, satisfy himself that sufficient provision has been made for the realization of all amount due to the LLP and for the payment or discharge of its liabilities and

	obligations of the LLP within a reasonable time and if necessary obtain necessary undertakings from the designated partner or partner of other persons in charge of the management of the LLP. The liability of every designated partner of the LLP dissolved, shall continue and may be enforced as if the LLP had not been dissolved. Where a LLP is not carrying on any business of operator for a period of one year or more the LLP in Form 24 may apply to the Registrar, with the consent of all partners, for striking off its name from the register. For this no notice is required to be issued to the LLP and the partners. The other procedure as discussed will be applicable.
WINDING UP OF LIMITED LIABILITY PARTNERSHIP **MODEL QUESTION**	Chapter XIII of Limited Liability Partnership Act provides for winding up and dissolution. Section 65 gives powers to the Central Government to make rules for the provisions in relation to winding up and dissolution of LLP. The Central Government made Limited Liability Partnership (Winding up and Dissolution) Rules, 2010. In suppression of this rules, in exercise of the powers conferred by Section 6t read with Section 79 of the Act, the Central Government made the rules called as 'Limited Liability Partnership (Winding up and Dissolution) Rules, 2012 vide Notification No. GSR 550 (E), dated 10.07.2012. These Rules came into effect from 10.07.2012.
Modes of winding up	Rule 4 provides that the winding up of an LLP may be either voluntary or by the Tribunal. The Tribunal means the National Company Law Tribunal constituted under the Companies Act.
Voluntary winding up	Part III of the Rules deals with the procedure for voluntary winding up. The LLP may be wound up voluntarily if the LLP passes a resolution to wind up the LLP with the approval of at least three fourths of the total number of its partners. If the LLP has creditors, whether secured or unsecured, the approval of such creditors is to be obtained for the voluntary winding up. A copy of the resolution shall be filed with the Registrar within 30 days of passing resolution in Form No. 1.
Commencement of voluntary winding up	Rule 6 provides that a voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up.
Declaration of solvency	Rule 7 provides that in case of voluntary winding up the majority of its designated partners, not being less than two, shall make a declaration in Form No. 2 verified by an affidavit to the effect that the LLP has no debt or that it will be able to pay its debts in full within such period as may be specified in the declaration, but not exceeding one year from the commencement of the winding up. The declaration shall be delivered to the Registrar in Form No. 3 within 15 days immediately preceding the date of passing of the resolution for winding up of LLP. The declaration shall be accompanied by a statement of assets and liabilities inform No. 4 for the period commencing from the date up to which the last account was prepared and ending with the latest practicable date immediately before the making of the declaration duly attested by at least two designated partners. The declaration shall also be accompanied by a report of the valuation of the assets of the LLP prepared by a valuer, if there are any assets.
Meeting of creditors	The meeting of creditors shall be convened for seeking approval of such creditors.

	The notice shall be sent by registered or speed post or any other mode prescribed. Where the two thirds in value of creditors give their consent that the winding up in the interest of all partners and creditors, the LLP shall within 14 days thereafter, file an application before the Tribunal for winding up. Notice of any decision of creditors shall be given to the Registrar in Form No. 5 within 15 days from the date of receipt of consent of creditors.
Publication	The LLP shall within 14 days of the receipt of the creditors' consent, give notice of the resolution by advertisement in a newspaper circulating in the district where the registered office or the principal office of the LLP is situated.
Appoint of LLP liquidator	The term 'LLP Liquidator' is defined in Section 2(a)(i) as a liquidator appointed in connection with voluntary winding up of a LLP from the panel maintained by the Central Government consisting of the names of practicing Chartered Accountants, Advocates, practicing Company Secretaries, practicing Cost Accountants or forms or bodies corporate having Chartered Accountants, Advocates, Company Secretaries, Cost Accountants and such other professionals as may be notified by the Central Government. The LLP shall within 30 days of passing of resolution of voluntary winding up shall appoint a voluntary liquidator as LLP liquidator and this would be effective only after it is approved by two thirds of the creditors in value of the LLP. If the creditors do not approve this appointment, the creditors shall appoint another LLP liquidator and fix the remuneration to be paid to him. The liquidator appointed by the creditor shall be LLP liquidator. If no liquidator is appointed the Tribunal may appoint an LLP liquidator on such remuneration as may be determined by it. The LLP liquidator shall file a declaration in Form No. 6 disclosing conflict of interest or lack of independence in respect of his appoint, if any, with the LLP or the creditors, as the case may be, and such obligation shall continue throughout the term of his or its appointment.
Removal of LLP liquidator	The Tribunal may, on cause being shown, remove an LLP liquidator and appoint any another LLP liquidator in his place. The Tribunal may also appoint or remove an LLP liquidator on an application made by the Registrar in this behalf. Before removal the liquidator shall be given a reasonable opportunity of being heard. The LLP liquidator may also be removed by the partners of the LLP or creditors where such appointment is approved by the partners, as the case may be, the creditors. The liquidator shall be given notice and given a reasonable opportunity of being heard.
Duties of LLP liquidator **RTP JUNE 18**	Rule 13 provides that on appointment of a LLP liquidator, all the powers of the designated partner and other partner, if any, shall cease, except for the purpose of giving notice of such appointment of the LLP liquidator to the Registrar. Rule 14 prescribes the following duties- He shall settle the list of creditors or partners, which shall prima facie evidence of the liability of the persons therein to the creditors or partner; • He shall obtain approval pf partners or creditors for any purpose he may consider necessary;

	• He shall maintain register and proper books of accounts in the form and manner as specified; • He shall the debts of the LLP and shall adjust the rights of the partners among themselves; • He shall observe due care and diligence in the discharge of duties. Audit of LLP liquidator's account Rule 15 provides that the accounts of the LLP liquidator shall be audited. Supervision of winding up Rule 16 provides that the partners or the creditors may appoint such committees as they consider appropriate to supervise the voluntary winding up and assist the LLP liquidator in discharging the functions. The LLP liquidator shall report quarterly on the progress of the winding up of the LLP in Form No. 8 to the partners or creditors which shall be made before the end of the following quarter. Where the fraud is reported against any person other than a partner or designated partner, the LLP liquidator, before sending a report to the Tribunal, may intimate it to the partners or designated partners and include their views in the report. The Tribunal is having power to make any order to transfer the winding up proceedings from voluntary winding up to compulsory winding up by Tribunal.
Dissolution of LLP	Rule 19 provides that as soon as the affairs of a LLP are fully wound up, the LLP liquidator shall prepare a report stating the manner in which the winding up has been conducted and property has been disposed off, final winding up accounts and explanations, in Form No.9, showing that the property and assets of the LLP have been disposed of and its debts fully discharged to the satisfaction of the creditors and thereafter seek the approval of the partners or the creditors on the said report and the final winding up accounts and explanation in the meeting of partners or creditors. If two thirds of total number of partners or two thirds in value of creditors, as the case may be, after considering the report, accounts and explanations of the LLP liquidator are satisfied that the LLP shall be wound up, they shall pass a resolution, within 30 days of receipt of such report, winding up accounts and explanations for its dissolution. Within 15 days after the resolution passed, the LLP liquidator shall- • send to the Registrar a copy of the final winding up accounts, explanations and report in Form No. 10; and • file an application with the Tribunal along with a copy of the final winding up accounts, explanations and report, for passing an order of dissolution of the LLP. If the Tribunal is satisfied that the process of winding up has been duly followed, the Tribunal may pass an order, within 60 days of the receipt of such application the LLP stands dissolved. The LLP liquidator shall file a copy of the order with

	the Registrar within 30 days in Form No. 11. The Registrar shall forthwith public a notice in the Official Gazette that the LLP stands dissolved. If the affairs of the LLP are not fully wound up within a period of one year from the date of commencement of voluntary winding up, the LLP liquidator shall file an application before the Tribunal explaining the reasons thereof and seek appropriate directions.
Distribution of property of LLP	Rule 21 provides that the assets of an LLP shall, on its winding up, be applied in satisfaction of its liabilities pari passu and, subject to such application, shall, unless the LLP Agreements otherwise provides, be distributed among the partners according to their rights and interests in the LLP.
Costs of voluntary winding up	Rule 24 provides that all costs, charges and expenses properly incurred in the winding up, including the fee of the LLP liquidator, shall, subject to the rights of secured creditors, if any, and workmen, be payable out of the assets of the LLP in priority to all other claims.
Winding up by Tribunal	Petition for winding up Rule 26 provides that an application to the Tribunal for the winding up of an LLP shall be by a petition presented by- ● the LLP or any of its partner or partners; ● any secured creditor or creditors, including any contingent or prospective creditor or creditors; ● the Registrar; or ● any person authorized by the Central Government in this behalf; ● the Central Government, in a case falling under Section 64(d). A petition filed by the LLP or any of its partner or partners for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs of the LLP on the date of petition and a resolution of three fourths of the total number of partners. The Registrar shall not a present a petition on the ground that the LLP is unable to pay its debts unless it appears to him either from the financial condition of the LLP as disclosed in its Statement of Accounts and Solvency or from the report of an Inspector that the LLP is unable to pay its debts. Further the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition. The Central Government shall not accord its sanction for the presentation of the petition unless the LLP concerned has been given a reasonable opportunity of making representations, if any.
Inability to pay debts	Rule 25 provides an LLP shall be deemed to be unable to pay its debts- ● if a creditor, to whom the LLP is indebted for an amount exceeding Rs. 1 lakh then due, has served on the LLP, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the LLP to pay the amount so due and the LLP has failed to pay the such amount within 21 days after

	the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor; ● if any execution or other process issued on a decree or order of any Court or Tribunal in favor of a creditor of the LLP is returned unsatisfied in whole or in part; or ● if it is proved to the satisfaction of the Tribunal that the LLP is unable to pay its debts, and, in determining whether a LLP is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the LLP.
Powers of Tribunal	On hearing a winding up petition, under Rule 27, the Tribunal may- ● dismiss it, with or without costs; ● make any interim order, as it thinks fit; ● direct the action for revival or rehabilitation of the LLP in accordance with the procedure laid down in Section 60 to 62 of the LLP Act; ● appoint a liquidator as provisional liquidator of the LLP till the making of a winding up order; ● make an order for the winding up of the LLP with or without costs; ● any other orders or orders as may be considered fit.
Directions for filing statement of affairs	Rule 28 provides that the Tribunal, where a petition for winding up is filed by any person other than the LLP, if satisfied that a prima facie case for winding up is made out, by an order direct the LLP to file its objections along with a statement of its affairs within the time specified in the order. The Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the LLP. If the LLP fails to file the statement of affairs the LLP lose the change to oppose the petition.
Appointment of liquidators	Rule 29 provides that the Tribunal may appoint a liquidator who may be called by either an official liquidator or a liquidator appointed by an order of the Tribunal from the panel maintained by the Central Government. In the absence of such order the Official Liquidator shall act as liquidator or provisional liquidator. Every liquidator appointed from the panel, shall, before entering upon his duties as a liquidator of the LLP, furnish security of such sum and in such manner as the Tribunal may direct.
Winding up order to be communicated	Rule 31 provides that where the Tribunal makes an order for the winding up of a LLP, it shall within a period of not exceeding 15 days from the date of passing of the order, cause intimation thereof to be sent to the Liquidator and the Registrar in Form No. 12. On receipt of the intimation, the Registrar shall make an endorsement to that effect in his records relating to the LLP and notify in the Official Gazette that such order has been made. On receipt of intimation, the Liquidator shall send notice to the registered office of the LLP, its partners, designated partners, officers, employees including Chief

	Executive Officer, Chief Financial Officer and auditors and secured creditors, if any, within 15 days of the receipt of the intimation for the purpose of custody of the property, assets, effects, actionable claims, books of accounts or other documents. The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the LLP except when the business of the LLP is continued. An order of winding up of an LLP shall operate in favor of all creditors and all the partners.
Jurisdiction of Tribunal	Rule 32 provides that the Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of- ● any suit or proceeding by or against the LLP; ● any claim made by or against the LLP, including claims by or against any of its branches in India; ● any application made under Sections 60 to 62 of the Act; ● any scheme submitted under the Act or any other law, for the time being in force, for revival or rehabilitation of LLP; ● any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of winding up of the LLP, whether such suit or proceeding has been instituted or such claim or question has arises or arises or such application is made or has been made or such scheme is submitted or has been submitted, before or during the pendency of winding up petition or after the winding up order is made.
Report by Liquidator	Rule 34 provides that where the Tribunal has made a winding up order, the Liquidator shall, within 60 days from the date of winding up of the order, submit to the Tribunal, a report containing the following particulars- ● the nature and details of the assets, cash balance in hand and in bank, if any and the marketable securities, if any held by the LLP; ● amount of contribution received and outstanding from partners; ● the existing and contingent liabilities of LLP; ● debts due to the LLP; ● guarantees given by the LLP; ● list of partners and dues if any payable by them and details of any outstanding contributions; ● details of intangible assets; ● details of subsisting contracts, joint ventures and collaborations, if any;

	● details of other LLPs or companies in which LLP has any stake; ● details of legal cases filed by or against the LLP; ● details of the properties, assets, books or records and other documents taken under the custody of the Liquidator; ● scheme of revival or rehabilitation of LLP, if any; and ● any other information which the Tribunal may direct or the Liquidator may consider necessary to include. The Liquidator may make in the report, the viability of the business of the LLP or the steps which, in his opinion, are necessary for maximizing the value of the assets of the LLP.
Directions of Tribunal on the report	Rule 35 provides that the Tribunal shall, on consideration of the report, fix a time limit within which the entire proceedings shall be completed and the LLP dissolved. The Tribunal may, at any stage of the proceedings, if it considers that it will not be advantageous or economical to continue the proceedings, reduce the time limit within which the entire proceedings shall be completed and the LLP dissolved. If it is in the opinion of the Liquidator that the proceedings could not be completed within the time allowed by the Tribunal, the Tribunal after satisfying itself on an application of the Liquidator, may extend the time, but not exceeding further 30 days.
Sale of LLP	The Tribunal may, on an examination of the reports of the Liquidator and after hearing the liquidator, creditors, partners, order the sale of the LLP as going concern or its assets or part thereof. The Tribunal may appoint a Sale Committee consisting of such creditors, partners and officers or employees of the LLP to assist the Liquidator in this regard.
Revival or rehabilitation of LLP	If the Tribunal is of the opinion that an LLP can be revived or rehabilitated, it may, direct that an action for revival or rehabilitation may be taken in accordance with Sections 60 to 62 of the Act.
Fraud	Where a report of the liquidator indicates the fraud committed in respect of the LLP, the Tribunal shall, without prejudice to the process of winding up, order for investigation and on consideration of the report of such investigation it may pass order and give such directions as it may think appropriate.
Custody of LLP's properties	Rule 36 provides that where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator on the order of the Tribunal, forthwith take into his custody or under his control all the property, assets, effects and actionable claims to which the LLP is or appears to be entitled to and take such steps and measures, to protect and preserve the properties of LLP. On the order of the Tribunal, any partner, trustee, receiver, banker, agent etc., are required to pay, deliver, surrender or transfer to the liquidator the money, property or books and papers in their custody within the time specified by the Tribunal.
Application of assets	The assets of the LLP shall be applied first for the payment of cost including expenses, charges or fees and remuneration of the Liquidator incurred in the

	winding up of the LLP and thereafter be applied for the discharge of its liability pari passu with the provisions of the Act and the rules.
Committee of Inspection	Rule 39 provides that the Tribunal may, at the time of making an order for the winding up of an LLP or any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator. The committee shall consist of such number of members not exceeding 12. The Committee shall meet at such times as it may from time to time appoint and the Liquidator or any member of the Committee may also call a meeting of the committee as and when he thinks necessary. As soon as possible after the holding of the meetings of the Committee, the Liquidator shall report the result to the Tribunal for further directions.
Periodical reports	Rule 40 provides that the Liquidator shall report quarterly on the progress of winding up of the LLP in Form No. 13 to the Tribunal which shall be made before the end of the following quarter. The Tribunal may review any order made by it and make such modifications as it thinks fit with or without any further directions.
Assistance to Liquidator	Rule 42 provides that the Liquidator may, with the sanction of the Tribunal, appoint one or more practicing Chartered Accountants or practicing Company Secretaries or practicing Cost Accountants or legal practitioners entitled to appear before the Tribunal or such other professions or experts or valuers or agency as he considers necessary to assist him in the performance of his duties and functions under the Act or the rules.
Appeal against the decision of Liquidator	Rule 43(5) provides that any person aggrieved by any act or decision of the Liquidator may apply to the Tribunal. The Tribunal may confirm, reverse or modify the act or decision complained of and make such further order as it thins just in the circumstances.
Books of accounts **RTP JUNE 18**	Rule 44 provides that the liquidator shall keep proper books of accounts in the manner prescribed in which he shall cause entries or minutes to be made or proceedings of the meetings. The accounts of the liquidator shall be audited in the form and manner specified in Rule 56. The liquidator shall cause the statement of accounts when audited or a summary thereof to be printed, and shall send a printed copy of the statement of accounts or summary thereof by post to every creditor and every partner.
Control of Central Government over liquidator	Rule 48 provides that the Central Government shall take cognizance of the conduct of the Official Liquidators of LLPs which are being wound up by the Tribunal and if a Tribunal does not faithfully perform his duties and duly observe all the requirements imposed on him by the Act and Rules with respect to performance of his duties or if any complaint is made to the Central Government by any creditor or partner in regard thereto, the Central Government shall inquire into the matter and take such action thereon as it may thin expedient. The Central Government may also direct a investigation to be made of the books and vouchers of such liquidators.
Provisions applicable to every mode of winding up	Part V of the Rules provides the provisions that are applicable to all type of winding up.
Powers of liquidator	Rule 51 provides that the LLP liquidator, with the sanction of the Tribunal in case of winding up by the Tribunal or with the sanction of a resolution by three fourths

	of total number of partners, in case of voluntary winding up, has the following powers- • pay any class of creditors in full; • make any compromise or arrangements with creditors; • compromise any money due from partners including outstanding, unrealized or unrecovered contribution etc.,
Proof of debts	Rule 50 provides that all debts payable on a contingency and all claims against the LLP, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the LLP.
Evidence	Rule 53 provides that all books and papers of the LLP, LLP liquidator and Liquidator shall, as between the partners of the LLP, be prima facie evidence of the truth of all matters purporting to be recorded therein.
inspection of books and papers	Rule 54 provides that at any time after making of an order for the winding up of a LLP by the Tribunal any creditor or partner of the LLP may inspect the books and papers of the LLP subject to conditions specified. The conditions are not applicable on the Central Government or a State Government or any authority or officer of the Government.
Disposal of records	Rule 55 provides that when the affairs of a LLP have been completely wound up and it is about to be dissolved, its books and papers and those of the LLP liquidator may be disposed of as follows- • in case of winding up by the Tribunal, in such manner as the Tribunal directs; and • in case of voluntary winding up, in such manner as the LLP approves it by three fourths of the total number of partners with the prior approval of the secured creditors. After expiry of five years from the dissolution of LLP, no responsibility shall devolve on the LLP, the LLP liquidator or the liquidator on the books and papers of the LLP, the liquidator. The Central Government may, by notification direct for such period not exceeding five years from the dissolution of the LLPs for the prevention of the destruction of the books and papers of a LLP which has been wound up and of its LLP Liquidator or Liquidator.
Remittance of money	Rule 57 provides that every liquidator shall pay the moneys received by him as Liquidator of any LLP into the public account of India in the RBI or any scheduled bank. If the Tribunal considers that it is advantageous for the creditors or partners of the LLP, it may permit the account to be opened in such other bank specified by it. The liquidator shall not deposit any money received by him in his capacity into any private account. The liquidator can retain at any time for more than ten days a sum of ` 50,000 on the authorization of the Tribunal. For this the liquidator is to make application and explains the retention to the satisfaction of the Tribunal. If the liquidator fails he is liable to pay interest and also penalty.

Filing returns	Rule 62 provides that every liquidator shall file, deliver or make any report, statement of accounts or any other document or give any notice which is required to be filed, delivered or made or given, as the case may be, pursuant to any rule, within the time specified in such rule. The Central Government may also specify any other report, statement of accounts or other documents to be filed within the time specified.
Dissolution void	Rule 64 provides that the where an LLP has been dissolved the Tribunal may at any time within two years of the date of the dissolution, on application by the Liquidator or by any other person, make an order, upon such terms as the Tribunal may think fit, declaring the dissolution to be void, and thereupon such proceedings may be taken as if the LLP has not been dissolved. The copy of the said order is to be filed within 30 days with the Registrar in Form No. 11, who shall register the same.
Computing period of limitation	Rule 66 provides that in computing the period of limitation specified for suit or application in the name and on behalf of a LLP which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the LLP to a period of one year immediately following the date of winding up order shall be excluded.
Filing with Registrar and filing fee	Rule 67 provides that a notice, document, form, resolution etc., or notification required to be filed with the Registrar shall be filed in electronic form along with the fee specified. In case of winding up by the Tribunal, the Central Government may waive the fee, if it deems fit. No fee shall be payable if any LLP under liquidation by the order of the Tribunal does not have funds and the liquidator submits a certificate that the LLP does not have any fund.
Proceedings and general procedures	Part VI of the rules provides for the proceedings and general procedures of the winding up. The following is the procedure enumerated in Part VI of the Rules- ● All proceedings shall be instituted before the Bench of the Tribunal having jurisdiction as may be notified by the Central Government; ● All petitions, applications, affidavits etc., shall be written, typewritten or printed neatly and legibly on substantial paper of foolscap size in duplicate and separate sheets shall be stitched together; ● The contents shall be divided into separate paragraphs, which are numbered serially; ● The general hearing in all proceedings before the Tribunal and in all advertisements and notices shall be in Form No. 16; ● Fees on applications as specified shall be paid; ● The proceedings shall be in English or Hindi; ● No documents other than in English or Hindi, unless translated into Hindi or English shall be accepted; ● No rules shall be deemed to limit or otherwise affect the inherent powers of the

	Tribunal to make such orders as may necessary for the ends of justice or to prevent abuse of the process of the Tribunal; ● The Tribunal shall have the power to dispense with the requirements of any of these rules subject to such terms and conditions and for the reasons recorded to be in writing; ● Where any particular number of days is specified, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a day on which the offices of the Tribunal are closed, in which case the time shall be reckoned exclusively of that day also and of any succeeding day or days on which the offices of the Tribunal continued to be closed; ● The Tribunal shall keep the following registers in physical or digital format or both the format, relating to the proceedings under the Act and the Rules- ■ LLP Petitioner's Register; ■ LLP Applications' Register; ■ Liquidation Registers; ■ LLP Document Registers; ■ Appearance of the person before the Tribunal; ● Every application or petition shall bear its distinctive serial number.; ● Every petition shall be verified by an affidavit by the petitioner and such affidavit shall be in Form No. 18 and shall be filed along with the petition; ● Every application/petition shall be accompanied by the documents required to be annexed; ● Where a petition is filed, an application shall be made by along with summons in Form No. 19 to the Member for directions as to the advertisement of the petition, the notices to be served and the proceedings to be taken; ● Where any petition is required to be advertised, be advertised not less than 7 days before the date fixed for hearing in one issue each of a daily newspaper in English language and a daily newspaper in regional language circulating in the State or the Union territory concerned as may be fixed by the Member; ● The advertisement shall be in Form No. 20 and shall include the required information; ● Every petition shall be served on the respondent; ● Notice of every petition required to be served upon any person shall be in Form No. 21 not less than 7 days before the date of hearing; ● The petitioner shall be responsible for the service of all notices, summons and other processes for the advertisement and publication of notices, required to be

	effected by these rules or by order of Tribunal; ● An affidavit of service on a LLP or its liquidator shall be in Form No. 22 or 23 as the case may be; ● Every person who intends to appear the hearing of a petition, whether to support or oppose the petition, shall serve on the petitioner or his advocate, notice of his intention at the address given in the advertisement; ● The petitioner or his advocate or authorized representative shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear at the hearing of the petition in the form No. 25 and shall be filed in Tribunal before the hearing of the petition; ● At the time of hearing the Member may either dispose of the petition finally or give such directions as may be deemed necessary for filing of counter affidavit and reply affidavits; ● All adjournments and postings will be subject to time schedule prescribed under the Act or the rules; ● It shall not be necessary give notice of the adjourned hearing to any person; ● The date of order shall be the date on which it was actually made notwithstanding that it is drawn up and issued on a later date; ● The costs should be awarded for every adjournment on the party seeking adjournment at the time of granting adjournment except in cases of serious illness and such similar circumstance; ● Where costs are awarded to a party in any proceeding, the order shall direct that the party liable to pay the costs shall pay the same.
Inspection and copies of proceedings	Rule 79 provides that records of every proceedings pending before the Tribunal will be available for the inspection of the parties or their authorized representatives on making an application in writing and on payment of a fee as specified. A person who is not a party to the proceedings is not entitled for inspection of records or proceedings except with the consent of the parties by whom they were presented or produced or under the orders of the Tribunal on payment of fee. A person not a party to the proceedings on which final orders have been passed can obtain copy of the orders on payment of such fee specified.
Petition for winding up	The following is the procedure for winding up- ● A petition for winding up an LLP shall be in Form No. 26 or 27 or 28 as the case may be, with such variations as the circumstances may require; ● The petition shall be in duplicate; ● Where the petition is filed by the LLP the petition shall be accompanied with the Statement of affairs of LLP on the date of petition; ● The Registrar shall note on the petition the date of its presentation;

	● The petition shall be posted before the Member in chambers for admission and to fix hearing date; ● The member may direct notice to be given to LLP before advertisement; ● The petition by a contingent or prospective creditor may be presented accompanying an application for the leave of the Tribunal for the admission of the petition; ● Every partner or creditor of the LLP shall be entitled a copy of petition within 24 hours on payment of the charges as specified; ● The advertisement shall be in Form No. 29 and advertised within the time and in the manner provided; ● A petition shall not be withdrawn after presentation without the leave of the Tribunal; ● The Tribunal may substitute creditor or partner for original petitioner; ● An affidavit intended to be used in opposition shall be filed not less than 5 days before the date fixed for the hearing of the petition; ● A copy of the affidavit shall be served on the petitioner; the statement of affairs of the LLP shall also be filed; ● An affidavit intended to be used in reply to the affidavit filed in opposition to the petition shall be filed not less than 2 days before the day fixed for the hearing of the petition and a copy of the affidavit shall be served on the other party; ● After the admission of the petition, the Tribunal, if it thinks fit, and upon such terms and conditions may appoint the liquidator to be the provisional liquidator pending final orders on the winding up petition; ● The order appointing the provisional liquidator shall be set out the restrictions and limitations, if any, on his powers and imposed by the Tribunal in Form No. 30; ● All costs and charges and expenses properly incurred by the Liquidator shall be paid out of the assets of the LLP; ● The Registrar of the Tribunal shall forthwith send to the liquidator appointed by the Tribunal notice of the order under the seal of the Tribunal in duplicate in Form No. 31 or 32 together with a copy of the petition; ● The order shall be in Form No. 33 with such variations as may be necessary; ● The liquidator shall make out a report for direction with regard to the performance by the liquidator of all or any of the duties or any other matter requiring the directions of the Tribunal; ● The Tribunal may give such directions as it thinks fit in regard to various matters including fixing of time before which the various matter shall be completed;

	● The Tribunal shall, at the time of making the winding up order or at any time thereafter, give directions as to the advertisement of the order and the persons if any on whom the order shall be served; ● Every order for the winding up shall within 14 days of the date of making the order, be advertised by the petitioner in Form No. 34; ● An application for stay of proceedings in the winding up shall be made to the Tribunal upon notice to the parties to the winding up petition; ● If stay order is granted the applicant shall within 15 days file a certified copy of the order with the Registrar in Form No. 10; ● An application for leave of the Tribunal to commence or continue any suit proceedings against the LLP shall be made to the Tribunal upon notice to liquidator and other parties to the suit or proceedings sought to be commenced or continued; ● An application for transfer to the Tribunal of any suit or proceeding by or against the LLP pending in court, other than High court and Supreme Court, or any Tribunal shall be made upon the notice to the liquidator and to the parties to the suit or proceedings sought to be transferred; ● A notice by the liquidator to any person to submit and verify a statement of affairs of LLP, shall be in Form 35 after the order of winding up; ● The Statement of Affairs shall be in Form No. 37 and shall be made out in duplicate, one copy of which shall be verified by affidavit; ● An affidavit of concurrence in the statement of affairs shall be in Form No. 38; ● The liquidator shall verify the Statement of Affairs and affidavit of concurrence and submit one copy to the Tribunal and retain the duplicate copy; ● Partners and other officers of LLP shall attend before the Liquidator and furnish the required information; ● The report shall be submitted by the Liquidator in Form No. 40 and the same shall contain the required information; ● Further report is to be filed by the liquidator in case fraud has been detected; ● On consideration of the Report the Tribunal may pass such orders and give such directions as it may think fit including directions of examination of designated partners, partners, officers and employees past and present of the LLP.
Settlement of list of creditors	The procedure for settlement of creditors is as follows- ● The liquidator, in any mode of winding up, shall issue notice not less than 14 days before the date of hearing to the creditors of the LLP to prove their debts or claims and to establish any title for they may have to priority under preferential payments or to be excluded from the benefit of any distribution made before such debts or claims are proved, or, as the case may be, from objecting to such distribution;

	● The liquidator shall give not less than 14 days of notice so fixed by advertisement which shall be released within 30 days from the date of confirmation of sale and in Form No. 41; ● If the number of creditors does not exceed 100, individual notice may be given within 30 days from the date of confirmation of sale; ● The liquidator shall also give not less than 14 days notice of the date fixed, to every person mentioned in the Statement of Affairs in Form No. 42 or 43; ● Every creditor shall prove his debt, unless the Member in any particular case directs that any creditors or class of creditors shall be admissible without proof; ● An affidavit proving a debt shall contain a statement of accounts showing the particulars of the debt and shall specify the vouchers or bills or contracts or any other material documents, by which the same can be substantiated and shall state whether the creditor is a secured creditor, or a preferential creditor and if so, shall set out the particulars of the security or the preferential claims and the affidavit shall be in Form No. 44; ● Claims for workmen may be in Form No. 45. Such proof shall have a schedule annexed thereto setting forth the names of the workmen and others and the amounts severally due to them; ● A creditor is also to prove the future debts; ● The liquidator shall examine every proof lodged with himself and the grounds of the debt; if it requires further evidence the liquidator shall send notice in Form No. 46 to produce further evidence; ● The liquidator is having power to summon any person in connection with the investigation; ● Unless otherwise ordered by the Member, a creditor shall bear the costs of proving his debt; ● The notice of admission of the proof shall be in Form No. 48; ● The notice of rejection of the proof shall be in Form No. 47; ● Any creditor, aggrieved against the order of the Liquidator, may file appeal before the Tribunal; ● The liquidator is not personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part; ● The liquidator shall, within two months from the last date for proving the debts, file in Tribunal a certificate in Form No. 49 containing a list of creditors who submitted proofs of their claims, the amount of claims etc.,; ● In the event of there being a surplus after payment in full of all the claims admitted to proof, creditors whose proofs have been admitted shall be paid interest from the date of winding up order up to the date of final distributable sum at a rate

	not exceeding the prime lending rate fixed by the RBI; ● In the event of there being a surplus after payment to creditors in full the partners are entitled for return of asset; for this purpose the liquidator shall give a provisional list of partners of the LLP with their names and addresses, the amount of contribution in Form No. 50; ● The liquidator then send notice to every person included in the provisional list in Form No. 51 not later than one month from the date of filing of the provisional list; ● On the hearing date the liquidator hears any objections if any; ● The liquidator then shall prepare the final list for settlement; ● Within 7 days after the settlement of the list, the liquidator shall file in Tribunal a certificate of the list of partners as finally settled by him in Form No. 52; ● The liquidator then issue notice to every person placed on list of partners as finally settled, stating the amount of contribution in Form No. 53; ● The liquidator may vary the final list and file application for rectification and the Tribunal may rectify or vary the list as it may think fit; ● An order varying such a list of partners shall be in Form No.54.
Meeting of creditors or partners in a winding up	• The procedure for meeting of creditors or partners in a winding up by Tribunal and of creditors in a voluntary winding up is as follows- • The liquidator shall summon all meeting of creditors or partners by giving not less than 14 days notice of the time of meeting; • The notice of the meeting shall be advertised in the newspapers; • The notices shall be in such Form No. 55, 55A, 55B, 55C and 55D as may be appropriate; • The place of the meeting shall be at the convenient of the most of the creditors; • Different times or places or both may, if thought fit, be appointed for the meetings of creditors and the meetings of partners; • If any officer fails to attend the liquidator, the liquidator may report such failure to the Tribunal in form No. 56; • The liquidator shall file affidavit for proof of notice in Form No. 57; • The cost of call meetings at the instance of creditor or partner shall be borne by the applicant; • If the meeting is summoned by the liquidator, he or some person nominated by him shall be the Chairman of the meeting; the nomination shall be in form No. 58; • In case of voluntary winding up the Chairman shall be such person as the

	meeting by resolution appoint; • At a meeting of creditors, a resolution shall be deemed to be passed, when a majority in value of creditors present personally or by proxy and voting on the resolution has voted in favor of the resolution; • At a meeting of partners, a resolution shall be deemed to be passed when a majority of the partners present personally or by proxy and voting on the resolution have voted in favor of the resolution; • The liquidator shall file in Tribunal a copy of every resolution certified by him; • The Chairman may, with the consent of the partners or creditors present in the meeting adjourn it from time to time; • The quorum for the meeting is at least two creditors entitled to vote if there are more than 2 or in case of a meeting of partners at least two partners; • If there is no quorum, the meeting shall be adjourned to the same day in the following week at the same time and same place, or to such other day, or time or place as the Chairman may appoint, but the day appointed shall be not less than 7 days or more than 14 days; • The Chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Tribunal; • The Chairman shall within 7 days of the conclusion of the meeting, report the result thereof to the Tribunal and such report shall be in Form No. 59; • The Chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in the boom and the minutes shall be signed by him or by the Chairman of the next meeting; • A list of creditors or partners present at every meeting shall be made and kept as in Form No. 60;
Collection and distribution of assets in a winding up by Tribunal	Rule 203 provides that the duties imposed on the Tribunal with regard to the collection of assets of the LLP and the application of the assets in discharge of LLP's liabilities shall be discharged by the liquidator as an officer of the Tribunal subject to the control of the Tribunal. The liquidator shall, for the purpose of acquiring and retaining possession of the property of the LLP, be in the same position as if he were a Receiver of the property appointed by the Tribunal and the Tribunal may on his application enforce such acquisition or retention accordingly. Where the person who is required to pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any money, property, documents, books or papers which happened to be in his hand for the time being, the Liquidator may apply to the Tribunal for appropriate orders and the notice shall be in form No. 62; Rule 206 provides that the liquidator is to realize unrealized contribution etc.,
Compromise or abandonment of	Rule 235 provides that no claim by the LLP against any person shall be compromised or abandoned by the Liquidator without the sanction of the Tribunal

claims	upon notice to such person as the Tribunal may direct. Rule 236 provides that every application for sanction of a compromise or arrangement with any person shall be accompanied by a copy of the proposed compromise or arrangement and shall be supported by an affidavit of the liquidator stating that for the reasons set out in the affidavit, he is satisfied that the proposed compromise or arrangement is beneficial to the LLP and the Tribunal may, if it thinks fit, direct notice of the application to be given to the Committee of Inspection, if there is one, and to such other person as it may think fit.
Sales by the liquidators	Rule 237 provides that no property belonging to LLP shall be sold by the liquidator without previous sanction of the Tribunal and every sale shall be subject to confirmation by the Tribunal and such order of confirmation may be passed within 60 days of the filing of the report by the Liquidator. Rule 238 provides that every sale shall be held by the liquidator by an agent or an auctioneer approved by the Tribunal and subject to the terms and conditions, if any, as may be approved by the Tribunal. All sales shall be made by public auction or by inviting sealed tenders or in such manner as the Member may direct. Rule 239 provides that the gross proceeds shall, unless the Tribunal otherwise orders, be paid over to the Liquidator by such auctioneer or agent and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent in accordance with the scales, if any fixed by the Tribunal or as approved by the Tribunal.

Distributable sum and returns of assets	Rule 240 provides that no distributable sum to creditor or return of assets to partners shall be declared by the liquidator without the sanction of the Tribunal. No payment shall be made to the creditors which would be deemed to distributable sum without filing list of creditors and sanctioned by Tribunal as distributable sum and no payment shall be made to the partners without filing final settlement of the list of settlement of partners and sanctioned by the Tribunal. Rule 241 provides that liquidator shall give notice of the declaration of distributable sum not less than one month prior to the date fixed for payment. The advertisement shall be in form No. 82. The notice to the creditor shall be in Form No. 83. Rule 242 provides that a person to whom distributable sum is payable may lodge with the liquidator an authority in writing to pay such distributable sum to another person named therein in Form No.84. Rule 243 provides that distributable sum may, at the request and risks of the persons to whom they are payable, be transmitted to him by registered post or any other mode as approved by the Tribunal, by cheques or demand drafts or any other manner a s may be appropriate or as approved by the Tribunals within 45 days from the date of filing the list of creditors before the Tribunal. Rule 244 provides that every order by which the liquidator is authorized to make a return to partners of the LLP, shall, unless Tribunal otherwise directs, contain or have appended there to a list setting out in a tabular form the name, amount etc., and interest which have been made or the variations in the list of partners which have arisen since the date of settlement of the list of partners and such other information as may be necessary to enable the return to be made. This list is in Form No. 85. The liquidator shall send a notice of return to each partner by ordinary post in Form No. 86. The payment may be sent by registered post or any other mode as may be appropriate or as approved by the Tribunal at the risk of the partners. Rule 245 provides that where a claim made in respect of a distributable sum due to a deceased creditor or a return of contribution due to a deceased partner is Rs.500 or less, the liquidator may, upon satisfying himself as tp the claimant's right and title to receive the distributable sum or the return, apply to the Tribunal for sanctioning the payment of such distributable sum or the return without production of a succession certificate or like authority and where the Tribunal sanctions the payment, the liquidator shall make the payment upon obtaining a personal indemnity from the payee.
Termination of winding up	Rule 246 provides that as soon as the affairs of the LLP have been fully wound up, the liquidator shall file his final account with the Tribunal in Form No. 89 and apply for orders as to the dissolution of the LLP. The application shall not be heard until the accounts are audited. Rule 247 provides that upon hearing the application, the Tribunal may, after hearing the liquidator and any other person to whom notice may have been ordered by the Tribunal, order for the dissolution of the LLP. Rule 248 provides that upon the order of dissolution being made, the liquidator shall forthwith pay into the LLP's Liquidation Account in the public account of

	India any unclaimed or unpaid distributable sum payable to the creditors or undistributed or unpaid assets refundable to partners in his hands on the date of order of dissolution, and such other balance in his hands as he has been directed by the Tribunal to deposit into the LLPs Liquidation Account. A copy of the order of dissolution shall, within 30 days from the date of order, be forwarded to the liquidator in Form No. 11 who shall make in his books a minute of the dissolution of LLP. A copy of the same shall be filed with the Registrar along with a Statement signed by him that the directions of the Tribunal regarding the application of the balance as per his final account have been duly complied with.
Conclusion of winding up	Rule 249 provides that the winding up of a LLP shall be deemed to be concluded, in the case of- • An LLP wound up by order of the Tribunal, at the date on which the order dissolving the LLP has been reported by the Liquidator to the Registrar; • An LLP wound up voluntarily, at the date of dissolution of the LLP, unless at such date any fund or assets of the LLP remain unclaimed or undistributed in the hands or under the control of LLP liquidator, or any person who has acted as liquidator, in which case the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the LLP Liquidation Account.
Application to declare dissolution void	Rule 250 provides that an application shall be made upon notice to the Central Government and the Registrar. Where the Tribunal declares the dissolution to have been void, the applicant shall file a certified copy of the order with the Registrar not later than 30 days from the date of order.
Appeal from order of Tribunal to NCLAT	Rule 301 provides that any aggrieved person may prefer an appeal against the order or decision of the Tribunal to the National Company Law Appellate Tribunal within a period of 45 days from the date on which the order is delivered in such manner as may be provided by that Appellate Tribunal.

PRACTICE MANUAL

Fill in the blanks

1. Every LLP has at least ____partners.

2. Designated partners shall always be _____.

3. The particulars of designated partner shall be filed within ____ days of his appointment with the Registrar.

4. Every partner shall inform the LLP of any change in his name or address within a period of ____ days of such change in Form No._____.

5. Every partner of LLP is the _____ of LLP.

6. The books of accounts of a LLP are required to preserve for _____ from the date on which they are made.

7. The LLP shall inform the concerned Registrar within _____ of the date of registration about the conversion and the particulars of LLP.

8. The foreign LLP shall file any alteration with the Registrar within _____ days of the close of the financial year.

9. The Central Government may appoint Inspector to investigate the affairs of the LLP if not less than _____ the total number of partners of LLP make an application.

10. Where an LLP is not carrying on any business for a period of ____ or more, the name of the LLP may be struck off by the Registrar.

Choose the correct answer:

Choose the correct answer

1. An LLP is a-

(a) Partnership;

(b) Company;

(c) Hybrid between a company and a partnership;

(d) None of the above.

2. The procedure for conversion from the firm into LLP is dealt with in the-

(a) First Schedule;

(b) Second Schedule;

(c) Third Schedule;

(d) Fourth Schedule.

3. Which one of the following is not an LLP?

(a) Corporate Sole;

(b) LLP registered under LLP Act;

(c) LLP incorporated outside India;

(d) Company registered outside India.

4. The minimum number of designated partners in an LLP shall-

(a) 1;

(b) 2;

(c) 7;

(d) 15.

5. The fee payable for registration of LLP whose contribution exceeds `10 lakhs is-

(a) `500/-;

(b) `2000/-;

(c) `4000/-;

(d) `5000/-

6. A partner may contribute to the LLP-

(a) Tangible or intangible property;

(b) Moveable or immoveable property;

(c) Money, promissory note etc.,

(d) Any of the above.

7. The accounts of LLP shall be audited if the turnover of LLP exceeds-

(a) ` 10 lakhs;

(b) `20 lakhs;

(c) `40 lakhs;

(d) ` 1 crore.

8. Which one of the following documents is required to keep for more than 5 years?

(a) Copies of Government order relating to LLP;

(b) All papers, registers, refund orders and correspondence relating to the LLP liquidation accounts;

(c) Copies of statistical returns furnished to Government;

(d) Annual return of a LLP.

9. The Act does not allow the conversion from _____ into LLP-

(a) Conversion from firm into LLP;

(b) Conversion from private company to LLP;

(c) Conversion from listed company into LLP;

(d) Conversion from unlisted company into LLP.

10. A compromise or arrangement may be proposed-

(a) Between a LLP and its partners;

(b) Between a LLP and its creditors;

(c) Either (a) or (b);

(d) None of the above

State whether TRUE or FALSE

1. The liability of a partner in an LLP is limited.

2. LLP is a separate legal entity.

3. An LLP is incorporated outside India is also included in the definition of LLP.

4. If the minimum number of partners is reduced below LLP may not carry its business.

5. The liabilities of LLP shall be met out of the properties of designated partners.

6. No partner shall be entitled to remuneration for acting in the business of LLP.

7. The Central Government may compound any offence under this Act which is punishable with fine only.

8. A company may apply to convert itself into a LLP if and only if the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.

9. LLP Administrator shall be appointed from a panel maintained by the State Government for winding up and dissolution of LLP.

10. The liability of every designated partner of the dissolved LLP shall continue and may be enforced as if the LLP had not been dissolved.

Model Questions

1. Discuss the salient features of LLP.

2. Who may be a partner in LLP?

3. Define 'designated partner'. Discuss the procedure of the appointment of a 'designated partner'.

4. Write notes on Designated Partners Identification Number.

5. What are to be included in 'incorporation document'.

6. Discuss the procedure in changing registered office of the LLP.

7. Describe the circumstances under which an LLP would be wound up.

8. Discuss the matters contained in the first schedule in regard to the terms of the agreement for an LLP.

9. Write a note on cessation of partnership interest. Discuss about the liability and entitlement of a ceased partner.

10. Write short notes on-

(a) Statement of Accounts & Solvency;

(b) Annual Return;

(c) Compounding of offences.

11. Discuss about the procedure relating to preservation of LLP records.

12. Discuss the procedure for conversion from a firm into an LLP.

13. Discuss the procedure for conversion from a private company into an LLP.

14. Discuss the procedure for conversion from an unlisted company into an LLP.

15. Elaborate the procedure for convening a meeting of creditors/partners in regard to compromise or arrangement.

Answers:

Fill in the blanks

1. 2;

2. Individual; 3. 30;

4. 15, Form 6;

5. Agent;

6. 8 years;

7. 15 days;

8. 60 days;

9. One fifth;

10. 2 years.

Choose the correct answer

1. C;

2. B;

3. A;

4. B;

5. D;

6. D;

7. C;

8. B;

9. C;

10. C.

State whether TRUE or FALSE

1. FALSE;

2. TRUE;

3. TRUE;

4. FALSE;

5. TRUE;

6. FALSE;

7. TRUE;

8. TRUE;

9. FALSE;

10. TRUE.

MTP Question:

MTP June 2019
Question: 1 Discuss the procedure for Conversion from private limited company into LLP

Answer: Conversion from private limited company into LLP
Para 1(b) of the third schedule defines the term 'convert' in relation to a private company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP in accordance with the third schedule.

A company may apply to convert itself into a LLP if and only if-
• there is no security interest in its assets subsisting or in force at the time of application; and
• the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.
Upon the conversion of a private company into an LLP, the company and its shareholders, the LLP and the partners of the LLP shall be bound by the provisions of this schedule that are applicable to them.

The company has to apply with the Registrar by filing the following documents:

• A statement by all its shareholders in Form No. 18 and fees containing the following particulars-
●The name and registration number of the company;
●The date on which the company was incorporated; and
• Incorporation document and statement;
On the receipt of the above said documents, the Registrar shall register the documents subject to the provisions of the Act and the rules made there under. The Registrar may require the documents to be verified as he considers fit. The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate. The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and of the particulars of LLP in Form along with the fees. If the Registrar is not satisfied with the particulars or other information furnished the Registrar may refused to register. Against this order appeal may be made before the Tribunal.

MTP Jun 2018
Question: 2 Limited Liability Partnerships are body corporate. Do you agree? Justify.

Answer: Limited Liability Partnerships formed and registered under Limited Liability Partnership Act, 2008 are body corporate. All LLPs have the following features:
1. A Limited Liability Partnership is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.
2. A limited liability partnership shall have perpetual succession.
3. Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
4. Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.
5. Any individual or body corporate may be a partner in a limited liability partnership.

MTP Jun 2017
Question: 3 Limited Liability Partnerships are body corporate. Do you agree? Justify.

Answer: Limited Liability Partnerships formed and registered under Limited Liability Partnership Act, 2008 are body corporate. All LLPs have the following features:
1. A Limited Liability Partnership is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.
2. A limited liability partnership shall have perpetual succession.
3. Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
4. Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.
5. Any individual or body corporate may be a partner in a limited liability partnership**.**

MTP Dec 2017
Question: 4 Explain in details the term 'designated partners' under LLP Act, 2008.

Answer: Designated Partners
"Designated partner" in reference to Limited Liability Partnership means any partner designated as such pursuant to section 7 of Limited Liability Partnership Act 2008. Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. In case if no partner is designated as such, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner of the LLP.

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

An individual cannot become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed and he is also required to obtain a Designated Partner Identification Number (DPIN).

The role of Designated Partners in case of LLP is on same footage as of Directors in case of Company. The Designated Partners as provided under Section 8 are directly responsible for the compliances of all provisions provided under LLP Act, 2008 and the provisions specified in the LLP Agreement.

Rights of Designated Partner are same as of other Partners. Alike other partners they are not entitled to any remuneration for their participation in management of LLP unless otherwise specifically provided in the LLP Agreement they ,yet they have additional responsibilities to comply with.

A designated partner shall be

(i) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

(ii) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Major duties of Designated Partner

(i) Notify any changes in the LLP's to Registrar of Companies.

(ii) Notify any changes in the Partners names & residential addresses to Registrar of Companies.

(iii) Notify any change in Registered Office Address to Registrar of Companies.

(iv) Filing of any Annual return, Statement of Accounts and other documents specified under the provisions of LLP Act with the Registrar of Companies.

(v) Statement of Accounts & Solvency to be signed by the Designated Partners of the Company.

(vi) to preserve and to produce before an inspector or any person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power

(vii) Responsible for signing all the eforms filed with the Registrar of Companies.

Any vacancy arising in the office of Designated Partner shall be filled within 30 days and the change shall be intimated to the Registrar of Companies

Suggested Question:

Suggested Dec2018

Question: 5 A limited liability partnership wants to shift its registered office from Mumbai in the State of Maharashtra to Kolkata in the State of West Bengal. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008?

Answer: Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Alternate Answer:

Change of LLP Office from one State to another (in the given problem, it is from Mumbai, Maharashtra to Kolkata, West Bengal)

Resolution for Change of Address: It should be done as per LLP Agreement. If where the Limited LLP doesn't provide for any such procedure, consent of all partners shall be required for changing the place of Registered Office of Limited LLP to another place.

Secured Creditors: Consent of Secured Creditors required for such change of address.

Form to be filed: Form- 15 to be filed with Registrar from where (here it is Mumbai) the LLP proposes to shift its registered office with a copy thereof for the information to the Registrar under whose jurisdiction (Kolkata) the registered office is proposed to be shifted within 30 days of such change.

Public Notice: Publish a general notice, not less than 21 days before filing any notice with Registrar, in a daily newspaper published in English and in the principal language of the district in which the registered office of the LLP is situated **(Mumbai, Maharashtra)** and circulated in that district giving notice of change of registered office.

From when to be filed: Within 30 days of publishing of notice.

Failure to comply with these provisions, the LLP and its every partner is liable to punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Revisionary Question:

Revisionary Dec 2018
Question: 6 Write a note on designated partners.

Answer: Section 7(1) provides that every LLP shall have at least two designated partners. The designated partners shall be individual and at least one of them shall be a resident of India, who has stayed in India for a period not less 182 days during the preceding one year. In case all the partners of the LLP are bodies corporate or one or more partners are individuals and bodies corporate then at least two individual partners or nominees of bodies corporate shall act as designated partners.
• If the incorporation document specifies who are to be designated partners, such persons shall be designated partners on incorporation;
• If the incorporation document states that each of the partners from time to time of LLP is to be designated partner, every partner shall be a designated partner;

• Any partner may become or cease to be a designated partner in accordance with LLP agreement;

Filing requirement: Section 7(4) provides that –
• An individual shall give his consent to become a designated partner in Form – 9;
• The particulars of an individual who has given his consent to act as designated partner shall be filed in Form No.-4;
• The individual who has given consent to act as partner or a designated partner shall file consent in Form -2 along with fee.

Disqualification to become designated partner: Rule 9 prescribes that a person shall not be capable of being appointed as a designated partner of a LLP, if he-

• has at any time within the preceding five years been adjudged insolvent; or
• suspends, or has at any time within the preceding five years suspended payment to his creditors and has not any time within the preceding five years made, a composition with them; or
• has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or
• has been convicted by a Court for an offence involving section 30 of the Act.

Liabilities of designated partners: Section 8 provides the liabilities of designated partners. It provides that unless expressly provided otherwise in this Act, a designated partner shall be –

• responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the Act including filing of any document, return, statement, report under this Act and as specified in the agreement;

• liable to all penalties imposed on the LLP for any contravention of those provisions.

Vacancy: Section 9 provides that a LLP may appoint a designated partner within 30 days of the vacancy arising for any reason. If no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner. Punishment: Section 10(1) provides the LLP contravenes the provisions of Sections 7(1) the LLP and its every partner shall be punishable with fine which shall not be less than ` 10,000/- but which may extend to ` 5 lakhs. Section 10(2) provides that if the LLP contravenes the provisions of Section 7(4) and (5), Section 8 or Section 9 the LLP and every partner shall be punishable with fine which shall not be less than ` 10000/- but which may extend to ` 1 lakh.

Question: 7 A limited liability Partnership wants to shift its registered office from Udaipur in the State of Rajasthan to Gurgaon in the State of Haryana. What procedure the corporate has to follow?

Answer: Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Revisionary June 2018
Question: 8 State the duties of a LLP Liquidator. Would his accounts be audited?

Answer: Rule 13 provides that on appointment of a LLP liquidator, all the powers of the designated partner and other partner, if any, shall cease, except for the purpose of giving notice of such appointment of the LLP liquidator to the Registrar. Rule 14 prescribes the following duties –

 He shall settle the list of creditors or partners, which shall prima facie evidence of the liability of the persons therein to the creditors or partner;

 He shall obtain approval of partners or creditors for any purpose he may consider necessary;

 He shall maintain register and proper books of accounts in the form and manner as specified;

 He shall the debts of the LLP and shall adjust the rights of the partners among themselves;

 He shall observe due care and diligence in the discharge of duties.

Audit of LLP liquidator's account - Rule 15 provides that the accounts of the LLP liquidator shall be audited.

Supervision of winding up - Rule 16 provides that the partners or the creditors may appoint such committees as they consider appropriate to supervise the voluntary winding up and assist the LLP liquidator in discharging the functions.

The LLP liquidator shall report quarterly on the progress of the winding up of the LLP in Form No. 8 to the partners or creditors which shall be made before the end of the following quarter. Where the fraud is reported against any person other than a partner or designated partner, the LLP liquidator, before sending a report to the Tribunal, may intimate it to the partners or designated partners and include their views in the report.

The Tribunal is having power to make any order to transfer the winding up proceedings from voluntary winding up to compulsory winding up by Tribunal.

Revisionary June 2018

Question: 9 A limited liability partnership wants to shift its registered office from Udaipur in the State of Rajasthan to Gurgaon in the State of Haryana. What procedure the corporate has to follow?

Answer: Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors**.**

Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Workbook Question:

Question: 10 Write the Difference between partnership and limited liability partnership.

Answer:

Basis	Partnership	Limited Liability Partnership
1.Legal entity	It is not a separate legal entity	It is a separate legal entity
2.Liability	The liability of the partners is unlimited.	The liability of the members of the LLP is limited.
3.Number of members	Minimum required is two. Maximum number is 50 subject to some exceptions	Minimum number of members for a LLP is 2 and no limit for maximum numbers.
4.Entering into contracts	Partnership is not a separate person and enter into contract on behalf of its partners	LLP is capable of entering into contracts and holding property in its own name
5.Compliance of law	Lesser compliance	More compliance under LLP Act.
6.Dissolution	Firm can be dissolved on the eve of death of partner, retirement of partner etc., unless otherwise e than agreed to in the agreement.	LLP can be dissolved by complying with the provisions of LLP (Winding up and Dissolution) Rules, 2012.

Question: 11 State the provision of Appointment, Removal and Resignation of auditor as per LLP Act 2008

Answer: Appointment of auditor A Chartered Accountant in practice is qualified for appointment as an auditor. The auditor(s) shall be appointed for each financial year of the LLP for auditing its accounts. The designated partners may appoint an auditor(s)-

 at any time for the first financial year but before the end of the first financial year;

 at least 30 days prior to the end of each financial year (other than the first financial year); (to fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of LLP exceeds the limits; or

 to fill up the vacancy caused by removal of an auditor.

If the designated partners have failed to appoint auditor(s), the partners may appoint an auditor or auditors. An auditor appointed shall hold office in accordance with the terms of his or their appointment and shall continue to hold such office till the period-

 the new auditors are appointed; or

 they are re-appointed. Rule 24 (14) provides that where no auditor has been appointed, any auditor in office shall be deemed to be re-appointed unless-

 the LLP agreement requires actual reappointment; or

 the majority of partners have determined that he should be reappointed and have given a notice to this effect to the LLP.

A notice may be in hard copy or electronic form and must be authenticated by the person or persons giving it. The above shall be applicable to removal and resignation of auditors. The remuneration of an auditor may be fixed by the designated partners or in accordance with the procedure laid down in the LLP agreement.

Removal of auditor
Rule 24(18) provides that the partners of a LLP may remove an auditor from office at any time by following the procedure as laid down in the LLP agreement. If the agreement does not provide for the removal of an auditor, consent of all partners shall be required for removal of the auditor from his office.

Resignation of auditor
Rule 24(19) provides that an auditor of an LLP may resign his office by depositing a notice in writing to that effect at the LLP's registered office. If an auditor is not willing to be re-appointed he shall give a notice in writing to the LLP not less than 14 days before the end of the time allowed for appointing the new auditor. The notice is not effective unless it is accompanied by the statement of the circumstances connected with his ceasing to hold office. The auditor's term comes to an end as on the date on which the notice is deposited or on such later date as it may be specified in the notice.

Question: 12 Explain the procedure of Cessation of partnership interest as per LLP Act, 2008.

Answer: Section 24 explains the procedure of Cessation of partnership interest.—
(1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner.

(2) A person shall cease to be a partner of a limited liability partnership— (a) on his death or dissolution of the limited liability partnership; or (b) if he is declared to be of unsound mind by a competent court; or (c) if he has applied to be adjudged as an insolvent or declared as an insolvent.

(3) Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless— (a) the person has

notice that the former partner has ceased to be a partner of the limited liability partnership; or (b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.

(4) The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.

(5) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership—

(a) an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and

(b) his right to share in the accumulated profits of the limited liability partnership, after the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.

(6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership

Question: 13 State the Relationship of partners as per LLP Act, 2008.

Answer*:* Section 23 of the LLP Act elucidates the Relationship of partners, as specified below—

(1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.

(2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.

(3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.

(4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

Scanner Question:

Question:14 2012 - June
Limited Liability Partnership; **(4 marks)**

Answer:
Limited Liability Partnership is formed under Limited Liability Partnership Act, 2008. Its essential features are :

(1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and liability of partners is limited.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

(4) The provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.

(5) Any individual or body corporate may be partner of LLP.

(6) Every limited liability partnership shall have at least two partners.

(7) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
(8) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.

(9) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

Question:15 2013- June
Annual Return (limited liability partnership) **(4 marks)**

Answer:
• Annual return: (Section 35): As per Section 35 of the LLP Act, every LLP shall file an annual return within sixty days of its financial year in such form and manner as may be prescribed.

• Such return should be accompanied by prescribed fees.

• If the LLP fails to comply with the provisions of Section 35 regarding filing of annual return, the LLP will be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees and every designated partner of such LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Question:16 2009- June [1]
A limited liability Partnership is a body corporate. **(2 marks)**

Answer:
A limited liability partnership is a body corporate with legal personality separate from that of its members. It is formed as per the Limited Liability Partnership Act 2009.

Question:17 2009- Dec [4]
How the profit of a limited liability partnership are treated for the purpose of Tax Acts? **(2 marks)**

Answer:
Profit will be treated as profits of the partners or members of LLP and not by the LLP as such.

Question:18 2010- June
A limited liability partnership must ensure that
(i) Where a person becomes or ceases to be a member or designated member, notice is delivered to the Registrar within 30 days.

(ii) Where there is any change in the name or address of a member, notice is delivered to the Registrar within 30 days. **(1 + 1=2 marks)**

Answer:
In first case, the notice to the Registrar be delivered within 14 days and in (ii) within 28 days.

Question:19 2011- Dec
All the members of a limited partnership firm are "designated members". **(2 marks)**

Answer:
Designated Partners
According to Section 7 of Limited Liability Partnership Act,2008,

1. Every limited liability partnership shall have at least two designated
partners who are individuals and at least one of them shall be a resident in India✓
Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

2. Subject to the provisions of sub-Section (1), --
(i) if the incorporation document-

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

(b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;

(ii) any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may ' cease to be a designated partner in accordance with limited liability partnership agreement.

3. An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to &ct as such to the limited liability partnership in such form and manner as may be prescribed.

Question: 20 2012- Dec
Provisions of Indian Partnership Act 1932 are applicable to LLPs and the body Corporate may be partner of LLP. **(2 marks)**

Answer :
The rules and regulations relating to Limited Liability Partnership have been described in the Limited Liability Partnership Act 2008, hence provisions of Indian Partnership Act 1932 are not at all applicable to LLP's. As regard the second portion of the question, the body corporate may be a partner in the LLP as per LLP Act 2008.

Question: 21 2013- Dec [3]

(i) Authorized capital for formation of limited liability partnership (LLP) is one crore.

(ii) Maximum number of partners in a LLP shall not exceed 50.

(iii) Foreign nationals can also be partners in a LLP.

(iv) Audit is not required in LLP in any circumstances. **(1x4 = 4 marks)**

Answer:
(i) NIL-Since the authorised capital is not specified in the Act.

(ii) No maximum limit-as no specific number specified in the Act.

(iii) Yes, foreign Nationals can also be partners.

(iv) Audit is required if the contribution is above INR 25 Lakhs or if annual turnover is above INR 40 Lakhs.

Question: 22 2013- Dec [6]
What are the circumstances in which Limited Liability Partnership may be wound up by Tribunal?
(3 marks)

Answer:
The circumstances in which a limited liability of partnership may be dissolved by Tribunal are provided in Section 64 of the Limited Liability Partnership Act, 2008 A limited liability partnership may be wound up by the Tribunal in following ways:

(i) The limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
(ii) if, for a period of more than six month, the number of partners of the limited liability partnership is reduced below two;

(iii) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;

(iv) if the limited liability partnership has made a default in filling with the Registrar the statement of account and solvency or annual return for ary five consecutive financial years; or

(v) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

(vi) If the limited liability partnership is unable to pay its debts.

Question: 23 2014- June
Explain the concept of 'whistle blowing' with respect to the Limited Liability Partnership Act, 2008.
(3 marks)
Answer:
Whistle blowing policy means a policy in which a mechanism is established to listen and take action against any wrong practice anywhere in the company. The concept has been discussed in Section 31 of the Limited Liability Partnership Act, 2008. As per the Section:

(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that:

(a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or

(b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.

(2) No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other 'manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-Section(l).

Question: 24 2014- June
A Limited Liability Partnership is not bound by any act of its member. Justify. (2 marks)

Answer:
If the member has no authority to act on behalf of LLP, the LLP is not bound by his act. A limited liability partnership is not bound by any act of a member in dealing with persons if:

(a) The member in fact has no authority to act for the limited liability partnership by doing that thing.
(b) The person knows that the members has no authority or does not know or believe him to be a member of limited partnership.

Question: 25 2014- Dec
A limited liability partnership wants to shift its registered office from Udaiipur in the State of Rajasthan to Gurgaon in the State of Haryana. What procedure the corporate has to follow? (4 **marks)**

Answer:
• Sec. 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in form 15 within 30 days.

• Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

• Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office.

• However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted.

• Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Question: 26 2015 - June
Explain the extent of liability of limited liability partnership under Section 26 of LLP Act. (3 **marks)**

Answer:
Extent of liability of limited liability partnership is contained in Section
27 which are as under:

1. A limited liability partnership is not bound by anything done by a partner in a deaiing with a person if:

(a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and

(b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

2. The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.

3. An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

4. The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

Question: 27 2015- Dec
For any contravention of provisions of the LLP Act or LLP agreement, all the partners of LLP are liable for all penalties. Offer your views based on Limited Liability Partnership Act, 2008. (3 **marks)**

Answer:
False, it is the designated partner who is responsible for doing all acts matters and things as are required to be done by LLP as per the Act or as specified in the LLP agreement, Unless expressly provided otherwise in this Act, a designated partner shall be responsible for doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Question: 28 2016 - June [2]
Limited Liability Partnerships are body corporate. Do you agree? Justify. **(5 marks)**

Answer :
Limited liability partnership to be body corporate:
1. A limited liability partnership is a body corporate formed and incorporated under this Act.and is legal entity separate from that of its partners.

2. A limited liability partnership shall have perpetual succession.

3. Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Question: 29 2016 - Dec [2]
List the circumstances under which a LLP formed under the Limited Liability Partnership Act, 2008 may be wound up by tribunal. **(6 marks)**

Answer:
A limited liability partnership may be wound up by the Tribunal, if:

(i) The limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
(ii) If, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;

(iii) If the limited liability partnership is unable to pay its debts;

(iv) If the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

(v) If the limited liability partnership has mode a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or

(vi) If the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Question: 30 2018- Dec

A limited liability partnership wants to shift its registered office from Mumbai in the State of Maharashtra to Kolkata in the State of West Bengal. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008? (8 marks)

Answer:

• According to Sec. 13 of the LLP Act Provides that a limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in form 15 within 30 days.

• Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be need for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

• Where the change in place of registered office is from one State to another State, a general notice, not less than 21 days before filing any notice with Registrar, is need to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership's situated and circulating in that district giving notice of change of registered office.

• Although, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted.

• Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Alternate

Answer:

Change of LLP Office from one State to another (in the given problem,

it is from Mumbai, Maharashtra to Kolkata, West Bengal)

1. **Resolution for Change of Address:** It should be done as per LLP Agreement. If where the Limited LLP doesn't provide for any such procedure, consent of all partners shall be required for changing the place of Registered Office of Limited LLP to another place.

2. Secured Creditors: Consent of Secured Creditors required for such change of address.

3. Form to be filed: Form-15 to be filed with Registrar from where (here it is Mumbai) the LLP proposes to shift its registered office with a copy thereof for the information to the Registrar ihder whose jurisdiction (Kolkata) the registered office is proposed to be shifted within 30 days of such change.

4. Public Notice: Publish a general notice, not less than 21 days before filing any notice with Registrar, in a daily newspaper published in English and another regional language where the registered office of the LLP is situated (Mumbai, Maharashtra) and circulated in that district giving notice of change of registered office.

5. From when to be filed: Within 30 days of publishing of notice.
6. Penalty: Failure to comply with these provisions, the LLP and its every partner is liable to punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Factories Act, 1948

Introduction	There are several legislations which regulate the conditions of employment, work environment and other welfare requirements of certain specific industries. The Factories Act, 1948 enacted to regulate the working conditions in factories. In the case of Ravi Shankar Sharma v. State of Rajasthan, AIR 1993 Raj 117, and Court held that Factories Act is a social legislation and it provides for the health, safety, welfare and other aspects of the workers in the factories. In short, the Act is meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises. The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc. The Act extends to whole of India including Jammu & Kashmir and covers all manufacturing processes and establishments falling within the definition of 'factory' as defined under Section 2(m) of the Act. Unless otherwise provided it is also applicable to factories belonging to Central/State Governments. (Section 116) The Factories Act, 1948 extend to whole of India and came into effect from 01.04.1949.
IMPORTANT DEFINITIONS	**Competent person** Section 2(ca) defines the expression 'competent person' in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to • the qualifications and experience of the person and facilities available at his disposal; or • the qualifications and experience of the persons employed in such institution and facilities available therein, with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognized as a competent person in relation to a factory;
Hazardous Process	Section 2(cb) defines the expression 'hazardous process' as any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes, or effluents thereof would- • cause material impairment to the health of the persons engaged in or connected therewith, or • result in the pollution of the general environment. The State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry, specified in the said Schedule;
Manufacturing process	Section 2(k) defines the expression 'manufacturing process' as any process for • making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or • pumping oil, water, sewage or any other substance; or • generating, transforming or transmitting power; or • composing types for printing, printing by letter press, lithography, photogravure or other

	similar process or book binding; or • constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or • preserving or storing any article in cold storage. In 'M/s Qazi Noorul Hasan Hamid Hussain Petrol Pump V. Deputy Director, Employees' State Insurance Corporation' – 2003 LLR 476 it was held that the definition 'manufacturing process' does not depend upon and is not correlated with any end product being manufactured out of a manufacturing process. It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport, delivery or disposal. It cannot be restricted an activity which may result into manufacturing something or production of a commercially different article.The 'manufacturing process' cannot be interpreted in a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.
Worker	Section 2(l) defines the term 'worker' as a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union. In 'Lal Mohammed V. Indian Railway Construction Co. Limited' – AIR 1999 SC 355 it was held that all the workers employed by a construction company would squarely attract the definition of the term 'workman' as found in Section 2(l) of the Act as they are working for remuneration in a manufacturing process carried out by the project.
Factory	Section 2(m) defines the term 'factory' as any premises including the precincts thereof • whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or • whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place. • For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account; • For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof. In 'Seelan Raj V. Presiding Officer, I Additional Labor Court, Chennai' – 2001 LLR 418 it was held that under Section 2(m), 'Factory' means any premises including the precints thereof in which a manufacturing process is carried on Explanation II of Section 2(m) sets out that the mere fact that an electronic data processing unit or a computer unit is installed in any premises or part thereof would not render a unit into a factory if no manufacturing process is carried on in such premises or part thereof.

	The State Government may make rules relating to approval, licencing and registration of factories and no factory can run without such licence or approval. Power to delicence and deregister is also with the State Government.
Occupier	Section 2(n) defines the term 'occupier' of a factory as the person who has ultimate control over the affairs of the factory. • in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier; • in the case of a company, any one of the directors shall be deemed to be the occupier; • in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier; • in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, • the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under- • section 6, section 7, section 7A, section 7B, section 11 or section 12; • section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock; • section 18, section 19, section 42, section 46, section 47 or section 49, in relation to the workers employed on such repair or maintenance; • the owner of the ship or his agent or master or other office-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44, or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to- • the workers employed directly by him, or by or through any agency; and • the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person. In 'Container Corporation of India Limited v. Lt. Governor, Delhi' – 2002 LLR 1068 it was held that in the case of a company, which owns a factory, it is only one of the directors of the company who can be notified as the occupier of the factory for the purpose of the Act and the company cannot nominate any other employee to be the occupier of the factory. In 'Indian Oil Corporation V. Labor Commissioner' –AIR 1998 SC 2456 it was held that for the purpose of Section 2(n) what is to be seen is who has the 'ultimate control' over the affairs of the factory. Relevant provisions regarding establishment of the Indian Oil Corporation Limited and its working, leave no doubt that the ultimate control over all the affairs of the Corporation, including opening and running of the factories, is with the Central Government. Acting through the Corporation is only a method employed by the Central Government for running its petroleum industry. In the context of Section 2(n) it will have to be held that the all the activities of the Corporation are really carried on by

	the Central Government with a corporate mask.
Notice by occupier	Section 7 provides that the occupier shall, at least 15 days before he begins to occupy or use any premises as a factory, send to the Chief Inspector, a written notice containing the name and situation of the factory, the name and address of the occupier, the nature of manufacturing process, the details of workers etc., Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge.
Duties of occupier	Section 7A prescribes the general duties of occupier.Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
Inspector	Section 8 provides that the State Government may appoint such persons as posses the prescribed qualification to be Inspectors for the purpose of this Act and may assign to them such local limits as it may think fit. Section 9 prescribes the powers of the Inspector as detailed below- • to enter into any place which is used, or which he has reason to believe is used as a factory; • make examination of the premises, plant, machinery, article or substance; • inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not and take on the sport statements of any person which he may consider necessary for such inquiry; • require the production of any document relating to factory; • seize or take copies of any register, record or other documents of any portion thereof as he may consider necessary; • to take possession of any article or substance or part thereof and detain it for so long as is necessary for such examination; • to exercise such other powers as may be prescribed.
Certified surgeons	Section 10 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.The duties of certified surgeons are as follows- • the examination and certification of young persons; • the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed; • the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where- • cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein; • by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health

	of workers employed in that manufacturing process; • young persons are, or are about to be, employed in any work which is likely to cause injury to their health.
Welfare measures	The Factories Act takes care of the workers in the following aspects- • health of the workers in the working environment; • safety of the workers including in the hazardous process; • welfare of the workers; • working hours of adults; • employment of young persons; • Annual leave with wages;
Health	Chapter III of the Act deals with measures to be taken considering the health aspects of the workers. The following are to be taken care of by the occupier of the factory: • cleanliness; • disposal of waste and effluents; • ventilation and temperature; • dust and fume; • artificial humidification; • overcrowding; • lighting; • drinking water; • latrines and urinals; • spittoons
Cleanliness	Section 11 of the Act provides every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular- • removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same; • cleaning of the floor of every workroom – once in every week by washing with disinfectant or by some other effective method; • providing effective drainage for removing water to the extent possible; • to ensure that interior walls and roofs etc., are kept clean the following is to be complied with- • white wash or color wash should be carried out at least once in every period of 14 months;

	• where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months; • where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in e very period of 14 months by such method as may be prescribed. • all doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years; The dates on which such processes are carried out shall be entered in the prescribed register.
Disposal of wastes and effluents	Section 12 provides that effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal.
Ventilation and temperature	Section 13 provides that effective and suitable provision shall be made in every factory for securing and maintaining every workroom with adequate ventilation by the circulation of fresh air and such a temperature as will secure to workers therein reasonable conditions of comfort and prevent to health. In case of the work involves the production excessively high temperatures, adequate measures shall be taken to protect the workers by separating their process which produces such high temperatures from the workroom by insulating the hot parts or by other effective means.
Dust and fume	Section 14 provides that in every factory if there is given off any dust or fume or other impurity of such nature in the process of manufacturing and it is likely to be injurious or offensive to the workers employed, any dust in substantial quantities, offensive to the workers, effective measures shall be taken to prevent its inhalation and accumulation in any work room.Exhaust appliance shall be applied as near as possible to the point of origin of dust, fume or other impurity and such points shall be enclosed so far as possible.
Artificial humidification	Section15 provides that if the humidity of the air is artificially increased, the State Government may make rules- • prescribing standards of humidification; • regulating the methods used for artificially increasing the humidity of the air; • directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded; • prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.
Overcrowding	Section16 provides that no room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.There shall be in every workroom in a factory at least14.2 cubic meters of space for every worker employed therein.
Lighting	Section 17 provides that in every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, nature or artificial or both.All glazed windows and skylights used for the lighting shall be kept clean on both the inner and outer surfaces and free from obstruction.Effective provisions shall be made for the prevention of glare, either directly from a source of light or by reflection from a smooth or polished surface and the formation of shadows to such an extent as to cause eye strain or the risk of accident to any worker.

Drinking water	Section 18 provides that effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed a sufficient supply of wholesome drinking water. Where more than 250 workers are employed provision shall be made for cool drinking water during hot weather.The water points shall be away six meters from any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination.
Latrines and urinals	Section 19 provides that in every factory- • sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at factory; • separate enclosed accommodation shall be provided for male and female workers; • they shall be adequately lighted and ventilated; • they shall be maintained in a clear and sanitary conditions at all times; • sweepers shall be employed to keep clean latrines, urinals and washing places. If there are more than 250 workers are employed all latrine and urinal accommodation shall be of prescribed types. The flows and internal walls andthe sanitary blocks shall be laid in glazed tiles to provide a smooth polished impervious surface.The latrines and urinals shall be washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.
Spittoons	Section 20 provides that there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.
Safety	Chapter IV of the Act prescribes the procedures to be adopted on the safety of the working place in a factory.The factory is to take safety measures in respect of the following- • Fencing of machinery; • Work on or near machinery in motion; • Employment of young persons on dangerous machines; • Striking gear and devices for cutting off power; • Self acting machines; • Casing of a new machinery; • Prohibition of employment of women and children near cotton openers; • Lifting machines, chains, ropes and lifting tackles; • Revolving machinery; • Floors, stairs and means of access; • Pits, sumps openings in floors etc.,; • Excessive weights; • Protection of eyes;

	• Precaution against dangerous fumes, gases, etc., • Precautions regarding the use of portable electric light; • Explosive or inflammable dust, gas etc., • Precaution in case of fire; • Safety on buildings and machinery; • Maintenance of buildings; • Appointment of safety officers
Hazardous Processes	Chapter IVA provides for making provisions relating to hazardous process.The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a Site Appraisal Committee. The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within 90 days of the receipt of such application. The Committee has the power to call for any information from the person making an application.When the application is got approved by the State Government, it shall not be necessary to obtain a further approval from the Central Board of the State Board of pollution authorities.
Responsibility of the occupier	The occupier has to follow the procedure- • to lay down a detailed policy with respect to the health and safety of the workers; • to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory; • to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place. • to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity. Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.
Powers of the Central Government	Section 41D provides that the Central Government is having power to inquire to the standards of health and safety observed in a factory. Section 41E provides to provide emergency standards in respect of a factory. Section 41F provides for fixing the maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing process in any factory. Section 41G provides that the occupier shall set up a Safety Committee consisting of equal number of representations of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that effect. Section 41H provides that the workers have reasonable apprehension

	that there is a likelihood of imminent danger to their lives or health due to accident, they may bring the same to the notice of his occupier, agent, manager or any other person who is in charge of the factory or the process. Immediate action shall be taken and a report to the Inspector having jurisdiction.
Welfare	Chapter V provides the welfare measures to be taken in a factory for the workmen employed in the factory.The following are the welfare measures prescribed in the Act to be provided by the factory to their workmen- • washing facilities; • facilities for storing and drying clothing; • facilities for sitting; • first aid appliances; • canteens; • shelters, rest rooms and lunch rooms; • crèches; • appointment of welfare officers.
Washing facilities	Section 42 provides that in every factory adequate and suitable facilities for washing shall be provided and maintained for the use of the workers.Separate and adequately screened facilities shall be provided for the use of male and female workers.The washing facility shall be conveniently accessible and shall be kept clean.
Facilities for storing and drying clothing	Section 43 provides that the State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.
Facilities for sitting	Section 44 provides that suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they make take advantage of any opportunities for rest which may occur in the course of their work.
First aid appliances	Section 45 provides that first aid appliances shall be provided and maintained so as to be readily accessible during all working hours or cupboards equipped with the prescribed contents and the number of such boxes or cupboards to be provided and maintained shall not be less than for every 150 workers at any one time in the factory.Each first aid box or cupboard shall be kept in charge of a separate reasonable person who holds a certificate in the first aid treatment recognized by the State Government and he should always be readily available during the working hours of the factor. In a factory where more than 500 workers are employed an ambulance of the prescribed size containing the prescribed equipment, nursing staff etc., shall be provided and made readily available at all times.
Canteens	Section 46 provides that if more than 250 workers are employed in a factory a canteen or canteens shall be provided and maintained by the occupier for the user of the workers.The items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs shall be borne by the employer. In 'Ferro Alloys Corporation Limited V. Government of Andhra Pradesh Labor Employment and Technical Education (Labor II) Department' – 2003 (96) FLR 160 it

	was held that there is nothing in Section 46 of the Factories Act, which provides for the mode in which the specified establishment must set up a canteen where it is left to the discretion of the concerned establishment to discharge its obligation of setting up a canteen either by way of direct equipment or by employment of contractor, it cannot be postulated that in the latter event, the persons working in the canteen would be the employees of the establishment.
Shelters, rest rooms and lunch rooms	Section 47 provides that if more than 150 workers are employed adequate and suitable shelters or rest rooms and a suitable lunch room with provision for drinking water shall be provided and maintained for the use of the workers.The same shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.
Crèches	Section 48 provides that if more than 30 women workers are employed there shall be provided and maintained a suitable room for the use of children under the age of 6 years of such women.The same shall be adequately ventilated and shall be maintained in clear and sanitary conditions and under the charge of women trained in the care of children and infants.
Welfare Officers	Section 49 provides that if 500 or more than workers are employed in a factory, the occupier shall employ in the factory such number of welfare officers as may be prescribed. In 'Shyam Vinyals Limited V. T. Prasad' – (1993) 83 FJR 18 (SC) it was held that an Assistant Personnel Officer cannot be held that he was in fact appointed asa Labor Welfare Officer simply because as a Assistant and Personnel Officer he was looking after the problems of the laborers and the welfare of the laborers.
Working hours of adults	**Working hours** Chapter VI of the Act provides for the working hours of adults.This chapter provides for working hours in a day, weekly working hours,weekly holidays, intervals for rest. Spread over of duty, night shift etc., Section 54 provides that no adult worker shall be required or allowed to work in factory for more than nine hours in any day. Section 55 provides that the periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that the worker shall work for more than five hours before he has had an interval for rest of at least half an hour. Section 56 provides that the periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest, they shall not spread over more than ten and half hours in any day. Section 51 provides that no adult worker shall be required or allowed to work in a factory for more than 48 hours in any week.In 'Richa & Company V. Shri Suresh Chand' – 2009 LLR 333 (SN) (Del HC) it was held that increase of 15 minutes working will not be violative of Section 51 of the Act.
Weekly holidays	Section 52 provides that no adult worker shall be required or allowed to work in a factory on the first day of the week unless- • he has or will have a holiday for a whole day on one of the three days immediately before or after the said day; and • the manager of the factory, has, before the said day or the substituted day whichever is earlier- • delivered a notice at the office of the Inspector of his intention to require the worker to

	work on the said day and of the day which is to be substituted; and • displayed a notice to that effect in the factory. In 'Motor and Machinery Manufacturers Limited V. State of West Bengal' – 1964 (2) LLJ 562 it was held that the primary object of the Section 52 is to provide weekly holiday for the workers and such day was fixed to be the first day of the week i.e., Sunday. But for any special reasons, it becomes necessary to make Sunday the working day, a substitutional holiday is made compulsory. But the intendment of the section is not that the employers will at their sweet convert successive on all the Sundays primarily intended to be holidays as working days and make any other working day of the week a holiday instead of Sunday.
Compensatory holidays	Section 53 provides that if a worker is deprived of any of the weekly holidays he shall be allowed within the month in which the holidays were due to him or within two months immediately following that month, compensatory holidays of equal number to the holidays so lost shall be given.
Shift duty	Section 57 provides that where a worker in a factory works on a shift which extends beyond midnight- • for the purposes of Section 52 and 53, a holiday for a whole day shall mean in his case a period of 24 consecutive hours beginning when his shift ends; • the following day for him shall be deemed to be the period of 24 hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day. Section 58 provides that the work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.
Overtime	Section 59 provides that where a worker works in a factory for more than 9 hours in any day or for more than 48 hours in any week, he shall, in respect of the overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. The term 'ordinary rate of wages' is defined as the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.Where any workers are paid on a piece rate basis, the time rate shall be deemed to be equivalent to the daily average of their full time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done and such time rates shall be deemed to be ordinary rate of wages of those workers. In 'National Textiles Corporation (D.P.&R) Limited Unit- Mahalakshmi Mills, Beawar V. Labor Court, Jaipur' – 1997 LLR 518 it was held that Section 59 creates an obligation on the employer to pay extra wages for overtime if a worker works for more than 9 hours in any day or for more than 48 hours in any week.
Double employment	Section 60 imposes restriction that no adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, savein such circumstances as may be prescribed.
Register of adult workers	Section 62 provides that a register of adult workers shall be maintained, showing- • the name of each adult worker in the factory;

	• the nature of the work; • the group, if any, in which he is included; • where his group works on shifts, the relay to which he is allotted; • such other particulars as may be prescribed.
Employment of women	Section 66 provides that the provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions- • no exemption from the provisions of Section 54 may be granted in respect of any woman; • no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M.; • the State Government may authorize the employment of any women between the hours of 10 PM and 5 A.M.; • there shall be no change of shifts except after a weekly holiday or any other holiday.
Employment of young persons	Chapter VII of the Act deals with the employment of young persons.
Prohibition of employment of young children	Section 67 provides that no child who has not completed his 14th year shall be required or allowed to work in any factory.
Adolescent worker	Section 68 provides that a child who has completed his 14th year or an adolescent shall not be allowed to work in any factory unless- • a certificate of fitness granted is in the custody of the manager of the factory; and • such child or adolescent carries while he is at work a token giving a reference to such certificate.
Certificate of fitness	Section 69(1) provides that a certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the Manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the Manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory. Section 69(2) provides that the certifying surgeon, after examination, may grant to such young person, in the prescribed form or may renew- • a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his 14th year, that he has attained the prescribed physical standards and that he is fit for such work; • a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his 15th year and is fit for a full day's work in a factory. The certificate granted by the certifying surgeon shall be valid for a period 12 months from the date thereof.He shall revoke any certificate granted or renewed if in his opinion the holder of it is no longer fit to work in capacity stated therein in a factory.In case the

	certifying surgeon refuses to give certificate he has to give reasons for the same. If a certificate is given under certain conditions, the young person shall not be allowed in any factory except in accordance with those conditions.The occupier is to pay the fee for getting the certificate from the certifying surgeon and the same shall not be recovered from the young person, his parents or guardian.
Working hours for children	Section 71 provide that no child shall be employed or permitted to work in any factory for more than four and a half hours in any day and during night.The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each.Each child shall be employed in only one of the relays which shall not, except with the previous permission. No female child shall be allowed to work in any factory except between 8 A.M. and 7 P.M.,
Register of child workers	Section 73 provides that the Manager of every factor in which children are employed shall maintain a register of child workers showing- • the name of each child worker in the factory; • the nature of his work; • the group, if any, in which he is included; • where his group works on shifts, the relay to which he is allotted; and • the number of his certificate of fitness granted under Section 69.
Annual Leave with wages	Chapter VIII of the Act deals with annual leave granted workers with wages.
Annual leave	Section 79 provides that every worker who has worked for a period 240 days or more in a factory during a calendar year shall be allowedleave with wages for a number days calculated at the rate of- • if an adult, one day for every 20 days of work performed by him during the previous calendar year; • if a child, one day for every 15 days of work performed by him during the previous calendar year. The following shall be deemed to be days on which the worker has worked for the purpose of computation of the period of 240 days or more- • any days of lay off, by agreement or contract or as permissible under the standing orders; • in the case of a female worker, maternity leave for any number of days not exceeding 12 weeks; and • the leave earned in the year prior to that in which the leave is enjoyed but the above shall not be entitled for a worker to earn leave. The leave admissible shall be exclusive of all holidays whether occurring during or at either end of the period of leave. In calculating the leave fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

Carry forward of leave	If a worker does not in any calendar year take the whole of the lave allowed to him any leave not taken by him shallbe carried over to the succeeding year. The total number of leave that may be carried forward shall not exceed 30 days in the case of an adult or 40 in the case of a child. A worker, who has applied for leave with wages but has not been granted, shall be entitled to carry forward the leave refused without any limit.
Availing of leave	A worker may, at any time, apply in writing to the Manager not less than 15 days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year. Such application shall be made not less than 30 days before the date on which he wishes his leave to begin, if he is employed in a public utility service. An application for leave shall not be refused unless refusal is in accordance with the scheme for the time being in operation.
Wages during leave period	Section 80 provides that a worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the month immediately preceding his leave, exclusive of any over time and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles. In case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of the total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked.
Advance payment	Section 81 provides that a worker who has been allowed leave for not less than four days, in case of an adult, and five days, in the case of a child, shall, before his leave begins be paid the wages due for the period of the leave allowed.
Encashment of leave	Section 79(3) provides that if a worker is discharged or dismissed from services or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, shall be entitled to the wages in lieu of the quantum of leave to which he was entitled immediately before such termination of his services. Such payment shall be made before the expiry of the second working day from the date of discharge, dismissal or quitting and where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.
Penalties	Section 92 provides that there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 2 years or with fine which may extend to `1 lakh or with both. If the contravention is continued after conviction, with a further fine which may extend to `1000/- for each day on which the contravention so continued. If the contravention resulted in an accident causing death or serious bodily injury, the fine shall not be less than `25,000/- in the case of an accident causing death, and `5000/- in the case of accident causing serious bodily injury. In 'General Manager, Wheel and Axle Plant, Bangalore V. State of Karnataka' – 1996 (1) FLR 23 (Kar) it was held that where an offence, which is punishable under Section 92 of the Act, has been committed by an officer of the Railways and he is a public servant within the meaning of Section 21 of the Indian Penal Code, the requirement of obtaining sanction to prosecute him is mandatory and taking cognizance of an offence in the absence of sanction cannot be allowed to stand.
Liability of owners	Section 93 provides that where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads,

	drainage, water supply, lighting and sanitation. The owners of the premises shall be liable as if they were the occupier or manager of a factory for any contravention of the provisions of this Act.
Enhanced penalty	Section 94 provides that if any person who has been convicted of any offence punishable under Section 92 of the Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to 3 years or with fine which shall not be less than `10,000/- but which may extend to ` 2 lakhs or with both. The Court may, for any adequate and special reasons recorded in writing, impose of a fine of less than `10,000/-. No cognizance shall be taken of any conviction made more than 2 years before the commission of the offence for which the person is subsequently convicted.
Penalty for obstructing Inspector	Section 95 provides that whoever- • willfully obstructs an Inspector in exercise of any power conferred on him; or • fails to produce on demand any registers or other documents in his custody before the Inspectoror conceals or prevents any worker in a factory from appearing before; or • being examined by, an Inspector shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to `10,000/- or with both.
Penalty for contravention of the provisions relating to hazardous process	Section 96A provides that whoever fails to comply with or contraventions any of the provisions of Section 41B, 41C or 41H or the rules made there under, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to `2 lakhs and in case of the failure or contravention continues, with additional fine which may extend to `5000/- for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. If the failure or contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.
Offences by workers	Section 97 provides that if any worker employed in a factory contravenes any provision of this Act or any rules or by order made there under, imposing any duty or liability on workers, he shall be punishable with fine which may extend to ` 500/-
Penalty for using false certificate of fitness	Section 98 provides that whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself a certificate granted to another person or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to 2 months or with fine which may extend to `1,000/- or with both.
Penalty for permitting double employment of child	Section 99 provides that if a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any director benefit from his wages, shall be punishable with fine which may extend to `1000/- unless it appears to the Court that the child so worked without the consent or connivance of the parent, guardian or person.

PRACTICE MANUAL

Fill in the blanks

1. Safety Officer is required to be appointed where more than _____ workers are ordinarily employed.

2. If more than _____ workers are employed in a factory, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

3. No adult worker shall be allowed to work in a factory for more than _____ hours in any day.

4. In respect of overtime work, the employee is entitled to wages at the rate of _____ his ordinary rate of wages.

5. No woman employee shall be required to work in any factory except between _____ and _____.

6. A child who has completed his 14th year of an adolescent shall not be allowed to work in any factory unless _____granted in the custody of the manager of the factory.

7. _____ shall be provided and maintained for the use of children not under the age of 6 years if more than _____women workers are employed.

8. Occupier is the person who has_____ over the affairs of the factory.

9. The total number of leave that may be carried forward shall not exceed _____ days in the case of adult or _____ in the case of child worker.

10. _____ shall examine an application for an establishment of a factory involving hazardous process.

Choose the correct answer

1. Age of adolescent worker is

(a) 10

(b)14

(c) 18

(d) 21

2. Certificate of fitness to be young worker is to be granted by

(a) Occupier of the factory

(b) Inspector of the factory;

(c) Certifying surgeon

(d) None of the above

3. White wash or color wash should be carried out atleast once in every period of

(a) 14 months;

(b) 24 months;

(c) 48 months;

(d) 60 months

4. Where more than_____ workers are employed provision shall be made for cool drinking water during hot weather.

(a) 100

(b) 250

(c) 500

(d) 1000

5. Shelter rooms with suitable lunch rooms are to be provided, if more than _____ workers are employed.

(a) 100

(b) 250

(c) 500

(d) 1000

(e) none of the above.

6. No female child shall be allowed to work in any factory except between

(a) 8 A.M., and 7 P.M.,;

(b) 6 P.M., and 6 A.M.,

(c) 6 A.M., and 7 P.M.,

(d) 10 P.M. and 5 A.M.,

7. Compensatory holidays are to be availed within _____ month.

(a) 1 month

(b) 2 months

(c) 6 months

(d) 9 months

8. Which one of the following amounts to safety measure?

(a) Artificial humidification;

(b) Ventilation;

(c) Fencing of factory;

(d) First aid appliances

9. Identify from the following which is the power of Inspector of Factory.

(a) Enter into any place ofa factory;

(b) Make inquiry into any accident;

(c) Seize or take copies of any document;

(d) All the above.

10. Weekly holiday shall be_____

(a) First day of the week;

(b) Last day of the week;

(c) Third day of the week;

(d) None of the above.

State whether TRUE or FALSE

1. The Occupier is bound to inform the changes taken place to the authorities by means of a notice.

2. Welfare Officer is required to be appointed if there are 100 or more workers are employed in a factory.

3. Double employment is allowed in factories act.

4. A dismissed employee is entitled to the wages in lieu of the quantum of leave at the time of his dismissal.

5. Government cannot inquire to the standards of health and safety observed in a factory.

6. A woman employee may be allowed to work between 6 p.m. and 6 a.m.

7. If the inspector is obstructed in a factory penalty is imposed on the concerned person.

8. Leave may be availed on oral request to the Supervisor.

9. Strike period is not counted as duty for the purposes of computation of the period of 240 days meant for calculation of leave entitlement.

10. Register of adult workers is to be maintained in a factor.

Questions

1. What are the responsibilities of an occupier in a factory?

2. Discuss the obligations and the right of the worker under the Factories Act.

3. Write a note on ‘hazardous processes.

4. What are the powers that can be exercised by an Inspector under this Act?

5. List the welfare measures to be taken by an Occupier in a factory.

6. What are the measures to be taken to keep the factory clean?

7. Define – Manufacturing Process and Factory.

8. Critically examine the duties of certified surgeon.

9. Briefly discuss the provisions in respect of first aid appliances.

10. Write notes on prohibition of employment of young persons under this Act.

Answers:

Fill in the blanks

1. 1000

2. 250

3. 9

4. Twice

5. 6 a.m. and 5 p.m.

6. A certificate of fitness

7. Crèche, 30

8. Ultimate control

9. 30, 40

10. Site Appraisal Committee

Choose the correct answer

1. B

2. C

3. A

4. B

5. E

6. A

7. B

8. C

9. D

10. C

State whether TRUE or FALSE

1. TRUE

2. FALSE

3. FALSE

4. TRUE

5. FALSE

6. FALSE

7. TRUE

8. FALSE

9. TRUE

10. TRUE

MTP Question

MTP June 2019
Question: 1 Write short notes
Cleanliness of factory:

Answer: Section 11 of the Act provides every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

• removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same;

• cleaning of the floor of every workroom – once in every week by washing with disinfectant or by some other effective method;

• providing effective drainage for removing water to the extent possible;to ensure that interior walls and roofs etc., are kept clean the following is to be complied with-

• white wash or color wash should be carried out at least once in every period of 14 months;

• where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months;

• where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in e very period of 14 months by such method as may be prescribed.

• all doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years;The dates on which such processes are carried out shall be entered in the prescribed register.

Question: 2 What are the responsibilities of an occupier in a factory?

Answer: Exemption of employer from liability in certain cases Section 10 provides that where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the
Court-
• that he has used due diligence to enforce the execution of this Act, and

• that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;

In seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor. If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer

Question: 3 Write short notes
Cleanliness of factory

Answer: Section 11 of the Act provides every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

• removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same;

• cleaning of the floor of every workroom – once in every week by washing with disinfectant or by some other effective method;

• providing effective drainage for removing water to the extent possible;to ensure that interior walls and roofs etc., are kept clean the following is to be complied with-

• white wash or color wash should be carried out at least once in every period of 14 months;

• where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months;

• where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in e very period of 14 months by such method as may be prescribed.

• all doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years;The dates on which such processes are carried out shall be entered in the prescribed register

MTP Dec 18
Question:4 How is overtime Wages fixed as per Minimum Wages Act, 1948.

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher**.**

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages-

□ in case of employment in agriculture - one and a half times the ordinary rate of wages;

□ in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made**.**
Section 14(2) provides that this Act shall not prejudice the operation of the provisions of

Section 59 of the Factories Act in any case where those provisions are applicable.

In Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules.

MTP Jun 2018
Question 5 Discuss the Responsibility of the occupier in a factory.

Answer: Responsibility of the occupier

The occupier has to follow the procedure-

 to lay down a detailed policy with respect to the health and safety of the workers;

 to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;

 to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

 to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory

MTP June 18
Question: 6 What are the rules regarding granting of Annual Leave under Factories Act, 1948?

Answer: Section 79 of Factories Act, 1948 provides that every worker who has worked for a period 240 days or more in a factory during a calendar year shall be allowed leave with wages for a number days calculated at the rate of-

 if an adult, one day for every 20 days of work performed by him during the previous calendar year;

 if a child, one day for every 15 days of work performed by him during the previous calendar year.

The following shall be deemed to be days on which the worker has worked for the purpose of computation of the period of 240 days or more-

 any days of lay off, by agreement or contract or as permissible under the standing orders;

 in the case of a female worker, maternity leave for any number of days not exceeding 12 weeks; and

 the leave earned in the year prior to that in which the leave is enjoyed

but the above shall not be entitled for a worker to earn leave. The leave admissible shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

In calculating the leave fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

MTP Jun 2017

Question: 7 Describe the term, 'Manufacturing Process' as per Factories Act, 1948 and also cite an example.

Answer: Section 2(k) defines the expression manufacturing process as any process for –

 making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

 pumping oil, water, sewage or any other substance; or

 generating, transforming or transmitting power; or

 composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

 constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

 preserving or storing any article in cold storage

In M/s Qazi Noorul Hasan Hamid Hussain Petrol Pump V. Deputy Director, Employees' State Insurance Corporation' – 2003 LLR 476 it was held that the definition manufacturing process' does not depend upon and is not correlated with any end product being manufactured out of a manufacturing process. It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport, delivery or disposal. It cannot be restricted an activity which may result into manufacturing something or production of a commercially different article.The manufacturing process' cannot be interpreted in a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.

Suggested Question:

Suggested June 18
Question:8 Critically examine the duties of certified surgeon under the Factories Act, 1948.

Answer: Section 10 under Factories Act, 1948 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. The duties of certified surgeons are as follows-

 the examination and certification of young persons;

 the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;

 the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where –

 cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;

 by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

 young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Suggested June 18 Write short notes
Question: 9 Manufacturing process under the Factories Act, 1948.

Answer: Manufacturing process
Under Section 2(k) of Factories Act 1948 define 'manufacturing process' as under any process for-

 making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

 pumping oil, water, sewage or any other substance; or

 generating, transforming or transmitting power; or

 composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

 constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

 preserving or storing any article in cold storage.

In 'M/s Qazi Noorul Hasan Hamid Hussain Petrol Pump V. Deputy Director, Employees' State Insurance Corporation' - 2003 LLR 476 it was held that the definition 'manufacturing process' does not depend upon and is not correlated with any end product being manufactured out of a manufacturing process. It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport, delivery or disposal. It cannot be restricted an activity which may result into manufacturing something or production of a commercially different article. The 'manufacturing process' cannot be interpreted in a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.

Suggested Dec 17
Question:10 Write short notes
Cleanliness of factory

Answer: As per Section I I of the Factories Act, 1948 every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular –

• Removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same,

• Cleaning of the floor of every workroom once in every week by washing with disinfectant or by some other effective method,

• Providing effective drainage for removing water to the extent possible,

• All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years,

• To ensure that interior walls and roofs etc. are kept clean the following is to be complied with –

- White wash or color wash should be carried out at least once in every period of 14 months,
- Where surface has been painted or varnished, repair or re-varnished should be carried out once in every 5 years, if washable then once in every period of 6 months,
- Where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.

The dates on which such processes are carried out shall be entered in the prescribed register.

Suggested June 17
Question: 11 What are the responsibilities of an occupier in a factory?

Answer: Responsibility of the occupier The occupier has to follow the procedure-

- to lay down a detailed policy with respect to the health and safety of the workers;

- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;

- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factor.

Revisionary Question:

Revisionary Dec 2018
Question: 12 ABC Ltd. carrying manufacturing activities with aid of power and with eight workers for last two years ending on 31.03.2014. Three more workers were appointed on 01.04.2014, two workmen left the company on 30.04.2014. Thereafter no workman was employed nor any workmen left. Mr. Basant, one of the workman demanded that Factories Act, 1948 shall be applicable to this company but the management denied. Give your opinion.

Answer: According to Sec 2 (m) of the Factories Act, 1948, _factory' means any premises including the precincts thereof –

(i) Wherein 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Wherein 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

In the given case, during the period 01.04.2014 to 30.04.2014, there were 11 workers carrying manufacturing activities with aid of power. So, the Factories Act, 1948 is applicable on ABC Ltd. Mr. Basant is correct.

Question: 13 Discuss the general duties of an „occupier" under the Factories Act, 1948

Answer: General duties of an occupier'are discussed in sec 7A of the Factories Act, 1948. These are as follows:
Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory. Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include –

(i) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;

(ii) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(iii) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety, of all workers at work;

(iv) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;

(v) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

Question: 14 Responsibility of the occupier

Answer: The occupier has to follow the procedure –

 to lay down a detailed policy with respect to the health and safety of the workers;

 to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;

 to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

 to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

Revisionary June 2018
Question: 15 ABC Ltd. carrying manufacturing activities with aid of power and with eight workers for last two years ending on 31.03.2014. Three more workers were appointed on 01.04.2014, two workmen left the company on 30.04.2014. Thereafter no workman was employed nor any workmen left. Mr. Basant, one of the workman demanded that Factories Act, 1948 shall be applicable to this company but the management denied. Give your opinion.

Answer: ***Please refer Revisionary Dec 2018 Q12B***

Question: 16 Discuss the general duties of an 'occupier' under the Factories Act, 1948

Answer: ***Please refer Revisionary Dec 2018 Q 14B***

Question: 17 Penalty for contravention of the provisions relating to hazardous process

Answer: Section 96A provides that whoever fails to comply with or contraventions any of the provisions of Section 41B, 41C or 41H or the rules made there under, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to `2 lakhs and in case of the failure or contravention continues, with additional fine which may extend to `5000/- for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. If the failure or contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

Workbook Question

Question: 18 What is the purpose of Factories Act, 1948?

Answer: Factories Act, 1948 is meant to provide protection to the workers, to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. It also provides for the improvement of working conditions within the factory premises. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc.

Question: 19 Define manufacturing process as per Factories Act, 1948.

Answer: Section 2(k) of Factories Act, 1948 defines 'manufacturing process' as any process for- making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or pumping oil, water, sewage or any other substance; or generating, transforming or transmitting power; or composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or preserving or storing any article in cold storage.

Question: 20 Define factory as per Factories Act, 1948.

Answer: Section 2(m) of Factories Act, 1948 defines the term 'factory' as any premises including the precincts thereof- whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine or mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Question: 21
Write short notes on
(i) Carry forward of leave
(ii) Encashment of leave

Answer: (i) If a worker does not in any calendar year take the whole of the leave allowed to him any leave not taken by him shall be carried over to the succeeding year. The total number of leave that may be carried forward shall not exceed 30 days in the case of an adult or 40 in the case of a child. A worker, who has applied for leave with wages but has not been granted, shall be entitled to carry forward the leave refused without any limit.

(ii) Section 79(3) provides that if a worker is discharged or dismissed from services or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, shall be entitled to the wages in lieu of the quantum of leave to which he was entitled immediately before such termination of his services. Such payment shall be made before the expiry of the second working day from the date of discharge, dismissal or quitting and where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

Question: 22 What are the responsibilities of an occupier in a factory?

Answer: Section 7A prescribes the general duties of occupier. Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
The occupier has to follow the procedure-

(i) to lay down a detailed policy with respect to the health and safety of the workers;

(ii) to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;

(iii) to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

(iv) to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.
Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes.

Question: 23 Critically examine the duties of certified surgeon under the Factories Act, 1948.

Answer: The duties of certified surgeons are as follows-

1. the examination and certification of young person;

2. the examination of person engaged in factories in such dangerous occupations or processes;

3. the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where-

(a) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;

(b) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

(c) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Scanner Question:

Question: 24 2010 - June Write short note :

Working hours for children **(4 marks)**

Answer:

Working Hours for Children : No child shall be employed or permitted :

(i) to work in any factory for more than four and half hours in any day;

(ii) during the night; (iii) not more than two shifts and shifts should be 5 hours apart; (iv) no child shall be allowed to work in any factory on any day on which he has already been working in any other factory; (v) no female child shall be allowed to work in any factory except between 8 am to 7 pm.

Question: 25 2010 - Dec
'Overcrowding' (Factories Act) **(4 marks)**

Answer:
Overcrowding as per Factories Act:
(i) No room in any factory shall be overcrowded to become injurious to health.
(ii) Space for wprker: (i) 9.9 cubic meter for every worker for factories existing before application of Act and (ii) 14.2 Cubic meter for every worker for factories built after the commencement of the Factories Act.
(iii) If the chief inspector requires, a notice specifying the maximum number of workers who may be employed in the room shall be posted in each workroom.
• (iv) The Chief inspector may grant exemptions to above conditions if he is satisfied that such conditions are unnecessary.

Question: 26 2011 - June Write short note on.

Duties of occupier **(4 marks)**

Answer:

Duties of Occupier:

(i) He should ensure safety, health and welfare of all workers who are working in his factory.

(ii) He should maintain plant and machinery of the factory so that they are safe and without risk.

(iii) Handling, storage, transport of all materials should be safe and without risk.

(iv) He should provide, maintain and monitor the working environment in the factory without risk and hazard to workers and adequate in facilities.

(v) The occupier should prepare, revise appropriately and display his general policy regarding the safety, security and health of the workers working in his factory.

Question: 27 2011 - Dec Write short note.

Safety Officers (Factories Act) (4 marks)

Answer:

If State Govt, requires every factory will have a safety officer if it has one thousand or more workers ordinarily. The duties, qualifications and conditions of appointment and service will be decided by the State Govt. The occupier is required to appoint the specified number of safety officers (as given the order of State Govt.) if (i) one thousand or more workers are ordinarily employed; Or (ii) State Govt, is of the opinion that the manufacturing process in the factory may cause risk of body injury, poisoning, disease, or any hazard to health.

Question: 28 2017- Dec [8] Write short note:

Cleanliness of factory (5 marks)

Answer:

Section 11 of the Act provides every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

• removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same;

• cleaning of the floor of every workroom - once in every week by washing with disinfectant or by some other effective method;

• providing effective drainage for removing water to the extent possible;

• to ensure that interior walls and roofs etc., are kept clean the following is to be complied with-

• white wash or colour wash should be carried out at least once in every period of 14 months;

• where surface has been painted or varnished, repair or re-varnish should be carried out once in every five years, if washable then once in every, period of six months;

• where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.

• all doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years;

The dates on which such processes are carried out shall be entered in the prescribed register. ™

Question: 29 2018- June Write short note

Manufacturing process under the Factories Act, 1948. (5 Marks)

Answer:

Manufacturing process under the Factories Act, 1948 ^‘Manufacturing Process” means Process for:

(i) Making, altering, repairing, oiling, washing, cleaning, ornamenting, finishing, packing, breaking up, or otherwise treating or adapting any article or substance with a view to its use, sale transport, delivery or disposal, or

(ii) Pumping oil, water, sewage or any other substance or,

(iii) Generating, transforming or transmitting, power, or

(iv) Composing types for printing the letter press, lithography, photographing, or other similar process or book binding, or

(v) Constructing, re-constructing, repairing, refitting, or breaking up of ships or vessels ; or

(vi) Preserving or Storing any articles in cold storage;

In this regard it becomes necessary to discuss some special circumstances that came up in some court cases:

(1) Preparation of food with aid of various electrical appliances in kitchen of a hotel is a manufacturing process: As decided in the case of "Poona Industrial Hotel vs. I.C. Sarin, 1980, Lab I.C. 100.

(2) Selling of petrol or diesel by a petrol dealer or repairing of motor vehicle will not come within the term "manufacturing process", as noted in the case of: "National Service Centre and Petrol Pump Vs. E.S.I Corporation, 1983 lab I.C. 412 (P. & H.).

(3) The work of mere packing cannot be called as a manufacturing process; {ref. A.I.R. 1955 NUC 2710}.

(4) The business of sale of diesel oil, motor spirit, lubricant, servicing of cars and lorries, repairing vehicles and charging batteries with the aid of power, by employing more than 20 workers / labourers amount to manufacturing process, as noted in the case of "Baranagar Service Station Vs. E.S.I Corporation (1987) 1 L.L.N 912 (Cal.) (Divisional Bench). & Lab I.C. 302.

(5) Decorticating groundnuts in electric mill is a manufacturing process (A.I.R. 1959 Madras 30).

(6) Breaking up of boulders is a manufacturing process - as decided in case of "Larsen & Toubro Vs. State of Orissa, 1992 Lab I.C. 1513 (Orissa Divisional Bench).

(7) Transportation of goods on contract basis from one place to another by road with the assistance of transport carriers is not a manufacturing process-as decided in the case of Regional Director, E.S.I.C Vs. Jaihind Roadways, Bangalore (2001),1 L.L.J 1187 (Karnataka).

(8) Reading the definition of 'Manufacturing Process' in the light of Supreme Court in "Workmen", Delhi Electricity Supply Undertaking Vs. management", (1974) 3 S.C.C. 108, the word 'or' in Section 2(k) (iii) must be read as 'and'.

Question: 30 2008- Dec

Personnel Manager told to Director that at least one canteen shall be provided in every factory. Do you agree? (2 marks)

Answer:

False : According to Factories Act, 1948, a canteen is required to be provided in any specified factory if the number of workers working in it is more than 250. Hence, it is not mandatory for every factory to provide canteen.

Question: 31 2009- June

Occupier of a factory in relation to the company means factory Manager of the factory, Answer based on legal provision. (2 marks)

Answer:

False : Occupier has been defined in the Factories Act in **Section 2(n)** as the person who has ultimate control over the affairs of the factory. It is also stated further that in case of firm or other association of individuals, any pne of the partners or members thereof shall be deemed to be the 'occupier'. The **Section 2** further states that in case of a company, any of the directors shall be deemed to be the 'occupier'.

Question: 32 2009- June

As per provision of Factories Act, every factory is to appoint at least one welfare Officer-Do you agree? Answer citing rules. (2 marks)

Answer:

False : In every factory wherein 500 or more workers are ordinarily employed, the occupier shall employ such number of welfare officer as may be prescribed.

Question: 33 2009 - Dec

(1) A factory owner can close a place of employment of his own. (2 marks)
(2) Creches are compulsory in a factory where women employees are employed. (2 marks)

Answer:
(1) Prior permission of government is required for closure of a place of employment if the industrial establishment employs 100 or more workmen.
(2) Creches are required to be provided when in a factory, more than 30 women are employed.

Question: 34 2010- June

Factories Act provides certain precaution measures in case of fire, give details. ' (4 marks)

Answer:

The precautions required in case of fire as per Factories Act, are as follows:

(i) All precautions and measures should be taken to prevent the occurrence of fire inside and outside the factory.

(ii) Fire escape should be provided. This should be adequate for all the employees.

(iii) All necessary equipments and facilities should be provided to fight and put out the fire.

(iv) All workers must be trained regarding what they should do in case of fire. All must know where the escape is.

(v) The state govt, has powers to give directions in this regard.

(vi) The Chief Inspector has all the powers, if in his opinion, the measures and precautions taken by factory to deal with fire, are inadequate, he may direct the factory to provide more facilities, equipments and arrangements in the factory. He may also frame a time schedule for this.

Question: 35 2010- June

(i) Manager of the factory fixed the working hours of women from 6 p.m. to 1 a.m. during the period from Monday to Friday of first week of May 2010. Whether it is permissible, cite with Rule position. (2 marks)

(ii) As per Factories Act 'First Aid Boxes' shall be provided and maintained not less than one for every 200 workers ordinarily engaged. (2 marks)

Answer:

(i) As per the provisions of Factories Act, the working hours for women are between 6.00 am to 7.00 pm. No woman shall be allowed, to work from

7.00pm to 6.00 am.

The state government has powers to alter the above limits but in no case the women will be allowed to work in any factory between 10.00 pm to

6.00am. Hence, the manager's decision is incorrect in the eyes of law.

(ii) As per the Factories Act, " first aid boxes" shall be provided and maintained not less than one for every 150 (not 200 as given) workers ordinarily engaged.

Question: 36 2010 - Dec
As per Factories Act, Canteen is mandatory in all the factories. (2 marks)

Answer:
False. According to Factories Act, 1948, a canteen is required to be provided in any specialized factory if the number of workers working in it is 250 or more. Hence, it is not mandatory for every factory to provide canteen.

Question: 37 2010 - Dec

What is the normal time for payment of Wages (Factories Act). (4 marks)

Answer:
(i) For Railway, factory or industrial or other establishment where less than 1,000 persons are working : Wages shall be paid before expiry of 7th day from date of wage becoming payable.

(ii) For Railway, factory or industrial or other establishment where 1,000 or more persons are working : Wages should be paid before expiry of 10lh day from date of wage becoming payable.

(iii) For persons employed in Dock, Wharf (landing place), or Jetty: Wages shall be paid before expin/ of 7th day from date of wage becoming payable.

(iv) When the person is removed from service, his due wages shall be paid to him before the expiry of 2nd working day from the date of removal of service.

Question: 38 2011- June
Occupier of a Factory means the person who occupies and resides in the factory. Offer your views. (2 marks)

Answer:
The statement is wrong. The Occupier of a factory means any person having ultimate control over the affairs of the factory.

Question: 39 2011- Dec
An young employee disagreed to work on dangerous machines in a factory. (2 marks)

Answer:
A young employee cannot be allowed to work at any machine unless:
(i) he has been fully instructed to the dangers arising in connection with the machine and the precautions to be taken; and

(ii) he has received sufficient training in work at the machine, or

(iii) he has under adequate supervision by a person who has thorough knowledge and experience in the machine. **(Section 23 of Factories Act, 1948).**

(iv) State Government may prescribe / specify such machines which in its opinion are of such dangerous character that young persons ought not work on them unless foregoing requirements are complied with.

Question: 40 2012- June
Any child can be employed in a factory. **(2 marks)**

Answer:
As per The Factories Act, 1948**,** Children below 14 years are not allowed to work in the factory. Child means a child who has not completed the age of 15 years. After attaining the age of 14, he or she can work in the factory provided he or she has a certificate of fitness given by a competent authority. **Space to write important points for revision**

Question: 41 2012- June
"Young person" means a person who has completed 18 years of age (Factories Act, 1948). Do you agre

Answer:
The statement is not correct. Young person means a person who is either a child or an adolescent. [Sec 2(d), The Factories Act, 1948]
A child means a person who has not completed his 15th year of age. [Sec 2(c), The Factories Act, 1948] An adolescent means a person who has completed his 15th year of age but not completed his 18th year. [Sec 2(b), The Factories Act, 1948]

Question: 42 2012 - Dec
Are there any provisions in the Factories Act for protection of eyes of Workmen? (2 marks)

(i) Who is 'Occupier' (Factories Act)
(ii) State the Duty of the Occupier when a new manager is appointed in the factory. (2 + 2 = 4 marks)

Answer :
(i) Yes, State Govt, by rules require that effective screens or suitable goggles shall be provided for the protection of eyes of persons employed on or in the immediate vicinity of manufacturing process which involves:
1. Risk of injury to the eyes from particles or fragments thrown off in the course of process or
2. Risk to the eyes by reason of exposure to excessive light. ,

(ii) Occupier has been defined in tlje Factories Act in Section 2(n) as the person who has ultimate control over the affairs of the factory. It is also stated further that in case of firm or other association of individuals, any one of the partners or members thereof shall be deemed to be the 'occupier'.
The Section 2 further states that in case of a company, any of the directors shall be deemed to be the 'occupier'. The Supreme Court resolved in *JK Industries vs Chief Inspector of Factories in 1997that* only a member of Board of Directors of the company can be a 'occupier' of the factory of the company. The ultimate control of the factory vests with the BOD of the company and not on anyone else. Any company which owns a factory cannot nominate its employee or its officer except the director of the company as the occupier of its factory.
(ii) When the new manager is appointed, it is the duty of the occupier to inform the inspector and chief inspector in writing regarding the appointment within seven days of the appointment.

Question: 42 2013- June

Factories Act, 1948 is applicable to all the factories wherein 50 or more workers are working. (2 marks)

Answer:

Factories Act, 1948 is applicable to factory which is defined as: Factory : means any premises including its precincts (means zone, sector, ground, division, area. Precinct means any area enclosed by wall.) where (i) **ten or more** workers are working or were working in **any day** of the preceding
twelve months, in a manufacturing process which is carried on **with the help of power** Or (ii) **twenty or more** workers are working or were working in any day of the preceding twelve months, in a manufacturing process which is carried on **without the help of power.**

Question: 43 2013- June
As per Factories Act, adequate shelters, rest rooms and lunch rooms are mandatory in all the factories. Do you agree? Give correct answer. (2 marks)

Answer:
The occupier is required to provide suitable shelters or rest rooms and a suitable lunch rooms with provision of drinking water, in his factory if more than one hundred and fifty workers are ordinarily employed in it.

Question: 44 2014- June

Does a laundry attached to the hospital (main Institution) used for washing linen used in the hospital is factory within the meaning of the Factories Act, 1948? (3 **marks)**

Answer:

• When hospital is not a factory, it is obvious that any department of hospital cannot be treated as factory.
• ***In Dr. PSS Sundar Rao, GS v Inspector of Factories Vellore 1984 II LLJ 237 Mad,*** the question was whether a laundry attached to the Christian Medical College and Hospital, Vellore is Factory within the meaning of this Act.
• The Madras High Court held that the laundry run by the hospital cannot be separated from the main Institution. In order to ensure high degree of hygienic standard the Hospital is having its own laundry for washing the linen used in the hospital.
• Therefore, laundry is only subsidiary, minor or incidental establishment of the hospital which is not a factory.
• • One department of the Hospital established for the efficient functioning of the Hospital cannot be therefore be disjoined from the main Institution and termed to be a factory.

• The paramount or the primary character of the main Institution alone has to be taken into consideration and when the main Institution is not a factory; a department thereof cannot become so, even though a manufacturing process is carried on there.

Question: 45 2015 - June
Explain the right of workers to warn about imminent danger under the Factories Act, 1948. (3 marks)

Answer:
As per Section 41H of the Factories Act, 1948, it is the right of workers to
warn about imminent danger
(1) Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the safety committee and simultaneously bring the same to the notice of the Inspector.
(2) It shall be the duty of such occupier, agent, manager or the person incharge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith the action taken to the nearest Inspector.
(3) If the occupier, agent manager or the person in charge referred to in sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

Question: 46 2016 - Dec
Employees of an electricity generation station claimed that their unit is covered under the definition of 'factory' considering the process of transforming and transmission of electricity generated at the power station as a 'manufacturing process'. Will their claim succeed under Factories Act, 1948. (6 marks)

Answer:

As per **Section 2(k) of the Factories Act, 1948, manufacturing process means any process for:**

(i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
(ii) Pumping oil, water, sewage or any other substance; or;
(iii) Generating, transforming or transmitting power; or
(iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
(v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
(vi) Preserving or storing any article in cold storage;
Process undertaken at electricity generating station, Sub-station is transferring and transmitting electricity is not a manufacturing process and are not thus factory- ***[Delhi Electricity Supply Undertaking vs. Management of DESU, AIR(1973)SCC 365].***

Question: 47 2017 - June

What are the responsibilities of an occupier in a factory? (5 marks)

Answer:

Responsibility of the occupier

The occupier has to follow the procedure;
• to lay down a detailed policy with respect to the health and safety of the workers;'
• to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
• to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the^vent of accident taking place.
t
• to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to4iazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who pqpsess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

Question: 48 2018- June

Critically examine the duties of certified surgeon under the Factories Act, 1948. (8 marks)

Answer:

Section 10 under the Factories Act, 1948 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. The duties of certified surgeons are as follows-

• the examination and certification of young persons;
• the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;
• the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where –

cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;

by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Question: 49 2015 - Dec

ABC Ltd. carrying manufacturing activities with aid of power and with eight workers for last two years ending on 31.03.2014. Three more workers were appointed on 01.04.2014, two workmen left the company on 30.04.2014. Thereafter no workman was employed nor any workmen left. Mr. Basant, one of the workman demanded that Factories Act, 1948 shall be applicable to this company but the management denied. Give your opinion. (3 marks)

Answer:

According to See. 2 (m) of the Factories Act, 1948, 'factory' means any premises including the precincts thereof:

(i) Wherein 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Wherein 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

In the given case, during the period 01.04.2014 to 30.04.2014, there were 11 workers carrying manufacturing activities with aid of power. So, the Factories Act, 1948 is applicable on ABC Ltd. Mr. Basant is correct.

PAYMENT OF GRATUITY ACT, 1972

Introduction	The term 'gratuity' is derived from the Latin word 'gratuitous'. 'Gratuity' is the payment made by the employer to the employee at the time of termination of his service either by retirement on superannuation or on resignation or on termination of the service. This is the old age retiral social security benefit. A lump sum is payable in consideration of the past services rendered by the employee. The payment of gratuity will be a relief to the retired employee or to the family members of the employee who dies during his service. For this purpose the Payment of Gratuity Act, 1972 was enacted. The Act was amended from time to time. To carry out the provisions of the Act the Central Government made 'The Payment of Gratuity Rules, 1972 which came into force with effect from 16th September, 1972. The Supreme Court in 'Burhanpur Tapti Mills Limited V. Burhanpur Tapti Mills Mazdoor Sangh' – 1964 (11) TMI 79 - SUPREME COURT – it was held that it is a gratuitous payment extended to an employee on retirement or discharge, in addition to the retrial benefits payable to the employee.
Object	An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto, employing 10 or more persons (with aid of power) and 20 (without aid of power).
Effect	The Act came into effect from 16th September, 1972.
Important Definitions:	**Appropriate Government** Section 2(a) defines the term 'appropriate Government' as • in relation to an establishment- • belonging to, or under the control of, the Central Government, • having branches in more than one State, • of a factory belonging to, or under the control of, the Central Government, • of a major port, mine, oilfield or railway company - the Central Government, • in any other case - the State Government;
Employee	Section 2(e) of the Act defines the term 'employee' as any person, other than an apprentice, who is employed for wages, whether the terms of such employment are express or implied, in any kind ofwork, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity. In 'Ahmedabad Private Primary Teachers Association V. Administrative Officer' – AIR 2004 SC 1426 it was held that teacher was held to be not an employee under the Act. The teachers are clearly not intended to be covered by the definition of employee. But the Payment of Gratuity (Amendment) Act, 2009 has amended the definition of 'employee, including teachers in educational institutions within the purview of the Act.
Employer	Section 2(f) defines the term 'employer', in relation to any establishment, factory, mine, oilfield, port, Railway Company or shop-

	• belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by appropriate Government for the supervision or control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned; • belonging to, or under the control of, any local authority, the person appointed by such authority for supervision and control of employees or where no person has been so appointed, the Chief Executive Officer of the local authority; • in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oil field, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.
Family	Section 2(h) defines the term 'family' in relation to an employee, shall be deemed to consist of- (i) in case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any; (ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. The explanation to this section provides that where the personal law of an employee permits the adoption by him of a child, any lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption lawful such child shall be deemed to be excluded from the family of the employees. Rule 5 provides that a notice under the proviso to sub clause (ii) of clause (h) of section 2 shall be in Form D and sent in triplicate by the employee to the employer, who shall, after recording its receipt on one copy thereof, return the copy to the employee and send the second copy to the controlling authority of the area. Rule 5(2) provides that an employee may withdraw the notice referred to in sub-rule (1) by giving another notice in triplicate in Form 'E' to the employer, who shall follow the same procedure as in subrule (1).
Retirement	Section 2(q) of the Act defines the term 'retirement' as termination of the service of an employee otherwise than on superannuation.
Superannuation	Section 2(r) defines the term 'superannuation' as in relation to an employee, the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment.
Wages	Section 2(s) defines the term 'wages' as all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, over time wages and any other allowance.
Continuous service	Section 2A deals with the continuous service. According to this section- 1. an employee shall be said to be in 'continuous service' for a period if he has, for that period been in un-interrupted service, including service which may be interrupted on account of sickness, accident leave, absence from duty without leave (not being absence

	in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay off, strike or a lock out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act; 2. where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) for any period of one year or six month, he shall be deemed to be in continuous service under the employer: (a) for the said period of one year, if the employee during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) 190 days in the case of an employee employed below the ground in mine or in an establishment which works for less than 6 days a week; and (ii) 240 days in any other case; (b) for the period of 6 months, if the employee during the period of 6 calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than- (i) 95 days, in the case of an employee below the ground in a mine or in an establishment which works for less than 6 days in a week; and (ii) 120 days in any other case The explanation to this section provide that for the purpose of clause (2), the number of days on which the employee has actually worked under an employer shall include the days on which- • he has been laid off under an agreement or as permitted by the standing orders made under the Industrial Establishment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment; • he has been on leave with full wages, earned in the previous year; • he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and • in the case of a female, she has been on maternity leave, so however, that the total period of such maternity leave does not exceed 26 weeks. 3. Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75%, of the number of days on which the establishment was in operation during such period.
Disablement	Disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.
Exemption	Section 5 of the Act gives powers to the appropriate Government to give exemption to any establishment from the purview of this Act, if it is satisfied that the employees in such establishment are in receipt of gratuity or pensionary benefits not less favorable than the benefits covered under this Act.

Notice of openings, change and closure of the establishment	Rule 3 provides that within thirty days of the rules becoming applicable to an establishment, a notice in Form A shall be submitted by the employer to the Controlling Authority of the area. A notice in Form B shall be submitted by the employer to the controlling authority of the area within thirty days of any change in the name, address, employer or nature of business. Where an employer intends to close down the business he shall submit a notice in Form C to the controlling authority of the area at least sixty days before the intended closure.
Display of notice	Rule 4 provides that the employer shall display conspicuously a notice at or near the main entrance of the establishment in bold letters in English and in a language understood by the majority of the employees specifying the name of officer with designation authorized by the employer to receive on his behalf notices under the Act or the rules.
Payment of Gratuity	Section 4(1) provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,- • on his superannuation, or • on his retirement; or • resignation, or • on his death or disablement due to accident or disease; The completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement. In the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to the heirs. Section 4(2) provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. In the case of piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account. In the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season. Section 4(3) provides that the amount of gratuity payable to an employee shall not exceed twenty months' wages. The maximum gratuity payable is ` 20 lakhs. Section 4(4) provides that for the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced. Section 4(5) provides that nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.
Forfeiture of Gratuity	Section 4(6) provides that notwithstanding anything contained in sub-section (1),-

	• the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused; • the gratuity payable to an employee may be wholly or partially forfeited,- • if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or • if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. The right of receiving the gratuity by the employee is the statutory right. Once it is eligible to receive the gratuity the employee is entitled to receive the same unless otherwise restricted by the provisions of law. The Court in 'KSRTC, Bangalore V. Deputy Labor Commissioner and the Appellate Authority, Bangalore and others' – 2014 (2) TMI 629 - KARNATAKA HIGH COURT held that right to gratuity is a statutory right and cannot be withheld under any circumstances but for the exception enumerated in Section 4(6) of the Act. In 'D.S. Nakara V. Union of India' – 1982 (12) TMI 151 - SUPREME COURT the Supreme Court held that gratuity is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing, corresponding to ageing process and when, one falls, back on savings. Such payment cannot be withheld unless specifically permitted by any statutory provision. In 'D.V. Kapoor V. Union of India' – 1990 (8) TMI 390 - SUPREME COURT OF INDIA it was held that the right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that this gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction. If circumstances require forfeiting either partially or fully a specific order shall be passed by the employer in this regard. For this purpose the employer shall issue a show cause notice to the employee indicating the grounds for forfeiture of gratuity and he shall be given a reasonable opportunity of being heard. The final decision will be taken on the basis of reply, if any, given by the employer and the order of forfeiture shall be passed and intimated to the employee. In 'Karnataka State Road Transport Corporation, Bangalore V. Deputy Labor Commissioner and the Appellate Authority, Bangalore and others' – 2012-III-LLJ-384 (Kant) the Court held that having regard to the mandate of Section 4(6) of the Act before forfeiting the gratuity amount, the petitioner employer ought to have extended an opportunity of hearing to the employee over the proposal to forfeit the amount of gratuity. Even otherwise, the statutory provision for forfeiture of gratuity when construed strict the petitioner corporation was required to prove before the Controlling Authority the extent of damage or loss cause by the employee for the acts of alleged misconduct by reason of which the employer is disentitled to gratuity.
Amount of gratuity payable	Gratuity is calculated on the basis of the continuous service rendered by the employee, for every completed year of service or part in excess of six months at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is `10 lakhs with effect from 08.04.2010. This has been increased from ` 3,50,000/- which was the maximum amount payable as gratuity from 24.09.1997 to 07.04.2010.

	Formula for calculation of gratuity = Last wage drawn x 15/26 x completed years of service In calculation of gratuity one month is taken as 26 days.
Nomination	Section 6 provides for filing nomination for receiving the gratuity after the death of the employee. The following are the points to be noted in respect of nomination- • Each employee, who has completed one year of service, shall make nomination in Form – F; • He may distribute the amount of gratuity payable to him under this Act amongst more than one nominee; • If an employee has a family at the time of making a nomination, the nomination shall be made in favor of one or more members of his family, and any nomination made by such employee in favor of a person who is not a member of his family shall be void.; • If at the time of making a nomination the employee has no family, the nomination may be made in favor of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favor of one or more members of his family; • A nomination may, subject to above, be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so; • If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest; • Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody. Rule 6 (1) provides that a nomination shall be submitted in duplicate by personal service by the employee, after taking proper receipt or by sending through registered post acknowledgement due to the employer, • in the case of an employee who is already in employment for a year or more on the date of commencement of these rules, ordinarily, within ninety days from such date, and • in the case of an employee who completes one year of service after the date of commencement of these rules, ordinarily within thirty days of the completion of one year of service. Nomination in Form 'F' shall be accepted by the employer after the specified period, if filed with reasonable grounds for delay, and no nomination so accepted shall be invalid merely because it was filed after the specified period. Rule 6(2) provides that within thirty days of the receipt of nomination in Form 'F' under sub-rule (1), the employer shall get the service particulars of the employee, as mentioned in the form of nomination, verified with reference to the records of the establishment and return to the employee, after obtaining a receipt thereof, the duplicate copy of the nomination in form 'F' duly attested either by the employer or an officer authorized in this behalf by him, as a token of recording of the nomination by the employer and the other copy of the nomination shall be recorded.

	Rule 6(3) provides that an employee who has no family at the time of making a nomination shall, within ninety days of acquiring a family submit in the manner specified in sub-rule (1), a fresh nomination, as required under sub-section (4) of section 6, duplicate in Form 'G' to the employer and thereafter the provisions of sub-rule (2) shall apply mutatis mutandis as if it was made under sub-rule (1). Rule 6(4) provides that a notice of modification of a nomination, including cases where a nominee predeceases an employee, shall be submitted in duplicate in Form 'H' to the employer in the manner specified in sub-rule (1), and thereafter the provisions of sub-rule (2) shall apply mutatis mutandis. Rule 6(5) provides that a nomination or a fresh nomination or a notice of modification of nomination shall be signed by the employee or, if illiterate, shall bear his thumb impression, in the presence of two witnesses, who shall also sign a declaration to that effect in the nomination, fresh nomination or notice of modification of nomination, as the case may be. Rule 6(6) provides that a nomination, fresh nomination or notice of modification of nomination shall take effect from the date of receipt thereof by the employer.
Determination of the amount of gratuity	Section 7 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined. The notice shall be in Form L. The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable. If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.
Dispute	Section 7(4) provides that if there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the Controlling Authority. The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable to an employee. If as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, the controlling authority shall direct the employer to pay such amount as is in excess of the amount deposited by him. Then the Controlling Authority shall pay the amount of the deposit- • to the applicant where he is the employee; or • where the applicant is not the employee, to the nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.
Application for gratuity	Rule 7(1) provides that an employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form 'I' to the employer. Where

	the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement. Rule 7(2) provides that a nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within thirty days from the date of gratuity became payable to him, in Form 'J' to the employer. An application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him. Rule 7(3) provides that a legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within one year from the date of gratuity became payable to him, in Form 'K' to the employer. Rule 7(4) provides that where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement. Rule 7(6) provides that an application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due.
Belated application	Rule 7(5) provides that an application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

Notice for payment of gratuity	(1) Within fifteen days of the receipt of an application under rule 7 for payment of gratuity, the employer shall- (i) if the claim is found admissible on verification, issue a notice in Form 'L' to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or (ii) if the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority. (2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form 'L' under clause (1) of sub-rule (1) shall be re fixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified. (3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. In that 'case, the time limit specified for issuance of notices under sub-rule (1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer. (4) A notice in Form 'L' or Form 'M' shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgement due. (5) A notice under sub-section (2) of section 7 shall in Form 'L
Mode of service of notice	Rule 8(5) provides that a notice in Form 'L' or Form 'M' shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgement due.
Mode of payment	Rule 9 provides that the gratuity payable under the Act shall be paid in cash or, if so desired by the payee, in Demand Draft or bank Cheque to the eligible employee, nominee or legal heir, as the case may be. In case the eligible employee, nominee or legal heir, as the case may be, so desires and the amount of gratuity payable is less than one thousand rupees, payment may be made by postal money order after deducting the postal money order commission there for from the amount payable. Intimation about the details of payment shall also be given by the employer to the controlling authority of the area. In the case of nominee, or an heir, who is minor, the controlling authority shall invest the gratuity amount deposited with him for the benefit of such minor in term deposit with the State Bank of India or any of its subsidiaries or any Nationalized Bank.
Application for direction	Rule 10 provides that if the employer- • refuses to accept nomination; or • to entertain an application for gratuity; or • rejects the eligibility of gratuity; or

	• indicates less amount than the eligible amount of gratuity in the notice; or • fails to issue notice the eligible person to receive the gratuity may file an application in Form – N within 90 days from the date of occurrence of the cause, to the Controlling authority for the issue of directions to the employer. Additional copies are to be sent along with the application for the purpose of issuing the same to the opposite parties. If the said application is filed after the limitation period of 90 days, the Controlling Authority may admit the application if the applicant shows sufficient cause for the delay in filing the application. The said application may be submitted to the Controlling authority in person or it may be sent through registered post with acknowledgment due.
Directions issued by Authority	On receipt of an application under rule 10 the controlling authority shall, by issuing a notice in Form 'O', call upon the applicant as well as the employer to appear before him on a specified date, time and place, either by himself or through his authorized representative together with all relevant documents and witnesses, if any. Any person desiring to act on behalf of an employer or employee, nominee or legal heir, as the cases may be, shall present to the controlling authority a letter of authority from the employer or the person concerned, as the case may be, on whose behalf he seeks to act together with a written statement explaining his interest in the matter and praying for permission so to act. The controlling authority shall record thereon an order either according his approval or specifying, in the case of refusal to grant the permission prayed for, the reasons for the refusal. A party appearing by an authorized representative shall be bound by the acts of the representative. After completion of hearing on the date fixed under sub-rule (1), or after such further evidence, examination of documents, witnesses, hearing and enquiry, as may be deemed necessary, the controlling authority shall record his finding as to whether any amount is payable to the applicant under the Act. A copy of the finding shall be given to each of the parties. If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the controlling authority may proceed to hear and determine the application ex parte. If the applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application. Such an order may, on good cause being shown within thirty days of the said order, be reviewed and the application re-heard after giving not less than fourteen days' notice to the opposite party of the date fixed for rehearing of the application. The sittings of the controlling authority shall be held at such times and at such places as he may fix and he shall inform the parties of the same in such manner as he thinks fit. The controlling authority may authorize a clerk of his office to administer oaths for the purpose of making affidavits. The controlling authority may, at any stage of the proceedings before him, either upon or without an application by any of the parties involved in the proceedings before him, and on such terms as may appear to the controlling authority just, issue summons to any person in Form 'P' either to give evidence or to produce documents or for both purposes on a specified date, time and place.

	Any notice, summons, process or order issued by the controlling authority may be served either personally or by registered post acknowledgement due or in any other manner as prescribed under the Code of Civil Procedure, 1908. Where there are numerous persons as parties to any proceeding before the controlling authority and such persons are members of any trade union or association or are represented by an authorized person, the service of notice on the Secretary, or where there is no Secretary, on the principal officer of the trade union or association, or on the authorized person shall be deemed to be service on such persons. If a finding is recorded that the applicant is entitled to payment of gratuity under the Act, the controlling authority shall issue a notice to the employer concerned in Form 'R' specifying the amount payable and directing payment thereof to the applicant under intimation to the controlling authority within thirty days from the date of the receipt of the notice by the employer. A copy of the notice shall be endorsed to the applicant employee, nominee or legal heir, as the case may be.
Powers of the Controlling Authority	For the purpose of conducting an inquiry the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely :- • enforcing the attendance of any person or examining him on oath; • requiring the discovery and production of documents; • receiving evidence on affidavits; • issuing commission for the examination of witnesses.
Appeal	Any person aggrieved by an order may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf. The appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days. The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.
Recovery of gratuity	Section 8 provides that if the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at the rate of nine per cent per annum, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.
Penalties	Section 9(1) provides that whoever, for the purpose of avoiding any payment to be made by himself under this Act or enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Section 9(2) provides that an employer who contravenes, or makes default in complying with, any of the provisions of this Act or any rule or order made there under shall be punishable with imprisonment for a term which may extend to one year, or with fine

	which may extend to one thousand rupees, or with both. Where the offence relates to non-payment of any gratuity payable under this Act, the employer shall be punishable with imprisonment for a term which shall not be less than three months unless the court trying the offence, for reasons to be recorded by it in writing is of opinion that a lesser term of imprisonment or the imprisonment of a fine would meet the ends of justice.
Exemption of employer from liability in certain cases	Section 10 provides that where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court- • that he has used due diligence to enforce the execution of this Act, and • that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence; In seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor. If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.
Cognizance of offence	Section 11 provides that no court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government. Where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorize the controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorization, make such complaint to a magistrate having jurisdiction to try the offence. No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.
Protection of gratuity	Section 13 provides that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court. Section 13A provides that notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act 2009 receives the assent of the president, the gratuity shall be payable to an employee in pursuance of this notification of the Government of India in the Ministry of Labor and Employment vide SO 1080 dated the 3rd day of April 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the payment of gratuity (Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly. Nothing contained in this section shall extend or be construed to extend to affect any person with any punishment or penalty whatsoever by reason of the non employment by him of the gratuity during the period specified in this section which shall become due in

	pursuance of the said notification.
Act to override other enactments etc.,	Section 14 provides that the provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act. In 'Jaswant Sing Gill V. Bharat Coking Coal Limited and others' – 2006 (11) TMI 550 - SUPREME COURT OF INDIA the Supreme Court held that the rules framed under the Coal India Executives' Conduct Discipline and Appeal Rules, 1978 which provided for a forfeiture of gratuity were not statutory rules and the provisions of Gratuity Act must therefore prevail over the rules. But in 'Rajan Shanthi P. V. Union of India' – 2010-IV-LLJ-600, the Supreme Court considered a seeming conflict between the provisions of Gratuity act, 1972 with reference to the provisions which have been extracted, namely, Section 4(6) and Section 5 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955. Section 5 of the latter Act is very similar to Clause 5 of the Regulations, 1964. Section 5(1)(a)(i) extends the benefit of gratuity to an employee whose services are terminated by the employer for any reason whatever, otherwise than a punishment inflicted by way of disciplinary act. The Supreme Court reasoned that the Payment of Gratuity Act was a general act and the Working Journalists and Other Newspaper Employees (Conditions of service) and Misc. Provisions of Act, 1955 was a special enactment will prevail when there is a conflict between a general act and a special act. Thus if the service of an employee has been terminated by way of disciplinary action under the Working Journalists and other Newspaper Employees (Conditions of Service) and Misc. Provisions of Act,1955, he is not entitled to gratuity.
Display of abstract of the Acts and Rules	The employer shall display an abstract of the Act and the rules made there under as given in Form 'U' in English and in the language understood by the majority of the employees at conspicuous place at or near the main entrance of the establishment.

PRACTICE MANUAL

Fill in the blanks

1. The gratuity is payable to an employee after he has rendered continuous service for not less than _____ years.

2. The maximum amount of gratuity payable is_____.

3. The employer shall arrange to pay gratuity within_____ from the date of its becoming payable to the eligible person.

4. Appeal, against the order of the Controlling Authority may be filed within _____ days from the date of receipt of the order.

5. If the gratuity is not paid in time the employer is liable to pay interest at _____ per annum.

6. Nomination is to be made by an employee in Form_____.

7. Gratuity is calculated for every completed year of service or part in excess of six months at the rate of _____ wages last drawn.

8. Section 4A may exempt the employer employing _____ or more persons who establishes an approved gratuity fund.

9. An employee, within _____ of acquiring a family shall submit a fresh nomination.

10. If there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the _____.

Choose the correct answer

1. Which does not amount to retirement?

(a) Retrenchment;

(b) Resignation;

(c) Dismissal;

(d) Superannuation**.**

2. Gratuity is payable to an employee

(a) On his superannuation;

(b) Retirement;

(c) Retrenchment;

(d) In all the above cases**.**

3. The gratuity is payable to an employee shall not exceed-

(a) 12 months pay;

(b) 16 months pay;

(c) 20 months pay;
(d) 24 months pay.

4. The employer shall display an abstract of the Act and the Rules in Form No

(a) U

(b) H

(c) O

(d) N

5. If sufficient cause is shown the appropriate Government may condone the delay in filing appeal against the order of the Controlling Authority, for

(a) 30 days;

(b) 60 days;

(c) 90 days;

(d) No time limit.

6. Nomination is to be made by an employee

(a) Immediately on his appointment;

(b) After completion of one year service;

(c) After he is made permanent;

(d) None of the above.

7. Which one of the following is to be included in the definition of 'wage'?

(a) Dearness allowance;

(b) Overtime allowance;

(c) Commission;

(d) House rent allowance.

8. If an employer intends to close the business he is to send notice to the Controlling Authority within _____ before the intended closure.

(a) 10 days;

(b) 30 days;

(c) 60 days;

(d) 90 days.

9. Nomination is to be filed in_____

(a) Single form

(b) Duplicate

(c) Triplicate

(d) Quadruplicate.

10. Which will not amount to service of notice under the rule?

(a) Personal service;

(b) By registered post;

(c) By courier.

State whether TRUE or FALSE

1. A person holding a post under the Central Government is an employee under the Payment of Gratuity act.

2. The father-in-law of a female employee will come under the term 'family'.

3. The maternity leave granted for 90 days will be included for the calculation of continuous service.

4. An employee is not required to obtain insurance for liability for payment of gratuity.

5. An employee may give nomination to his friend to receive gratuity after his marriage.

6. No gratuity payable shall be liable to attachment in execution of any decree of court.

7. The Controlling Authority may pay the gratuity to a minor, a nominee to receive the gratuity after the death of an employee.

8. For the purpose of calculation of gratuity 26 days are taken as a month.

9. The employer can make agreement with the employer to pay gratuity below the amount fixed by the Act.

10. Gratuity is a lump sum payable on consideration of the past services rendered by the employee.

Model Questions

1. Define 'continuous service'. Elucidate the requirement of minimum no of days for continuous service in respect of regular employment and seasonal employment.

2. Discuss the grounds on which the gratuity may be forfeited.

3. Explain the provisions relating to 'nomination'.

4. What are the powers of the Controlling Authority in deciding an application for payment of gratuity?

5. What is the remedy available if the employer rejects the application of an employee for payment of gratuity?

6. Explain the procedure for an employer to determine the gratuity payable to the employee.

7. Describe the procedure for mode of payment of gratuity.

8. Explain the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity.

9. Discuss the penal provisions under this Act.
10. Write a short on approved gratuity fund.

Answers:

Fill in the blanks

1. 5

2. ` 10 lakhs;

3. 30 days;

4. 60 days;

5. 10%;

6. F;

7. 15 days;

8. 500;

9. 90 days;

10. Controlling Authority.

Choose the correct answer

1. D

2. D

3. C

4. A

5. B

6. B

7. A

8. C

9. B

10. C

State whether TRUE or FALSE

1. FALSE

2. TRUE

3. TRUE

4. FALSE

5. FALSE

6. TRUE

7. FALSE

8. TRUE

9. FALSE

10. TRUE

MTP Question:

MTP June 19
Question: 1 Explain the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity.

Answer: Section 10 provides that where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court-

• that he has used due diligence to enforce the execution of this Act, and

• that the said other person committed the offence in question without his knowledge,consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;

In seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor. If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

Question: 2 What are the responsibilities of an occupier in a factory?

Answer: Responsibility of the occupier
The occupier has to follow the procedure-

• to lay down a detailed policy with respect to the health and safety of the workers;

• to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;

• to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

• to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity. Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

MTP Jun 2018
Question: 3 Write a note on:
Protection of Gratuity

Answer: Section 13 provides that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Section 13A provides that notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act 2009 receives the assent of the president, the gratuity shall be payable to an employee in pursuance of this notification of the Government of India in the Ministry of Labor and Employment vide SO 1080 dated the 3rd day of April 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the payment of gratuity (Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly.

Nothing contained in this section shall extend or be construed to extend to affect any person with any punishment or penalty whatsoever by reason of the non employment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.

Question: 4 Determination of amount of Gratuity

Answer: Section 7 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of

gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined. The notice shall be in Form L.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.

If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

MTP June 2017
Question:5 Determination of amount of Gratuity

Answer: Section 7 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined. The notice shall be in Form L.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.

If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

Question: 6 Aswani who was an employee of Sun Televisions Limited, retired on 1st January, 2013 after 30 years of continuous service. The company did not pay the amount of gratuity to Aswani till the end of December, 2013. Now, Aswani claims the amount of gratuity along with interest. Decide, under the Payment of Gratuity Act, 1972 whether Aswani will succeed in his claim?

Answer: If the employer fails to pay the gratuity within the prescribed time (i.e., within 30 days of termination of employment), the controlling authority is empowered to issue a certificate, known as the recovery certificate to the collector to recover the amount of gratuity. Before issue of such certificate, the controlling authority shall give the employer a reasonable opportunity of being heard.

The employer shall also be liable to pay compound interest at such rate as may be notified by CG from time to time. The interest shall be paid starting from the date of expiry of prescribed period for payment of gratuity and ending with the actual date of payment of gratuity. However, the interest payable shall not exceed the amount of gratuity payable. The gratuity shall be recovered by the collector in the same manner as if it were arrears of land revenue. The gratuity so recovered shall be paid to the person entitled to payment of gratuity**.**

Hence Aswani may follow the above rules for settlement of his claim.

Question: 7 Forfeiture of Gratuity

Answer: Forfeiture of Gratuity
Section 4(6) provides that notwithstanding anything contained in sub-section (1),-

- the gratuity of an employee, whose services have been terminated for any act, will ful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

- the gratuity payable to an employee may be wholly or partially forfeited,-

  - if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

  - if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Suggested Question:

Suggested Dec 2018
Question: 8 Mr. Gill, an employee of M/s Sonabheel Tea Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Mr. Gill. Examine the decision taken by the company to forfeit the amount ofgratuity in the light of the Payment of Gratuity Act, 1972.

Answer: The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused.

The gratuity payable to an employee may be wholly or partially forfeited:

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Mr. Gill is entitled to receive the balance gratuity.

Suggested Dec 2017
Question: 9 Discuss the procedure for determination of the amount of gratuity as per section 7 of the Payment of Gratuity Act, 1972.

Answer: Section 7 of the Payment of Gratuity Act. 1972 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable the employer shall whether the employee has made application or not, determine the amount of gratuity Then he is to give notice to the person to whom the gratuity is payable and also to the controlling authority, specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within stipulated period the employer is liable to pay interest at the rate of 10 % per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable. If the claim for gratuity is not found admissible, issue a notice in form 'M' to the applicant employee nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

Revisionary Question:

Revisionary Dec 2018
Question: 10 Mr. Green, an employee of Yellow Ltd. becomes disabled due to a disease and is unable to do the same work. He was then re-employed on the reduced wage. How the gratuity of Mr. Green shall be, computed under the provisions of the Payment of Gratuity Act, 1972?

Answer: Computation of Gratuity of a disabled employee: According to Section 4(4) of the Payment of Gratuity Act, 1972, when an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in two parts:-

• For the period preceding the disablement: on the basis of wages last drawn by the employee at the time of his disablement.

• For the period subsequent to the disablement: On the basis of the reduced wages as drawn by him at the time of the termination of services.

In the case of Bharat Commerce and Industries Vs. Ram Prasad, it was decided that if for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are better than the Act, the employee is entitled for that benefit.

As per section 4(3), the maximum amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.

Question:11 Mr. Alexander was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. Alexander applied to the Appropriate Authority for the recovery of the amount of gratuity. Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Answer: Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act,1972. Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Question:12 Mr. Alexander was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. Alexander applied to the Appropriate Authority for the recovery of the amount of gratuity. Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Answer: Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death

or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act,1972. Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).

In the given case the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. Alexender is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. Alexender. On the refusal by the company, Mr. Alexender can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

Question: 13 Write short notes on:
Protection of gratuity

Answer: Section 13 provides that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Section 13A provides that notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act 2009 receives the assent of the president, the gratuity shall be payable to an employee in pursuance of this notification of the Government of India in the Ministry of Labor and Employment vide SO 1080 dated the 3rd day of April 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the payment of gratuity (Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly.

Nothing contained in this section shall extend or be construed to extend to affect any person with any punishment or penalty whatsoever by reason of the non employment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.

Revisionary June 2018

Question: 14 Ajit an employee of Supertech Copper Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Ajit. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

Answer: The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused. The gratuity payable to an employee may be wholly or partially forfeited:- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Ajit is entitled to receive the balance gratuity.

Question: 15 (a) How is the amount of Gratuity determined in case of the following employees:
(i) A monthly rated employee
(ii) A piece rated employee
(iii) An employee of a seasonal establishment

Answer: Calculation of amount of gratuity:

(i) In case of monthly rated employee:
- The gratuity shall be payable @ 15 days wages for every completed year of service or part thereof in excess of 6 months.
- 'Wages' means last drawn wages.
- 'Month' means a period of 26 days.
- Thus, gratuity shall be computed as follows:
- Last drawn wages x 15/26 x Completed years of service (including a part of year in excess of 6 months).

(ii) In case of piece rated employee:
- Gratuity shall be computed as follows:
- Last drawn wages x 15/26 x Completed years of service (including a part of year in excess of 6 months).
- Last drawn wages shall be computed by taking average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment.

While computing daily wages, the total wages of last 3 months is to be divided by number of days the employee actually worked, and not by the number of days or the number of working days in the said period of 3 months.
- For the purpose of computation of last drawn wages, wages paid for overtime work shall not be included in 'wages'.

(iii) In the case of an employee of a seasonal establishment:
- Such an employee shall be paid gratuity at the rate of 7 days' wages for each season.

Question: 16 Dispute as to the amount of gratuity payable

Answer: Section 7(4) provides that if there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the Controlling Authority. The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable to an employee. If as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, the controlling authority shall direct the employer to pay such amount as is in excess of the amount deposited by him.

Then the Controlling Authority shall pay the amount of the deposit-
- **to the applicant where he is the employee; or**
- **where the applicant is not the employee, to the nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.**

Workbook:

Question: 17 Define family as per Payment of Gratuity Act, 1972

Answer: Section 2(h) of Payment of Gratuity Act, 1972 defines the term 'family' in relation to an employee, shall be deemed to consist of-
(i) in case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any;

(ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

Question: 18 What does it mean by the term Retirement?

Answer: Section 2(q) of Payment of Gratuity Act, 1972 defines the term 'retirement' as termination of the service of an employee otherwise than on superannuation.

Section 2(r) defines the term 'superannuation' as in relation to an employee, the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment.

Question: 19 Discuss the different means of payment of Gratuity.

Answer: Section 4(1) of Payment of Gratuity Act, 1972 provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

On his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease;

Section 4(2) provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. The maximum amount of gratuity allowed under the Act is 20 lakhs (with effect from March 2018). Formula for calculation of gratuity = Last wage drawn x 15/26 x completed years of service. In calculation of gratuity one month is taken as 26 days. No half year shall be counted. If an employee is employed for more than half year (even by one day) it will taken as full year but he has worked for 5 months and 29 days, it will be ignored.

In the case of piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

In the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Section 4(3) provides that the amount of gratuity payable to an employee shall not exceed twenty months' wage.

Question: 20 Discuss the situations on which gratuity can be forfeited.

Answer: Section 4(6) provides that notwithstanding anything contained in sub-section (1),- the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

The gratuity payable to an employee may be wholly or partially forfeited,- If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Scanner Question:

Question: 21 2009 - June Write explanatory note on:

Recovery of Gratuity **(4 marks)**

Answer:

Recovery of Gratuity: If the amount of Gratuity payable under the act is not paid within the prescribed time i.e 30 days to the entitled thereto, the said employee may apply to the Controlling Authority for direction to pay the gratuity.
Controlling Authority may give a reasonable opportunity of showing cause. After hearing both the parties, the Controlling Authority, issues orders for payment of gratuity with interest specifying the last date for such payment.
If the employer fails to pay the gratuity within the prescribed time against the order of the controlling Authority, then the controlling Authority issues certificates for that amount to the collector who shall recover the same with compound

interest at such rate as the central Govt, may specify from the date of expiry of prescribed time as arrears of land revenue and pay the same to the employee entitled thereto.

Question: 22 2012- **June** Write short note on :

Protection of Gratuity; (4 marks)

Answer:

No gratuity payable under the Payment of Gratuity Act, 1972 and no gratuity payable to an employee employed in any establishment, factory, mines, oil field, plantation, port, Railway company or shop exempted u/s 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court. [Sec. 13, The Payment of Gratuity Act, 1972]

Question: 23 2012 - Dec Write short note on :
Forfeiture of Gratuity. (4 marks)

Answer:
Forfeiture of Gratuity:
• Gratuity can be forfeited for any employee whose services have been terminated for any act of violence, wilful omission or negligence causing damage or destruction to the property belonging to the employer.
• It can also be forfeited for any act which constitutes an offence involving moral turpitude.
• Where services have not been terminated on any of the above ground, the employer cannot withhold gratuity due to employee.
• Where the land'of the employer is not vacated by the employee, gratuity cannot be withheld.

Question: 24 2013- **June** Write short notes on:

Forfeiture (Gratuity Act, 1972) (4 marks)

Answer:

Please refer 2012 - Dec [4] (a) (ii) on page no. 270

Question: 25 2009- Dec Whether Mr. Sham who joined the company on 1.7.05 and died on 30.11.09 is entitled to Gratuity. Answer citing Rules. (2 marks)
Answer:
In accordance with the Payment of Gratuity Act, the gratuity is payable to the employee under following conditions :
• On death or disablement due to accident or disease.
• Due to resignation or retirement.
• On termination of his employment.
• Due to his.superannuation.
Other requirements for payment of gratuity are as follows:
He is required to have rendered continuous period of service for not less than five years but compliance of this condition is not necessary in case of death or disablement. Sanctioned leave is counted in service period.
In case of death, the gratuity is payable to his nominee and in the absence of nominee to his legal heirs. If nominee and legal heirs are minor, the amount of gratuity is invested until they attain maturity.

Question: 26 2010- June
Gratuity can be attached in execution of a decree or order of any civil, revenue or criminal court. (2 marks)

Answer:
False: This protection is specifically provided in the Payment of Gratuity Act, 1972 that the gratuity cannot be attached by an order of the Court.

Question: 27 2010 - June When and to whom gratuity is payable? (4 marks)

Answer:

Gratuity is payable to employees who have rendered continuous service for minimum 5 years in following circumstances :

(i) On the superannuation (ii) on his/her retirement or resignation (iii) on his/her death or disablement. In case of death, gratuity is paid to the nominees or to his/her legal heirs, if there was no nominee. In case of death, the condition of continuous service of 5 years is not applicable.

Question: 28 2010- **Dec**

Payment of Gratuity Act, 1972 applies to all the factories. **(2 marks)**

Answer:

Payment of Gratuity Act, 1972 applies to

(i) Every factory, mine, oil fields, plantation, Port and Railway company;

(ii) Every shop and establishment employing ten or more persons;

(iii) Any other establishment employing ten or more person.

Question: 29 2011- June

Retirement and superannuation. (under Payment of Gratuity Act) are same.

(4 marks)

Answer :

False. As per payment of gratuity act the retirement means termination of service of an employee otherwise than superannuation. Superannuation is attainment of a prescribed age by the employee at which he is retired from job. Space to write important points for revision[1]

Question: 30 2011 - June [4]

Nomination once made cannot be changed (Payment of Gratuity Act) **(2 marks)**

Answer:

False : Nomination can be changed as per the will of the person receiving the gratuity. All provisions of applicable sections must be followed before such change of nomination.

Question: 31 2014- **June**

State the nature of dispute as to gratuity that may be decided by the Controlling Authority. **(3 marks)**

Answer:

The Controlling Authority may decide the following disputes:

(a) Dispute as to amount of gratuity payable to an employee under the Payment of Gratuity Act.

(b) Dispute as to the admissibility of any claim of, or in relation to an employer for payment of gratuity.

(c) Dispute as to the person entitled to receive gratuity **[Sec. 7(4)(a)].**

Question: 32 2016- **June**

Under what circumstances the gratuity payable to an employee be forfeited? **(8 marks)**

Answer:

Forfeiture of Gratuity:

The legal provisions relating to the forfeiture of gratuity are contained in Section 4 (6) of the Payment of Gratuity Act, 1972 and may be summed up as under:

1. The gratuity payable to an employee shall be forfeited where the services of an employee have been terminated due to any act, willful ■ omission or negligence on the part of the employee and employee's such act etc. has caused:

(a) damage or loss to the property belonging to the employer, or
(b) destruction of the property belonging to the employer.

In this case, the gratuity payable to the employee shall be forfeited to the extent of the damage or loss caused to employer's property due to employees act, omission or negligence **[Section 4(6)(a)]**

2. **The gratuity payable to an employee may be forfeited:**
(a) If the services of such employee have been terminated for his riotous or disorderly conduct or any other Act of violence on his part, or
(b) If the services of such employee have been terminated for any Act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.
' In the above stated cases, the gratuity payable to an employee may be forfeited wholly or partially. **[Section 4(6)(b)]**
Following judicial decisions are important to note in connection with the forfeiture of gratuity by the employer:

(i) The right of the employer to forfeit the amount of gratuity of an employee whose services were terminated due to any Act, wilful omission or negligence causing any damage to the employer's property is limited to the extent of damage and the proof of such damage.

[Permali Wallance Ltd. Ite. ***State of M.P. (1996) IILLJ 515 (MP)].***

(ii) The right of the employer to forfeit the gratuity is available only in the circumstances enumerated in **Section 4(6),** as stated in points (1) and

(2) above, and is not available in any other circumstances as employee's right to gratuity is the statutory right.
[K.C.Mathew Vs. Plantation Corpn. of Kerala Ltd. (2001) LLR 123 (ker.)].

(iii) The refusal by the employees to surrender land belonging to the employer is not a ground for forfeiture of gratuity.
[Travancore Plywood Industries Ltd. Vs. Regional Joint Labour Commissioner, (1996) If LLJ 85 (ker.)].

(iv) In case of termination of services on account of offence involving moral turpitude the gratuity may be wholly or partially forfeited. In this regard, the Karnataka High Court has held that when an offence of theft under law involves moral turpitude, gratuity stands wholly forfeited in view of **Section 4 (6)** of the Act.

[Bharat Gas Mines Ltd. **Us.** ***Regional Labour Commissioner. (Central) (1987) 70 FJR 11 (Karnataka)].***

Question: 33 2016 - Dec [2]
Explain the manner in which the gratuity payable to employees in a seasonal establishments is calculated under the Payment of Gratuity Act, 1972. State also the maximum amount of gratuity payable under the Act. (5 marks)

Answer:
Seasonal Establishments:
In the case of seasonal establishment the employees can be classified into 2 groups.
(a) Those who work throughout the year and
(b) Those who work only during the season.
The former are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of 6 months. The latter, are entitled to receive gratuity at the rate of 7 days for each season. **Under Section 4(3)** provides that the amount of gratuity payable to an employee shall not exceed ` 20 lakhs.

Question: 34 2017- Dec
Discuss the procedure for determination of the amount of gratuity as per Section 7 of the Payment of Gratuity Act, 1972. (5 marks)

Answer:

Section 7 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined. The notice shall be in Form L.
The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.
If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why' the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

Question: 35 2018- Dec
Mr. Gill, an employee of M/s Sonabheel Tea Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Mr. Gill. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. (5 marks)

Answer:
The gratuity of an employee, whose services have been terminated for any Act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused.
The gratuity payable to an employee may be wholly or partially forfeited:
(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other Act of violence on his part or
(ii) if the services of such employee have been terminated for any Act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.
It is not a valid ground forfeiture of entire gratuity. In the above case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Mr. Gill is entitled to receive the balance gratuity.

Question: 36 2008 - Dec [2]
Calculate the amount of gratuity of Mr. X who joined the company on 1.5.78 and retired on 30.11.08 when his salary was ` 26,000/- per month. During November, 2008 he received overtime and incentive ` 5,000 (2 marks)

Answer:
Mr. X worked from 1.5.78 to 30.11.08. The period is 30 years 6 months and 29 days (30.11.08 is not included), for the purpose of computation of gratuity the period of service is taken as 31 years. Gratuity is (31 x 26,000 x 15)/26 = ` 4,65,000 . Thus, he will be entitled for a gratuity payment of ***t*** 4,65,000.

Question: 37 2009 - June [2]
Every employee, whose salary is not more than ` 3,500 per month is entitled to Gratuity as per Payment of Gratuity Act. State the legal provision if not correct. (2 marks)

Answer:
False : Now all the employees of the specified establishment excepting Apprentices are entitled to gratuity under the act.

Question: 38 2009 - Dec
Mr. Sham, who retired on 30.11.09 did not vacate office quarter which was provided by his employer. Employer withheld the Gratuity to force him to vacate the quarter. (2 marks)

Answer:
Gratuity can be withheld or forfeited only to the extent of damage, loss and destruction of property suffered by employer due to wilful act, negligence and omission of the employee and his services have been terminated on the grounds of such act, negligence or omission. The non-vacation of quarters is no reason to withhold gratuity.

Question: 39 2011- Dec

Mr. A. B. Roy a dissatisfied worker wilfully causing damage of a machine. Employer had to spend ` 10,000/- to get the machine rectified. Hence his gratuity was forfeited. Whether justified. (2 marks)

Answer:
Gratuity shall be forfeited under the following circumstances:
1. Where the services of the employee have been terminated due to wilful omission or negligence causing damage, loss or destruction of property of establishment. The forfeiture in this case will be limited to the amount of loss/damage.
2. Where the services of the employee have been terminated due to riotous or disorderly conduct or for any other act of violence by the employee. The forfeiture in this case may be entire amount or part thereof depending on the gravity of the offence.
3. Where the employee commits an offence involving moral turpitude while in the course of his employment.
In the current case, the employer cannot withhold or forfeit gratuity since the services were not terminated for the damages caused by the worker.

Question: 40 2011 - Dec [3]
Mr. Saxena on superannuation on 30.09.2011 submitted an application in prescribed form to his employer on 05.10.2011 for payment of gratuity of ` 15,00,000/-.
He has not received any payment till 10.12.2011 inspite of reminders. Advise the steps to be taken by him and the benefits which he may receive.
(4 marks)

Answer:
The employer was to pay the amount of gratuity within 30 days from the date it becomes payable. Hence employer has failed. As per Payment of Gratuity Act, 1972 Maximum ceiling of gratuity is actual amount but not exceeding ` 20,00,000. Hence Mr. Saxena is entitled to maximum amount of ` 20,00,000 or the amount based on year of service and his wages whichever is less. Since Employer has failed to pay, Mr. Saxena shall submit appeal to the controlling authority for direction to pay
(a) Principal amount of gratuity and
(b) Interest for delayed period till the date of payment.

Question: 41 2012- Dec
Mr. S.K. Paul employed in seasonal establishment and was not employed throughout the year claimed gratuity at the rate of 15 tiays wages for each year of service. But Employer refused to pay any Gratuity to employees of seasonal establishment. (2 marks)

Answer:
Employer shall pay gratuity at the rate of seven days wages for each season to employees who are employed in a seasonal establishment and who are not so employed throughout the year. Wages will include Basic and D.A. Hence Mr. Paul is entitled to Gratuity.

Question: 42 2013- June
ABC Pvt. Ltd. incorporated on. 2nd January 1980 carrying on business from the date of incorporation employing 50 persons. Due to loss, the number of employees reduced to five w.e.f. 02.06.2011. Mr. 'A' who retired on 31.05.2013 was refused gratuity on the ground that the total number of employees is below 10 (ten). Whether employer was justified? (3 marks)

Answer:
The Payment of Gratuity Act, 1972 was enacted to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields,, plantations, ports, railway companies, shops or other establishments who have rendered a minimum five years of continuous service with the establishment employing ten or more persons.
Every employee, other than apprentice irrespective of his wages is entitled to receive gratuity after he has rendered continuous service for five years or more. Gratuity is payable at the time of termination of his service either (i) on superannuation or (ii) on retirement or resignation or
(iii) on death or disablement due to accident or disease. Termination of services includes retrenchment.
However, the condition of five years' continuous service is not necessary if services are terminated due to death or disablement. In case of death of the employee, the gratuity payable to him is to be paid to his nominee, and if no nomination has been made, then to his heirs.

• If the Act has become applicable to any establishment, it will continue to be applicable even if the number of persons employed falls below ten or any number as specified by the Central Government.
• All the employees irrespective of salary or status are entitled to the payment of gratuity on completion of 5 years of service, in case of death or disablement there is no minimum eligibility period.
In the light of above the employer is not justified in refusing gratuity to A.

Question: 43 2013 - Dec [3]
Anurag was an employee of Coffee Estate Ltd. The whole undertaking of Coffee Estate Ltd. was taken over by a new company Asian Coffee Ltd. The Service of Anurag remained continuous in the new company. y^,fter serving for one year, Anurag met with an accident and become permanently disable. Anurag applied to the new company for the payment of gratuity. The company Asian Estate Ltd. refused to pay gratuity on the ground that Anurag has served only for a year in the company. Examine the validity of refusal of the company in the light of the provisions of the Payment of Gratuity Act, 1972. (3 marks)

Answer:
According to the **Section 4(1) of the Payment of Gratuity Act,1972,** gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years or on his superannuation or, on his retirement or resignation or on his death or disablement due to accident or disease.
• The condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section.
• Disablement means such disablement as incapacities of an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.
• The given problem fulfils all the above requirements as stated.
• Therefore, Anurag is entitled to recover gratuity after becoming permanently disabled, and continuous service of five years is not required in this case.
• Hence, the company cannot refuse to pay gratuity on the ground that he has served oniy for a year.

Question: 44 2013 - Dec
Mr. Mahavir joined the company on 25.05.1987 and retired on 30.11.2012 when his salary was INR 70,000 per month. He also received conveyance allowance INR 20,000 per month and average overtime INR 1,000 per month, calculate the amount of gratuity. (3 marks)

Answer:
He superannuated on 30.11.2012 Joined on25.05.1987
He is entitled for 25 year 6 months + 5 = 26 years
Amount of gratuity
= 15x26x70,000 /26
= INR 10,50,000
Maximum ceiling being INR 20,00,000 His gratuity is INR 10,50,000

Question: 45 2014- June
Ram is employed in Sweet Sugar factory, a seasonal establishment. The factory was in operation for four months only during the financial years 2011-12. Ram was not in continuous service during this period. However, he has worked only 60-days. Referring to the provisions of The Payment of Gratuity Act, 1972, decide whether Ram is entitled to gratuity payable under the Act. Would your answer be the same in case Ram works for 100 days? (2 marks)

Answer:
• For entitlement of gratuity one must work for at least 75% of the days on which the establishment was open and in operation. The factory was in operation for 120 days.
• One must work for 75% of 120 i.e. 90 days to claim gratuity. Ram is not entitled to gratuity, since he has actually worked for less than 75% of the number of days on which the establishment was in operation during such period.
• If Ram had worked for 100 days, then he would have been entitled to gratuity since the number of days on which he would have worked, in that case, would have been 75% or more of the number of days 6n which the establishment was in operation.

Question: 46 2015- Dec

Ajit an employee of Supertech Copper Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Ajit. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. (3 **marks)**

Answer:
The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused. The gratuity payable to an employee may be wholly or partially forfeited:
(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or
(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.
It is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Ajit is entitled to receive the balance gratuity.

EMPLOYEES PROVIDEND FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

Introduction	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation to provide for the institution of Provident Fund, Pension Fund and Deposit Linked Insurance Fund for employees working in factories and other establishments. The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress. **The following three schemes have been framed under the Act by the Central Government:** (a) The Employees' Provident Fund Schemes, 1952; (b) The Employees' Pension Scheme, 1995; and (c) The Employees' Deposit-Linked Insurance Scheme; 1976**.** The three schemes mentioned above confer significant social security benefits on workers and their dependents**.** These schemes taken together provide to the employees an old age and survivorship benefits, a long term protection and security to the employee and after his death to his family members, and timely advances including advances during sickness and for the purchase/ construction of a dwelling house during the period of membership. The Act is now applicable to employees drawing pay not exceeding `15,000/- per month. The Act extends to whole of India except Jammu and Kashmir. The term pay includes basic wages with dearness allowance, retaining allowance (if any), and cash value of food concession.
APPLICABILITY	Section 1(3) provides that subject to Section 16, this Act applies- • To every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed; and • To any other establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf. • The Central Government may apply the provisions of this Act to any establishment employing such number of persons less than 20 as may be specified in the notification. Not less than 2 months' notice is to be given by the Central Government to such establishments; • Where it appears to the Central Provident Fund Commissioner, that the employer and the majority of the employees have agreed that the provisions of this Act should be made applicable to their establishment, he may, by notification, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement; • Once the Act is covered to any establishment it shall continue to apply notwithstanding the number of the persons employed therein shall at any time falls below 20. In 'Goods Shepherd Public School V. EPF organization' – 2014 LLR 611 (Del HC) it was held that a school rightly covered under PF when the principal has affirmed about employment of 20 employees. In 'M/s Nasiruddin Beedi Merchant Limited V. CPF Commissioner' – AIR 2001 SC 850,

	the Supreme Court held that this Act would apply even in respect of home workers engaged through contractors and cannot be objected any more. In 'Annamma Iype V. Regional Provident Fund Commissioner' – 1993 LLR 287 it was held that wherein an establishment the strength of the employees at a particular time is below 20, it cannot be contended by the employer that the establishment is no longer within the purview of the Act.
Non applicability of the Act	Section 16(1) of the Act provides that this Act is not applicable to the following • To any establishment registered under the Co-operative Societies Act, 1912 or under any other law for time being in force in any State relating to co-operative Societies, employing less than 50 persons and working without the aid of the power; or • To any other establishment belong to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or • To any other establishment set up under the Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.
IMPORTANT DEFINITIONS	**Appropriate Government** Section 2(a) defines the term 'appropriate Government' • in relation to an establishment belonging to, or under the control of, the Central Government or in relation to an establishment connected with- • a railway company; • a major port; • a mine or an oil field; or • a controlled industry; or • in relation to an establishment having departments or branches in more than one State,the appropriate Government is the 'Central Government'; • in relation to any other establishment, the appropriate Government is the 'State Government'.
Authorized Officer	Section 2(aa) defines the term 'authorized officer' as- • the Central Provident Fund Commissioner; • Additional Central Provident Fund Commissioner; • Deputy Provident Fund Commissioner; • Regional Provident Fund Commissioner; or such other officer as may be authorized by the Central Government, by Notification in the Official Gazette.

Basic wages	Section 2(b) defines the term 'basic wages' as all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case, in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include- • the cash value of any consideration; • any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) house rent allowance, over time allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment; • any presents made by the employer.
Contribution	Section 2(c) defines the term 'contribution' as a contribution payable in respect of a member under a scheme or the contribution payable in respect of an employee to whom the Insurance scheme applies.
Fund	It means Provident Fund established under the Scheme. [Section 2(h)]
Employer	Section 2(e) defines the term 'employer' as- • in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory, the person so named; and • in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.
Employee	Section 2(f) defines the term 'employee' as any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person- • employed by or through a contractor in or in connection with the work of the establishment; • engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 or under the Standing orders of the establishment. In 'Prakash D. Shah V. Union of India'- 2004 LLR 218 (Bom) the High Court held that a partner of a firm having a status of beneficiary will not be employee either to be covered or counted under the Act.
Factory	Section 2(g) defines the term 'factory' as any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid or power.
Occupier of a factory	Section 2(k) defines the term 'occupier of a factory' as the person who has ultimate control over the affairs of a factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory. In 'Srikanta Dutta Narasimharava Wodiyar V. Enforcement Officer, Mysore'- 1993 LLR 497 it was held that the person who is in charge or responsible for the management or

	ultimate control over the affairs of the factory or establishment, in the event of entrustment to a managing agent, such managing agent shall also be deemed to be the occupier of the factory. In 'B.K. Basu V. Regional Provident Fund Commissioner' – 2002 LLJ 512 (Cal) the High Court held that the clear meaning of the 'occupier' indicates a person, who is in actual possession and control. It may be an individual or a firm. Unless a notice is given, notifying the individual of a firm, all the members of the firm are to be liable.
Schemes	The Act provides three types of schemes for the benefit of the employees as detailed below- • Section 5 –Employees' Provident Fund Schemes; • Section 6A – Employees' Pension Scheme; • Section 6C – Employees' Deposit Linked Insurance Scheme. The details of the schemes will be seen. Section 7 gives powers to the Central Government to amend or vary, either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance scheme, as the case may be.
Employees' Provident Fund Schemes	Section 5 provides that the Central Government framed a scheme called the Employees' Provident Fund Scheme ('Scheme' for short) for the establishment of provident funds for employees. The Central Government framed 'The Employees' Provident Fund Scheme, 1952 which came into effect from 2nd September, 1952. The fund shall vest in and be administered by the Central Board constituted under Section 5A of the Act. The scheme framed may provide for all or any of the matters specified in Schedule II. The scheme may provide that any of the provisions shall take effect either prospectively or retrospectively on such date as may be specified in the scheme.
Central Board	Section 5A provides for the establishment of Central Board by the Central Government. The Board consists of a Chairman and a Vice Chairman to be appointed by the Central Government. The Central Provident Fund Commissioner is ex officio. Members to this Board are being appointed by the Central Government as per the provisions contained in Section 5A. Section 5AA provides for the appointment an Executive Committee by the Central Government to assist the Central Board in the performance of its functions. The members of the Executive Committee are appointed by the Central Government.
State Board	Section 5B gives powers to the Central Government, in consultation with the Government of any State, constitutes for that State, a Board of Trustees to exercise such powers and perform such duties as the Central Government may assign to it from time to time.
Contributions	As per Section 6, the contribution which shall be paid by the employer to the Fund shall be 10%, of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the employees contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act. The Government has raised the rate of Provident Fund Contribution from the current 8.33% to 10% in general and in cases of establishments specially notified by the Government, from 10% to 12% with effect from September 22, 1997. Each contribution shall be calculated to the nearest rupee, fifty paise or more to be

	counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored. Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working. The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for no exceptionunder which a specified employer can avoid his mandatory liability.
Wage limit	Contribution is paid up to a maximum of `15,000 by employer and employee with effect from 01.09.2014. To pay a contribution on higher wages, a joint request from employee and employer is required. In such case the employer has to pay administrative charges on the higher wages. For the international worker wage ceiling of `15,000 is not applicable.
Applicability of the scheme	This scheme shall apply to all factories and other establishments to which the Act applies. This scheme shall not applicable to the tea factories in the State of Assam.
Withdrawal from the fund	Withdrawal from the fund is allowed for the following purposes- • For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose; • For repayment of loans in special cases; • Withdrawal within one year before the retirement; • Withdrawal upto 75% of the balance, if not employed from one month or more, subject to approval of P.F. Commissioner or any officer authorised by him. Such withdrawals are not required to be repaid.
Advances from the fund	Advances from the fund are paid for the following purposes- • For illness in certain cases; • For marriages or post matriculation education of children; • In abnormal conditions such as calamity of exceptional nature such as flood, earthquakes or riots – (non-refundable) • Granted to members affected by cut in the supply of electricity; (non-refundable) • Grant of advance to members who are physically handicapped; (non-refundable)
Employees' Pension Scheme- Section 6A	The Central Government framed Employees' Pension Scheme for the purpose of providing for- • Superannuation pension; • Retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and • Widow or widower's pension; • Children pension or orphan pension payable to the beneficiaries of such employees.

	The Pension Scheme may provide for all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that scheme.
Contribution	There is no contribution from the employee. The employer is to contribute 8.33% of the basic wages, dearness allowance and retaining allowance, if any of the concerned employees as may be specified in the pension scheme. Contribution is not payable when the employee crosses 58 years of age since the scheme ceases on completion of 58 years
Pension Fund	A pension fund has been created for the purpose of this scheme. The Pension Fund shall vest in and administered by the Central Board. The pension scheme may provide for all or any of the matters in Schedule II, as detailed below- • The employees or class of employees to whom the Pension scheme shall apply; • The portion of employers' contribution to the Provident Fund which shall be entitled to the Pension Fund and the manner in which it is credited; • The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service; • The regulation of the manner in which and the period of service, for which no contribution is received; • The manner in which the employees' interest will be protected against default in payment of contribution by the employer; • The manner in which the accounts of the Pension fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by Central Government; • The form in which an employee shall furnish particulars about himself and the members of his family whenever required; • The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme; • The scale of pension and pensionary benefits and the conditions relating to the grant of such benefits to the employees; • The manner in which the exempted establishments have to pay contribution towards the pension scheme and the submission of returns relating thereto; • The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose; • The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund; • Any other matter which is to be provided for in the Pension Scheme or which may be necessary for the purpose of implementation of the Pension Scheme.
Employees' Deposit linked Insurance Scheme- Section 6C	The Central Government made the Employees' Deposit Linked Insurance Scheme, 1976 which came into effect from 01.09.1976. It applies to all factories and other establishments to which the Act applies except tea factories in State of Assam. The wage ceiling limit under Employees Deposit linked Insurance Scheme has been increased from `6,500 to `15,000.

	The insurance benefit under the scheme shall be an amount between 2.5 lakhs and 6 lakhs.
Contribution	The Deposit Linked Insurance Fund has been created for this purpose. In this Fund the employer shall pay such amount not being more than 1% of the aggregate of basic wages, dearness allowance and retaining allowance of every such employee in relation to whom he is the employer. The employer shall pay into the Insurance Fund such further amount of money not exceeding one fourth of the contribution which is required to make as the Central Government may from time to time determine to meet all the expenses in connection with the administration of the scheme other than the expenses towards the cost of any benefits provided by or under that scheme. Where the monthly pay of an employee exceeds ` 15,000 the contribution payable is restricted to the amounts payable on a monthly pay of `15,000, dearness allowance, retaining allowance and cash value of food concession.
Determination of moneys due from employers	Section 7A provides that in case where a dispute arises regarding the applicability of this Act to an establishment, the Authority concerned may conduct such enquiry as he may deem necessary decide such dispute and determine the amount due from any employer under the provision of this Act, the scheme or the Pension Scheme or the Insurance Scheme as the case may be. Before passing such order the employer concerned shall be given a reasonable opportunity of representing his case. For the purpose of conducting inquiry the Authority shall have the same powers as are vested in a court under CPC for trying a suit in respect of the following matters- • enforcing the attendance of any person or examining him on oath; • requiring the discovery and production of documents; • receiving evidence on affidavit; • Issuing commissions for the examination of witnesses. Where the employer, employee or any other person required to attend the inquiry, fails to attend such inquiry, the Authority shall decide the case ex-parte and pass orders based on the available documents put forth before him. The employer, within three months from the date of communication of such order, may apply to the Authority to set aside the ex-parte order showing that there are sufficient causes for not enabling him to attend the hearing on the prescribed date. If the Authority is satisfied, he may set aside the ex-parte order and shall appoint a date for proceeding with the inquiry. In 'S.K. Nasiruddin Beedi Merchant Limited V. Central Provident Fund Commissioner' – AIR 2001 SC 850 it was held that the applicability of the Act to any class of employees is not determined and decided by any proceeding under Section 7A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under Section 7A of the Act is only determination of quantification of the same.
Review of order under Section 7A	Section 7B provides that any person aggrieved by an order under Section 7A may apply for a review of that order to the Officer who passed the order, if he- • discovered new and important matter of evidence which after the exercise of due diligence was not within his knowledge; or • could not be produced by him at the time when the order was made; or • on account of some mistake; or

	• error apparent on the face of the record; or • for any other sufficient reason. Such officer may also on his own motion review his order if he is satisfied that it is necessary so to don any such ground. Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application. Where the officer is of opinion that the application for review should be granted, he shall grant the same. In 'Balu Fire Clay Mines V. Union of India' – 2003 LLR 578 it was held that review is a statutory remedy. A review petitioner should also be disposed of by a speaking order.
Determination of escaped amount	Section 7C provides that the officer can re-open the case within five years from the date of order passed under Section 7A or Section 7B if he has reason to believe that by reason of omission or failure on the part of the employer to make any document or report available, or to disclose fully and truly all material facts any amount so due from such employer for any period has escaped his notice. The Officer may pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act.
EPF Appellate Tribunal	Section 7D provides for the appointment of EPF Appellate Tribunal to hear the appeal against the order passed by the Central Government or any authority under Section 7A or 7B or 7C. The Appellate Tribunal may, after giving reasonable opportunities to the parties decided the appeal either confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit. The Tribunal may rectify any mistake apparent from the record within five years from the date of its appeal order. No appeal by the employer shall be entertained unless he has deposited with it 75% o the amount due from him. The Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.
Protection against attachment	Section 10 provides that the amount standing to the credit of any member of the Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or any court in respect of any debt or liability incurred by the member and neither the Official assignee nor any receiver shall be entitled to, or have any claim on, any such amount.
Employer not to reduce wages	Section 12 provides that no employer in relation to an establishment to which any scheme or the insurance scheme applies shall, by reason only of his liability for the payment of any contribution to the fund or any charges or the scheme or the insurance scheme, reduce, whether directly or indirectly, the wages of any employee to whom they apply.
Transfer of Accounts	Section 17A provides that where an employee employed in an establishment to which the Act applies, leaves his employment and obtains re-employment in other establishment to which this Act does not apply, the amount of accumulations to the credit of such employee shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules, in relation, to that provident fund permit such transfer.
Penalties	Section 14(1) provides that for the purpose of avoiding any payment whoever knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of ` 5000 or with both. Section 14(1A) provides that an employer, who contravenes or makes default in

	complying with the provisions of Section 6 as it relates to the payment of inspection charges, administrative charges shall be punishable with imprisonment for a term which may extend to three years but- • Which shall not be less than one year and fine of `10000/- in case of default of payment of the employees' contribution ;  • Which shall not be less than six months and a fine of ` 5000/- in any other case. Section 14(1B) provides that an employer who contravenes or makes default in complying with the provisions of Section 6C in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than six months and shall also be liable to fine which may extend to `5000. Section 14(2) provides that subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance scheme may provide that any person who contravenes or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ` 4000 or with both. Section 14(3) provides that whoever, contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non compliance, be punishable with imprisonment which may extend to six months but which shall not be less than one month and shall be liable to fine which may extend to ` 5000.
Offences by companies	Section 14A (1) provides that if the person committing an offence under this Act, the Scheme etc., is a company, every person who at the time of the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Nothing contained in this section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence. Section 14A(2) provides that where an offence under the Act, the scheme or the pension scheme or the Insurance scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

PRACTICE MANUAL

Fill in the blanks

1. EPF Act is applicable to every establishment employing _____or more persons.

2. The contribution or employer to the Fund is_____of basic wages, dearness allowance and retaining allowance, if any.

3. The Pension fund is administered by the _____.

4. The Employee's Deposit Linked Insurance Scheme, 1976 came into effect from_____.

5. The contribution to insurance fund is to be remitted by the employer within_____days of the close of the month.

6. The wage limit contribution under the scheme has been fixed at`15,000/- with effect from _____.

7. The Central Government may give exemption to any establishment considering its_____.

8. Contribution to EPF is payable by_____and_____.

9. _____is not covered under the EPF Act.

10. Section 5AA provides for the appointment of_____by the Central Government to assistant the Central Board in the performance of its functions.

Choose the correct answer

1. Which one of the following will not include in the definition of basic wages?

(a) Dearness allowance;

(b) Overtime;

(c) Cash value for consideration;

(d) All the above.

2. The contribution of employer to insurance fund is

(a) 1%

(b) 10%

(c) 12%

(d) None of the above.

3. Contribution of 10% to PF is applicable t0

(a) Any establishment in which less than 20 employees are employed;

(b) Any establishment declared as sick industrial company;

(c) Jute company;

(d) All of the above.

4. The minimum administrative charge payable by the employer to the fund is

(a) `75

(b) `500/-

(c) `1000

(d) None of the above

5. The maximum penalty recoverable from the employer who makes the default in payment of any contribution to the fund is

(a) 5%

(b) 10%

(c) 15%

(d) 25%

6. Withdrawal from PF may be allowed for-

(a) Marriage of the employer;

(b) Post matriculation education of children;

(c) For the purchase of a dwelling place;

(d) For illness in certain cases

7. The Employees Pension Scheme provides for-

(a) Superannuation pension;

(b) Orphanage pension;

(c) Both (a) and (b);

(d) None of (a) or (b).

8. Contribution of the employer to employees' pension scheme is

(a) 8.33%

(b) 10%

(c) 12%

(d) None of the above.

9. The following cannot be nominated for the purposes of EPF Act

(a) Wife;

(b) Sons of a deceased sons who have attained majority;

(c) Father in law;

(d) Unmarried daughter.

10. While filing appeal to EPF Appellate Tribunal the employer has to deposit___of the amount due from him.

(a) 25%

(b) 50%

(c) 75%

(d) None of the above.

State whether TRUE or FALSE

1. Once the EPF Act is covered to any establishment it shall continue to apply notwithstanding the number of persons employed shall at any time false below 20.

2. The wage limit `15,000/- is applicable for the contribution to the Fund in respect of international workers.

3. The employer cannot reduce wages of the employee to avoid his liability under the Act.

4. If an employee is transferred from one employment to another, the balance at his credit in his PF Account cannot be transferred to the new establishment.

5. The Central Government may add to amend or vary either prospectively or retrospectively, the scheme, Pension Scheme or the Insurance Scheme.

6. Where the pay of an employee exceeds `15,000/- the contribution to insurance scheme is restricted to `15,000/-.

7. Contribution to pension scheme is recoverable when the employee crosses 58 years of age.

8. The employer shall in the first instance pay the contribution payable by himself and also on behalf of the member employed by him through a contractor.

9. The PF scheme is applicable to the tea factories in the State of Assam.

10. The EPF Act is applicable to any establishment registered under the Co-Operative Societies Act, 1912.

Model Questions

1. What are the schemes available in the EPF Act?

2. What are the consequences if an employer makes default in the payment of any contribution to the Fund?

3. Under what circumstances advances can be received by employer from the PF Fund?

4. Discuss the matters provided for the insurance fund under the Schedule.

5. How the money due from employers is determined in respect of PF, pension scheme or the insurance scheme?

6. Explain the provisions relating to EPF Appellate Tribunal.

7. Discuss the procedure involved in review of order of the officer passed under Section 7A of the Act.

8. Describe the procedure for the payment of assured benefits in case of no nomination is filed by the employee.

9. Narrate the features of Employees' Pension Scheme.

10. Define the term 'appropriate government' and 'employee'

Answers:

Fill in the blanks

1. 20;

2. 10%;

3. Central Board;

4. 01.09.1976;

5. 15;

6. 01.09.2014;

7. Financial position;

8. Employer, employee;

9. Apprentice;

10. Executive Committee.

Choose the correct answer

1. D;

2. A

3. D

4. B

5. D

6. C

7. C;

8. A

9. B

10. C

State whether TRUE or FALSE

1. TRUE;

2. FLASE;

3. TRUE;

4. FALSE;

5. TRUE;

6. TRUE;

7. FALSE;

8. TRUE;

9. FALSE;

10. FALSE

MTP Question:

MTP June 2019
Question: 1 Under what circumstances advances and withdrawal made from the PF fund.

Answer: Withdrawal from the fund is allowed for the following purposes-
• For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose;
• For repayment of loans in special cases;
• Withdrawal within one year before the retirement;
• Withdrawal upto 75% of the balance, if not employed from one month or more, subject to approval of P.F. Commissioner or any officer authorised by him.Such withdrawals are not required to be repaid.

Advances from the fund
Advances from the fund are paid for the following purposes-
• For illness in certain cases;
• For marriages or post matriculation education of children;
• In abnormal conditions such as calamity of exceptional nature such as flood, earthquakes or riots – (non-refundable)
• Granted to members affected by cut in the supply of electricity; (non-refundable) • Grant of advance to members who are physically handicapped; (non-refundable)

MTP Dec 2018
Question: 2 Write a note on: Pension Funds

Answer: Pension funds [Section 23]

(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds:

Provided that at least one of the pension funds shall be a Government company.

Explanation.- For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in Section 617 of the Companies Act, 1956.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

Question: 3 Write e note on 'Point of Presence' of Central Record-keeping agency, as per PFRDA Act, 2013.

Answer: If "Point of presence" means an intermediary registered with the Authority under subsection (3) of Section 27 as a point of presence and capable of electronic connectivity with the central recordkeeping agency for the purposes of receiving and transmitting funds and instructions and pay out of funds;

Rules of Point of Presence as per Section 22 of PFRDA Act, 2013 would be:
(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a point of presence for the purpose of receiving contributions and instructions, transmitting them to the Trustee Bank or the central recordkeeping agency, as the case may be, and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard.

(2) A point of presence shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

MTP Jun 2018
Question: 4 State the non-applicability of Employees Providend Fund and Miscellaneous Provisions Act, 1952.

Answer: Non applicability of the Act

Section 16(1) of the Act provides that this Act is not applicable to the following –

- To any establishment registered under the Co-operative Societies Act, 1912 or under any other law for time being in force in any State relating to co-operative Societies, employing less than 50 persons and working without the aid of the power; or

- To any other establishment belong to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

- To any other establishment set up under the Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

Question: 5 Pension Funds [Section 23 of PFRDA Act, 2013]

Answer: Pension funds [Section 23]

(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds: Provided that at least one of the pension funds shall be a Government company.

EXPLANATION.— For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in Section 617 of the Companies Act, 1956.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

Question: 6 Write a note on Central Record Keeping Agency as per Section 21 of PFRDA Act, 2013.

Answer: Central Recordkeeping Agency [Section 21]

(1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central recordkeeping agency: Provided that the Authority may, in public interest, appoint more than one central recordkeeping agency.

(2) The central recordkeeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central record-keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central recordkeeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central recordkeeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Suggested Question:

Suggested Dec 2017
Question: 7 When can a member withdraw from his National Pension Funds account?

Answer: A Member of the National Pension Fund can withdraw following situation.

(1) At any point in time before 60 years of Age (min. contribution for 10 years) Minimum 80% of the pension wealth to be utilised for purchasing a life annuity from the empanelled ASP. Remaining 20% of the pension wealth can be withdrawn as lump sum. If pension wealth is equal or less than ` 1 lakh, entire amount will be paid as lump sum.

(2) On attaining the Age of 60 years and up to 70 years of age Purchasing a life annuity from the empanelled ASP, subject to maximum deferment of 3 years. Remaining 60% of the pension wealth can be withdrawn as lump sum or can be deferred and withdrawn anytime before 70 years. Subscriber can also contribute till withdrawal or 70. If pension wealth is equal or less than ` 2 lakhs, entire amount will be paid as lump sum.

(3) Death due to any cause (all citizen) In such an unfortunate event, option will be available to the nominee to receive 100% of the NPS pension wealth in lump sum. However, if the nominee wishes to continue with the NPS, he/she shall have to subscribe to NPS individually after following due KYC procedure.

Revisionary Question:

Revisionary Dec 2018
Question: 8 Ritesh, a 57 years old district judge was appointed by the Central Government as Presiding Officer of the Employee's Provident Funds Appellate Tribunal for a period of five years. After three years, he (Ritesh) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the Government till that date. Examine the validity of Ritesh‟s action to cease work under the provisions of the Employees‟ Provident Funds and Miscellaneous Provisions Act, 1952.

Answer: Section 7F (1) of the Employees‘ Provident Funds and Miscellaneous Provisions Act, 1952 provides that the Presiding Officer of a Employees‘ Provident Funds Appellate Tribunal may by notice in writing under his hand addressed to the Central Government, resign his office provided that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

Hence, Ritesh's action is invalid as per above provisions. He is supposed to continue for three months unless he is relieved earlier by the Central Government or his successor appointed by the Central Government has taken up the office, whichever is earlier.

Question: 9 Primitive Ltd., which is covered by the Employees‟ Provident Fund and Miscellaneous Provisions Act, 1952 was adjudged insolvent and an order for winding up was made. State, in this connection, whether the Provident Fund is attachable and whether the payment of Provident Fund contribution be considered as priority over other Debts of the Company

Answer: Protection against attachment:

According to section 10 of the Employee‘s Provident Fund and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member or of any exempted employee in the Provident Fund shall not in any way be capable of, being assigned or charged and shall not be liable to attachments under any decrees order of any court in respect of any debt or liability, incurred by the member or the exempted employee. Neither the official assignee appointed under the Presidency town Insolvency Act, 1909 nor any Receiver appointed under the Provincial Insolvency Act 1920 shall be entitled to have any claim on any such amount. Such amount shall also not be liable to attachment under any degree or order of any court.

Priority of Payment of Contribution over other debts (Section 11): If the employer is adjudged an insolvent or if the employer is a company and an order for winding thereof has been made, the amount due from the employer whether in respect of the employee‘s contribution or the employer‘s contribution must be included among the debts which are to be paid in priority to all other debts under Section 49 of the Presidency - Towns Insolvency Act, Section 61 of the Provincial Insolvency Act, Section 327 of the Companies Act, 2013, in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be a preferential payment provided the liability therefor has accrued before this order of adjudication or winding up is made.

Revisionary June 2018

Question: 10 Sushil retired from the services of ABC Limited, on 31st March, 2014. He had a sum of ` 10 lakhs in his Provident Fund Account. It has become due for payment to Sushil on 30th April, 2014, but the company made the payment of the said amount after one year. Sushil claimed for the payment of interest on due amount at the rate of 15 per cent per-annum for one year. Decide, whether the claim of Sushil is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer: According to Section 7Q of the Employees‘ Provident Funds and Miscellaneous Provisions Act, 1952, the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

However, the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest charged by any scheduled bank. As per above provision, Sushil can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate Sushil can claim only 12 percent per annum interest on the due amount. Hence claim of Sushil for interest rate 15% is not tenable**.**

Question: 11 (a) Examine with reasons, the validity of the following nominations made under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952:

1. J nominated N (his son) as a nominee.

2. M nominated S (his wife) and K (a friend) as nominees.

3. R who does not have a family nominated A (a close relative) as a nominee.

4. G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to Z.

Answer: 1. Nomination by J in favour of N is valid, since N is a member of the family of J (since son is covered under the definition of 'family').

2. Nomination by M in favour of S is valid, since S is a member of the family of M (since wife is covered under the definition of 'family'); But in favour of K is void, since K is not a member of the family of M (since K is only a friend, and a friend is not covered under the definition of 'family').

3. Nomination by R in favour of A is valid although A is not covered under the definition of family; but if the employee does not have a family, then, nomination may be made in favour of any person.

4. Nomination by G in favour of N is valid but it becomes void immediately on marriage since a nomination made in favour of a person who is not a member of the family, becomes void immediately when the employee subsequently acquires a family.

Question: 12 Features of National Pension System

Answer: The National Pension System shall, on the commencement of this Act, have the following basic features, namely:—

(a) every subscriber shall have an individual pension account under the National Pension System;

(b) withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the conditions, such as purpose, frequency and limits, as may be specified by the regulations;

(c) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;

(d) there shall be a choice of multiple pension funds and multiple schemes: Provided that— (a) the subscriber shall have an option of investing up to hundred per cent of his funds in Government Securities; and (b) the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the Authority;

(e) there shall be portability of individual pension accounts in case of change of employment;

(f) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;

(g) there shall not be any implicit or explicit assurance of benefits except market-based guarantee mechanism to be purchased by the subscriber;

(h) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and

(i) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

Workbook Question:

Question: 13 What does it mean by contributions towards the Employees Provident Fund?

Answer: As per Section 6 of Employees Provident Fund and Miscellaneous Provisions Act, 1952, the contribution shall be paid by the employer to the Fund shall be 10%, (12% in some class of Industries/ establishments as notified by Govt.) the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the employees contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act.

Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working.

Contribution is paid up to a maximum of 15,000 by employer and employee with effect from 01.09.2014. To pay a contribution on higher wages, a joint request from employee and employer is required**.**

Question: 14 In which situation withdrawal from the fund is allowed under Employees Provident Fund and Miscellaneous Provisions Act, 1952?

Answer:
Withdrawal from the fund is allowed for the following purposes- (i) For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose; (ii) For repayment of loans in special cases; (iii) Withdrawal within one year before the retirement;

Question: 15 When Advances can be received from the fund under Employees Provident Fund and Miscellaneous Provisions Act, 1952?

Answer:
Advances from the fund are paid for the following purposes-
(a) For illness in certain cases;
(b) For marriages or post matriculation education of children;
(c) In abnormal conditions such as calamity of exceptional nature such as flood, earthquakes or riots – (non-refundable)
(d) Granted to members affected by cut in the supply of electricity; (non-refundable)
(e) Grant of advance to members who are physically handicapped; (non-refundable)

Question: 16 What are the schemes available in the EPF Act?

Answer:
The Act provides three types of schemes for the benefit of the employees as detailed below- Section 5 – Employees' Provident Fund Schemes; Section 6A – Employees' Pension Scheme; Section 6C – Employees' Deposit Linked Insurance Scheme. Section 7 gives powers to the Central Government to amend or vary, either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance scheme, as the case may be.

Scanner Question:

Question: 17 2010 - **Dec** Write short note on:

Employees Deposit Linked Insurance. **(4 marks)**

Answer:

Employees Deposit Linked-Insurance : This is the benefit provided to the employees who join the EPF scheme. In this scheme, the employer contributes some amount to the PF account of every employee on some rational basis. The factors like PF balance, salary drawn, length of service etc. may be considered for calculating the amount so payable. This is also called EDLI benefit. This benefit is not available to employee in his lifetime but is given to his nominee on the event of his death. The benefit shall not exceed ` 1,30,000.

Question: 18 2011 - June Write short note on :
Protection from attachment (EPF Act 1952) **(4 marks)**

Answer :
Protection from attachment:

The provident fund of employee is for his security in old age. Hence, following protections are given to provident fund money which is to the credit of employee.

(a) The amount standing to the credit of any member in the Fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged.

(b) The amount shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or the exempted employee.

(c) The official assignee appointed under the Presidency-Towns Insolvency Act or any receiver appointed under the Provincial Insolvency Act is not entitled to have any claim on such amount **[Section 10(1)].**
The protection is applied to provident fund pension and insurance amounts receivable by employee under the scheme. **10(3).**

Question: 19 2008 - Dec
When and under what circumstances a person can receive pension under Employees Provident Fund Scheme? (2 marks)

Answer:
The circumstances are as follows :

(i)	**On Superannuation**	Superannuation means reaching the retirement age with at least ten years of service.
(ID	**Before Superannuation**	On attaining the age between 50 and retirement age and at least ten .years of service
(iii)	**Death**	Death while in service or while not in service.
(iv)	**Permanent Disablement**	On becoming permanently unfit for employment which the person was doing at the time of such disablement.

Question: 20 2009- Dec
Mr. Sham joining on 1.11.09 as an accountant wanted to become member of PF from 1.11.09 but Personnel Manager disagreed. (2 marks)

Answer:
As per PF Act, the employee becomes member of Provident fund immediately on joining the duty. Hence Mr. Sham becomes member w.e.f. 1/11/ 2009 the date of joining. The personnel manager is wrong.

Question: 21 2010- **Dec**

Under what circumstances pension under E.P.F. can be applied for by an employee? (4 marks)

Answer:

Please refer 2008 - Dec [2] (h) on page no. 288

Question: 22 2011- June
Employees Provident Fund Scheme applies to Sick Industrial Undertaking with the same Rate of Contribution at par with others. Do you agree ? (2 marks)

Answer:
Partly true. The EPF scheme is applicable to all sick units within the meaning of SICA but the rate of contribution is not at par with others. The rate of contribution is 10% in case of sick units.

Question: 23 2013 - June
What are the benefits a member of an Employees Provident Fund & Misc. Provisions Act 1952 can get on retirement/death? **(2 marks)**

Answer:
Retirement benefits are:
1. Accumulated Balance in PF A/C of the employee.
2. The employee pension on reaching 50/58 years of age or leaving/ retirement capital return of pension.
3. Widow pension, children pension, nominee pension or death of member.
4. Deposit linked insurance to family or to nominee.

Question: 24 2014 - June
Explain basic wages under The Employees Provident Fund Act, 1952. Enumerate the items which are not included in it. (3 marks)

Answer:
Basic Wages: As per **Section 2(b) of the Employees Provident Funds and Miscellaneous Provision Act, 1952,** the term "Basic Wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not includes:
(i) the cash value of any food concessions;
(ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment; or
(iii) any presents made by the employer.

Question: 25 2014 - Dec
State the Salient features of Employees Deposit Linked Insurance as outlined in Employee's Provident Fund & Miscl. Provisions Act, 1952. (4 marks)

Answer:
Employees Deposit-linked Insurance Scheme:
(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Deposit-linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies.

(2) There shall be established, as soon as may be after the framing of the Insurance Scheme', a Deposit linked Insurance Fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one percent of the aggregate of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Govemment'may, by notification in the Official Gazette, specify.

Explanation: For the purposes of this sub-section', the expressions "dearness allowance" and "retaining allowance" have the same meanings as in **Section 6.**

(3) The employer shall pay into the Insurance Fund such further sums of money' not exceeding one fourth of the contribution which he is required to make under sub-section (2), as the Central Government may, from time to time, determine to meet all the expenses in connection with the
. administration of the Insurance Scheme other than that expenses towards the cost of any benefits provided by or under that scheme.

(4) The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme.

(5) The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

(6) The Insurance Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme.

Question: 26 2015- June

A person was declared insolvent and the Court ordered attachment of all his properties. State whether the accumulations in the Provident Fund Account of the person is attachable. (3 marks)

Answer:

• According to Sec. 10 of E.P.F. & M.P. Act, 1952 the amount standing to the credit of any member in the fund or of any exempted employee in a fund shail not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or order of any Court in respect of any debt or liability incurred by the member or exempted employee and neither the Official Assignee or any Receiver appointed under respective Acts shall be entitled to or have any claim on any such amount.

• The said treatment wiil also hold good in case of the death of the person and accumulated amount is payable to his nominee.

Question: 27 2016- June

Is the amount standing to the credit of a member of the Provident Fund attachable in the execution of decree or order of the Court Examine the law, on this point, laid down in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. (7 marks)

Answer:

Protection against attachment:

• 'Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. Sub-section (1) of Section 10 provides that the amount standing to the
credit of any member in the fund or any exempted employee in a provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to or have any claim on any such amount.

• The amounts standing to the credit of aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules, and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court.

Question: 28 2016 - Dec

Employees provident funds and Miscellaneous Provisions Act, 1952 Is not applicable to certain establishments. List out those establishments. (5 marks)

Answer:

The Employees Provident Fund and Miscellaneous Provisions Act, 1952

does not apply to certain establishments as specified **under Section 16** of

the said Act.

They are as follows:

(a) Any establishment registered under the **Co-operative Societies Act, 1912** or under any other law for the time being in force in any state relating to co-operative societies employing less than 50 persons and working without the aid of power or

(b) To any establishment belonging to or under the Control of the Central Government or a State Government and whose employees are entitled to the benefit of Contributory Provident Fund or old age pension. Or

(c) Any other establishment set up under any Central Provincial or State Act and whose employees are entitled to any Contributory provident fund or old age pension.

(d) Any newly setup establishment (less than 3 years).

Central Government having regard to the financial position of any class of establishment or other circumstances of the case may exempt that class of establishment from the operation of this Act for such period as specified in- the notification Issued for this purpose.

Question: 29 2017- Dec
When, can a member withdraw from his National Pension Funds account? (5 marks)

Answer:
Withdrawal from the National Pension Fund Account is allowed for the following purposes-
• For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose;
• For repayment of loans in special cases;
• Withdrawal within one year before the retirement;
Such withdrawals are not required to be repaid.

Question: 30 2018 - June
Enumerate the Central Record Keeping Agency under Pension Fund Regulatory and Development Act 2013? (7 **marks)**

Answer:
Section 21 of the Pension Fund Regulatory and Development Act, 2013 deals with Central Record keeping Agency:
(1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central record keeping agency: Provided that the Authority may, in public interest, appoint more than one central record keeping agency.

(2) The central record keeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central record keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central record keeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central record keeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Question: 31 2010- June

During 2001-02, the number of employees were 50 and subsequently reduced to 10 during 2009-10. Employer discontinued deduction as EPF not applicable due to reduction of Employees. (2 marks)

Answer:

EPF Act, 1952 provides that once the Act is applied to any establishment, it shall continue to be applied even when subsequently the number of employees has reduced. Employer action is wrong in the eyes of law. EPF scheme shall continue.

Question: 32 2010 - Dec
Mr. Suresh, a casual labour draws ` 5,000/- per month. His Employer does not include his name for the purpose of provident fund. Whether the Employer is justified? (2 marks)

Answer :
Yes, the employer is justified because Suresh is a casual labour. Casual labour is not entitled to be included in EPF scheme. As per EPF Act, all employees in factories or establishments including contract labour but excluding casual labour are covered under this act, if their monthly wages are up to ` 15,000 per month.

Exercise of the powers conferred by **Section 5** of the Employees Provident Funds and miscellaneous Provisions Act, 1952, the Central Government vide notification G.S.R. 610 (E) dated August, 2014 amended the Employees' Provident Funds Scheme, 1952 w.e.f 01st September, **Amendments are as follows:**

• The statutory wage ceiling under the Employees' Provident Funds Scheme has been increased from ƒ 6,500 to ` 15,000 per month.

• Employees drawing pay exceeding fifteen thousand rupees per month
treated as excluded employees.

Question: 33 2011- Dec

An employee desirous to contribute 20% of salary as against 12% towards P.F. contributions (8% being voluntary) and demand that employer shall also contribute 20%. (2 marks)

Answer:

Here, the employee cannot demand for matching contribution because the employer does not have to make equal contribution over and above the statutory limit of 12% or 10% as the case may be. The employer is bound to contribute upto the statutory limit only and if an employee contributes more than statutory limit that does not mean the employer will also have to do the same.

Question: 34 2012- June

Mr. Malhotra aged 50 years joined the P.F. Scheme on 01.01.2003. He decided to leave the service w.e.f. 01.07.2012 provided he gets Pension under E.P.F. Scheme. Advise based on Rules. (2 marks)

Answer:

Pension is allowed when:

(i) an employee attains the age of 50 Years or more and

(ii) when he has completed a total service of 10 years or more and

(iii) when he is not receiving any other EPF Pension from any other Employer, it is presumed he is not receiving any other EPF Pension.

He has attained the minimum age of 50 years but he has not completed minimum 10 years of service.

Hence, he will not be entitled to pension if he leaves w.e.f. 1.7.12. He will however, be entitled for pension if he leaves the Employment after 1.1.2013.

Question: 35 2012 - **Dec**

'A' on retirement withdrew the entire amount of his accumulation in the Provident Fund. Later on he was appointed for a fixed tenure. Employer disagreed to allow P.F. benefit in view of his retirement and withdrawal of entire amount. Offer your views based on Rule position. (2 marks)

Answer:

When any employee withdraws all his deposited amount from his provident fund account, his account is treated as closed and no further benefit can be given to the employee on this account. Hence employer was right..

Question: 36 2013 - Dec

An inspector appointed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 makes an inspection at 10 p.m. (five hours after factory timings) and seeks to take copies of the "shareholders Register". How far under the Act is his action reasonable? (3 marks)

Answer:

Under **Section 13(2) of the Employees Provident Funds and miscellaneous Provision Act,1952,** an inspector can inspect and make copies of, take extract from any book, register or other documents maintained in relation to the establishment and where he has reason to believe that any offence under this Act has been committed by an employer seize with assistance as he may think fit, such book, register or other documents or portions there of as he may consider relevant in respect of that offence. The register of shareholders is not relevant in any offence mentioned in the Act. He is not justified in taking the copies of such register. Moreover he should take copies of documents during working hours. It is unreasonable on his part to take copies at 10.00 p.m.

In the present case, the inspector had sought to take copies of the shareholder's register which is irrelevant to the offence, after the working hours (10.00 pm) which is not reasonable.

Question: 37 2015- Dec
Sushil retired from the services of ABC Limited, on 31st March, 2014. He had a sum of ` 10 lakhs in his Provident Fund Account. It has become due for payment to Sushil on 30th April, 2014, but the company made the payment of the said amount after one year. Sushil claimed for the payment of interest on due amount at the rate of 15 percent per-annum for one year. Decide, whether the claim of Sushil is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. (3 marks)

Answer:
According to **Section 7Q** of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.
However, the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest charged by any scheduled bank. As per above provision, Sushil can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate Sushil can claim only 12 percent per annum interest on the due amount. Hence, claim of Sushil for interest rate 15% is not tenable.

Question: 38 2015- Dec
After serving 15 years, Mr. Anand died on 30.09.2015 when his last twelve months average monthly wages was ` 5,000. Calculate the amount to Employees Linked Deposit Insurance (ELDI) which can be paid to nominee of Anand. (3 marks)

Answer:
As per current amendment [The Employees Deposit Linked Insurance Scheme, 1976 as amended by the Employees Deposit Linked Insurance (Amendment) Scheme, 2011], higher of the below mentioned would be paid to the nominee of the deceased.

(A) Average monthly wages drawn (upto ` 6,500) during the twelve months preceding the month of death, multiplied by twenty. (Maximum amount payable is ` 1,30,000)
Or

(B) An amount equal to average balance in the accounts of the deceased in the fund where average balance exceeds ` 50,000, the amount payable shall be ` 50,000 plus 40% of the amount in excess of ` 50,000 (subject to maximum benefit of ` 1,00,000). [In this case it is assumed that the average Fund balance ` 1,00,000]
Hence,
Option A = 5,000 x 20= ` 1,00,000 Option B = 50,000 + 40% of 50,000 = ` 70,000 Therefore, amount to be paid to the nominee of Mr. Anand (Higher of A and B) is ` 1,00,000

EMPLOYEES STATE INSURANCE ACT, 1948

Introduction	The Employees' State Insurance Act, 1948 is the first major legislation on social security for the employees in India. It is devised to provide social protection to employees in contingencies such as illness, long term sickness or any other health risks due to exposure to employment injury or occupational hazards. The medical facilities are also made available to legal dependents of the employees who are insured person. This facility is also extended to retired persons also.
Object of the Act	The object of the Act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.
Applicability	This Act extends to whole of India. This Act applies to- • in the first instance applicable to all factories, including factories belonging to the Government, other than season factories; • the appropriate Government may, in consultation with the corporation and where the appropriate Government is a State Government, with the approval of Central Government, after giving one month's notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or classes of establishments, industrial, commercial, agricultural or otherwise; • a factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power. The Central Government has since prescribed the wage limit for coverage of an employee under Section 2(9) of the Act, as ` 21,000 per month. Further it is provided that an employee whose wages (excluding remuneration for overtime work) exceeds ` 21,000 a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the said period. In 'Employees' State Insurance Corporation V. Premlal' – 2009 LLR 282 (Ker HC) it was held that ESI scheme will be applicable to establishment preparing sweets with the aid of LPG. In 'Employees State Insurance Corporation, Orissa Region V. Gujarat Co-operative Milk Marketing Federation Limited' – 2009 LLR 615 (Ori.HC) it was held that in the absence of required number of employees in Milk Federation, ESI Act could not be extended upon it. In 'Kuriacose V. Employees' State Insurance Corporation' – (1988) 2 CLR 301 (Ker) it was held that once the Act has become applicable to a factory or an establishment, its application will be continuous.
Important Definitions:	**Appropriate Government** Section 2(1) defines the term 'appropriate Government', in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.
Confinement	Section 2(3) defines the term 'confinement' as labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of a child, whether alive or dead.

Dependant	Section 2(6A) defines the term 'dependant' as any of the following of a deceased insured person: • a widow, a legitimate or adopted son who has not attained the age of 25 years, an unmarried legitimate or adopted daughter; • a widowed mother; • if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm; • if wholly or in part dependant on the earnings of the insured person at the time of his death • a parent other a widowed mother; • a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor; • a minor brother or an unmarried sister or a widowed sister if a minor; • a widowed daughter-in-law; • a minor child of a pre-deceased son; • a minor child of a pre-deceased daughter where no parent of the child is alive; or • a paternal grand-parent if no parent of the insured person is alive.
Employment injury	Section 2(8) defines the term 'employment injury' as a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of employment, being an insurable employment, whether the accident occurs or the occupation disease is contracted within or outside the territorial limits of India.
Employee	Section 2(9) defines the term 'employee' as any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and • who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or • who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or • whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the productions of, the factory or establishment or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time but does not include- • any member of the Indian naval, military or air forces; or

	• any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government provided that an employee whose wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period. In 'Director, Hassan Co-operative Milk Producer's Society Union Limited V. Assistant Regional Director, Employees' State Insurance Corporation' AIR 2010 SC 2109 it was held that merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be an 'employee'; he must not only be employed in connection with the work of the establishment but also be shown to be employed in or other of the three categories mentioned in Section 2(9) of the Act. In 'Employees' State Insurance Corporation V. Tata Engineering & Locomotive Co., Limited' – AIR 1976 SC 66 it was held that an apprentice who is mere trainee for a distinct purpose is not an employee. In 'Regional Director, Employees' State Insurance Corporation V. Ramanuja Match Industries' – AIR 1985 SC 278 it was held that a partner is not an employee. The following categories are coming under the purview of the term 'employee' • Canteen workers – Employees State Insurance Corporation V. Shri Ram Chemical Industries' – (1978) 2 LLN 227 (Raj); • Employees who are working in a show room or sales office – 'Bhopal Motors Private Limited V. Employees' State Insurance Corporation' – (1982) 2 LLN 827 (MP); •Workers rendering services outside the place of establishment or shop – 'Hindu Jea Band V. Regional Director, Employees' State Insurance Corporation' – 1986 LLR 95; • Part time employees employed on daily rate basis – 'Hindu Jea Band' (supra); • Casual workers – 'Regional Director, Employees' State Insurance Corporation V. South India Flour Mill (Pvt) Limited' – AIR 1986 SC 1686;
Family	Section 2(11) defines the term 'family' as all or any of the following relatives of an insured person • a spouse; • a minor legitimate or adopted child dependent upon the insured person; • a child who is wholly dependent on the earnings of the insured person and who is- o receiving education, till he or she attains the age of 21 years; o an unmarried daughter; • a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues; • dependent parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government; • in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependent upon the earnings of the insured person.

Factory	Section 2(12) defines the term 'factory' as any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed. **Immediate employer** Section 2(13) defines the terms 'immediate employer' in relation to employees employed by or through him, as a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent on hire to the principal employer and includes a contractor. In 'Employees' State Insurance Corporation V. T. Shankar Singh T. Byali' – (1988) 92 FJR 645 (Kar) it was held that a person will be the immediate employer and not the principal employer even if the employees have been employed by him, if he supplied services to a factory or establishment.
Insured Person	Section 2(14) defines the term 'insured person' as a person who is or was an employee in respect of whom contributions are or were payable under the Act and who is by reason thereof, entitled to any of the benefits provided by this Act.
Permanent partial disablement	Section 2(15A) defines the expression 'permanent partial disablement' as such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement. Every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement.
Permanent total disablement	Section 2(15B) defines the expression 'permanent total disablement' as such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident in such disablement. The permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100% or more.
Principal Employer	Section 2(17) defines the term 'principal employer' as • in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named; • in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department; • in any other establishment, any person responsible for the supervision and control of the establishment.
Seasonal factory	Section 2(19A) defines the term 'Seasonal factory' as a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton

	ginning, cotton or jute pressing, decortications of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year • in any process of blending, packing or repacking of tea or coffee; or • in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify.
Temporary disablement	Section 2(21) defines the term 'temporary disablement' as a condition resulting from an employment which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury.
Wages	Section 2(22) defines the term 'wages' as all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but not include • any contribution paid by the employer to any pension fund or provident fund, or under this Act; • any travelling allowance or the value of any travelling concession; • any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or • any gratuity payable on discharge. In 'Regional Director, Employees' State Insurance Corporation' – 1994 LLR 1 (SC) it was held that bonus or ex-gratia amount is not 'wages'. The following are treated as wages • LIC Premium subsidy; • House rent allowance, heat, gas and dust allowance and incentive allowance; • Incentive bonus; • Over time allowance;
Employees' State Insurance Incorporation	Section 3 provides for the establishment of Employees' State Insurance Corporation with effect from 01.10.1948. The Corporation is a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued.
Constitution of Corporation	Section 4 provides that the Corporation shall consist of a Chairman, a Vice Chairman and other members representing the interests of employers, employees, state governments, union territories and medical professions. Three members of the Parliament and the Director General of the Corporation are its ex-officio members. Section 5 provides for the term of office of members of Corporation. Section 6 provides for the eligibility for re-nomination or re-election. All orders and decisions of the Corporation shall be authenticated by the signature of the Director General.
Regional Boards	Section 25 provides that the Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner and delegate to them such powers and functions, as may be provided by the

	regulations.
Other bodies of Corporation	**Standing Committee** Section 8 of the Act provides for the constitution of Standing Committee which shall be constituted form among its members consisting of- • a Chairman; • three members of the Corporation; • three members of the Corporation representing such three State Governments; • eight members elected by Corporation – • three members from among the members of the Corporation representing employers; • three members from among the members of the Corporation representing employees; • one member from among the members of the Corporation representing medical profession; and • one member from among the members of the Corporation elected by Parliament. • the Director General of the Corporation, ex-officio.
Term of office	Section 9 provides that the term of office of a member of the Standing Committee shall be two years from the date on which his election is notified. A member of the Standing Committee shall cease to hold office when he ceases to be a member of the Corporation.
Powers of the Standing Committee	Section 18 provides that subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation. The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf. The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.
Meetings of Standing Committee, Corporation and Medical Benefit Council	Section 20 of the Act provides that the Standing Committee shall meet at such times and places and shall observe such rules or procedure in regard to transaction of business at their meetings as may be specified in the regulations made in this behalf.
Supersession of the Corporation and Standing Committee	Section 21 of the Act provides that if in the opinion of the Central Government, the Corporation or the Standing Committee persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, that Government may, by notification in the Official Gazette, supersede the Standing Committee in consultation with the Standing Committee. Before issuing a notification the Standing Committee shall be given a reasonable opportunity to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Standing Committee. On such superseding all the members shall be deemed to vacate their office. A new Standing Committee shall be immediately constituted.
Medical Benefit Council	Section 10 provides for the constitution of Medical Benefit Council consisting of • the Director General of ESI, ex-officio – Chairman; • the Director General, Health Services, ex-officio – Co-Chairman;

	• the Medical Commissioner of the Corporation – ex-officio; • one member each representing each state other than Union territories; • three members representing employers; • three members representing employees; • three members representing the medical profession; among them one shall be a woman.
Term of office	The term of the office of the members of Medical Benefit Council (last three categories) shall be four years from the date on which the appointment is notified.
Duties of Medical Benefit Council	Section 22 provides the duties of the Medical Benefit Council as to- • advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters; • have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with the medical treatment and attendance; and • perform such other duties in connection with the medical treatment and attendance as may be specified in the regulations.
Disqualification	Section 13 provides that a person shall be disqualified as a member of the Corporation, the Standing Committee or the Medical Benefit Council- • if he is declared to be of unsound mind by a competent court; or • if he is an undischarged insolvent; or • if he has directly or indirectly by himself or by his partner any interest in a subsisting contract with, or any work being done for, the Corporation except as a medical practitioner or as a share holder of a company; or • if before or after commencement of this Act, he has been convicted of an offence involving moral turpitude.
Resignation	Section 11 provides that a member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to the Central Government and his seat fall vacant on the acceptance of the resignation by Government.
Cessation	Section 12 provides that a member of the Corporation, the Standing Committee or the Medical Benefit Council shall cease to be a member if he fails to attend three consecutive meeting. The Corporation, the Standing Committee or the Medical Benefit Council may restore the membership subject to the rules made by the Government.
Registration of employees	Every employee is to register himself under the provisions of the Act. Registration is the process of obtaining and recording information about his employment which is insurable employment. This process also identifies to provide the benefits available under the Act that are related to the contributions paid by the employer on behalf of insured employees. The employee is required to give his details and his family details to his employer. A family photo is also to be provided so that the employer can register the employee. Registration is the process of obtaining and recording information about the entry of an

	employee into 'insurable employment', for the purpose of his identification under the Act. Registration of employee is the process of identification to provide the benefits under the Act which are related to the contributions paid by the employer on behalf of each of the insured persons. At the time of joining the insurable employment, an employee is required to provide his and his family details to the employer along with a family photo so that the employer can register the employee online. This exercise of registering an employee has to be a onetime exercise in life time of an employee. The insurance number generated on the first occasion of registration is to be used throughout his life time irrespective of change of employment including change of place.
Employees' State Insurance Fund	Section 26 of the Act provides for the creation of Employees' State Insurance Fund held and administered by the Corporation. All contributions paid under this Act and all other moneys received on behalf of the corporation shall be paid into this fund. The grants, donations and gifts received from the Central Government or any State Government, local authority or any individual or body whether incorporated or not, are also paid into this Fund.
Purposes for which the fund may be expended	Section 28 of the Act provides the Central Government may utilize the State Insurance Fund only for the following purposes: • payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provisions of this Act and defraying the charges and costs in connection therewith; • payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils; • payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act; • establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families; • payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation; • defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities; • defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act; • payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf; • payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim

	instituted or made against the Corporation; • defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act; • defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and • such other purposes as may be authorized by the Corporation with the previous approval of the Central Government.
Contributions	The contribution payable under this Act is of two types – one is the contribution of the employer and the other is the contribution of the employee which is recovered from his wages and remitted to the Fund. The present rate contribution is 4.75% and 1.75% of workers' wages by employers and employees respectively. The contribution shall be paid in a bank duly authorized corporation within 21 days of the last day of the calendar month in which the contribution falls due for any wage period. The employer is required to file monthly contributions online through ESIC portal on a monthly basis in respect of all its employees after duly registering them. Through this, the employer has to file employee wise number of days for which wages paid and the amount of the wages paid respectively to ascertain the amount of contributions payable. The total amount of contribution, both by the employer and the employee, for each month is to be deposited in any branch of SBI in cash or by cheque or demand draft on generation of such a challan through ESIC portal using credentials. The contributions can also be paid through SBI internet banking.
Principal employer to pay contribution in the first instance	Section 40 (1) provides that the principal employer shall pay in respect of all employer, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution. Section 40(4) provides that any sum deducted by the principal employer from wages shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted. The principal employer shall bear the expenses of remitting the contributions to the corporation.
Recovery of contribution from immediate employer	Section 41 provides that a principal employer, who has paid contribution in respect of an employee employed through an immediate employer, shall be entitled to recover the amount of the contribution so paid from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer. The immediate employer shall maintain a register of employees employed by or through him and submit the same to the principal employer before the settlement of any amount payable by him.
Method of payment of contribution	Section 43 provides that the Corporation may make regulations for payment and collection of contributions payable. Such regulations may provide for- • the manner and time of payment of contributions; • the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, card or otherwise and regulating the manner, times and conditions, in, at and under which, such stamps are to be affixed or impressed; • the date of which evidence of contributions have been paid is to be received by the Corporation;

	• the entry in or upon books or cards of particulars of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards relate; and • the issue, sale, custody, production, inspection and delivery of books or card and the replacement of books or cards which have been lost, destroyed or defaced.
Recovery of contributions	Section 45B provides that any contribution payable under this Act may be recovered as an arrear of land revenue. Section 45C provides that the authorized officer may issue certificate to Recovery Officer, who in turn proceed to recover the amount by one or more of the modes mentioned below- • attachment and sale of moveable or immovable property of the factory or establishment or, as the case may be, the principal, or immediate employer; • arrest of the employer and his detention in prison; • approving a receiver for the management of the movable or immovable properties of the factory or establishment or, as the case may be, the employer. The attachment shall first be effected against the properties of the factory or the establishment and such attachment and sale is insufficient for recovering the whole of the amount of arrears, the Recovery Officer may take such proceedings against the property of the employer.
Benefits	Section 46 provides that the insured persons , their dependents shall be entitled to the following benefits- • periodical payments to any insured person in case of his sickness; • periodical payments to an insured woman in case of confinement or mis-carriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage; • periodical payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee; • periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee; • medical treatment for and attendance on insured persons; • payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure. The amount of such payment shall not exceed such amount as may be prescribed by the Central Government. The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.
Bar against receiving compensation under any other law	Section 53 provides that an insured person or his dependants shall not be entitled to receive or recover, whether from the employer or from any other person, any compensation or damages under the Workmen Compensation Act, 1923 or any other law for the time being in force or otherwise in respect of an employment injury sustained by the insured person as an employee.

Medical benefit	Section 56 provides that an insured person or a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefits. Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution. A person shall be entitled to medical benefit during any period for which contributions are payable in respect of him or which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations.
Establishment of hospital by Corporation	Section 59 provides that the Corporation may, with the approval of the State Government, establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of insured persons and their families.
Benefits not assignable	Section 60 provides that the right to receive any payment or any benefit under this Act shall not be transferable or assignable.
Benefits not to be combined	Section 65 provides that an insured person shall not be entitled to receive for the same period- • both sickness benefit and maternity benefit; or • both sickness benefit and disablement benefit for temporary disablement; or • both maternity benefit and disablement benefit for temporary disablement. Where a person is entitled to more than one of the benefits he shall be entitled to choose which benefit he shall receive.
Repayment of benefit improperly received	Section 70 provides that where any person has received any benefit or payment under this Act when he is now lawfully entitled to receive the same, he shall be liable to the Corporation the value of the benefit or the amount of such payment, or in the case of his death his representative shall be liable to repay the same from the assets of the deceased, if any, in his hands. The amount recoverable may be recovered as if it were an arrear of land revenue or by the Recovery Officer.
Employer not to reduce wages etc.,	Section 72 provides that no employer by reason only of his liability for any contributions payable under this Act shall, directly or indirectly reduce the wages of any employee, or except as provided by the regulations discontinue or reduce benefits payable to him under the conditions of his service, which are similar to the benefits conferred by this Act.
Employer not to dismiss or punish the employee during sickness etc.,	Section 73 provides that no employee shall dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall be, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period which he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulars to arise out of the pregnancy or confinement rendering the employee unfit for work.
Adjudication of disputes and claims	Section 74 provides that the State Government shall constitute an ESI Court for such local area as may be specified in the notification. Section 75 provides that ESI Court may decide any question or dispute arises as to- • whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution; or • the rate of wages or average daily wages of an employee for the purposes of this Act; or

	• the rate of contribution payable by a principal employer in respect of any employee; • the person who is or was the principal employer in respect of any employee; or • the right of any person to any benefit and as to the amount and duration thereof; or • any direction issued by the Corporation on a review of any payment of dependants' benefit; or • any other matter which is in dispute between- • a principal employer and the Corporation; or • a principal employer and an immediate employer; or • a person and the Corporation; or • an employee and a principal or immediate employer, The following claims shall be decided by ESI Court- • claim for the recovery of contributions from the principal employer; • claim by a principal employer to recover contributions from any immediate employer; • claim against a principal employer; • claim for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and • any claim for the recovery of any benefit admissible under the Act. An appeal shall lie to the High Court from an order of ESI Court if it involves a substantial question of law. The appeal shall be filed within 60 days from the date of the order of ESI Court.
Jurisdiction of Civil Court	Section 75(3) provides that no Civil Court have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which is to be decided by a medical board or a medical appeal tribunal or ESI Court. In 'ESI Corporation V. Jalandhar Gymkhana Club'- 1972 LLR 733 (P&H) it was held that a civil court cannot determine whether this Act is applicable to an establishment or not.
PENAL PROVISIONS UNDER SECTIONS 84 TO 86 OF ESI ACT, 1948:	Sections 84 to 86 of the Act provide for penalties for certain offences. These penalties were substantially increased by the Employee's State Insurance (Amendment) Act, 1975. The amended Act introduced three new sections namely, Section 85-A, 85-B and 85-C. The following are the penalties as per the Act: **Section - 84:** This section deals with penalties for making wrong / false statements made by the Insured Persons with a view to take any benefit which is not admissible to him under the Act. Such Act is an offence punishable under Act with imprisonment for a term which may extend to six months or with fine which may extend to Two thousand rupees or with both. It is also provided under this section that if an insured person is convicted by the Court for an offence committed by him under this section, he shall not be entitled to any cash benefits available under the Act for such a period as may be prescribed by the Central Government.

Section - 85: This section deals with penalties for non – compliance with the various provisions of the ESI Act and Regulations made there under. Such non- compliance with any of the provisions of the Act constitutes an offence committed by the employer of a covered Factory / Establishment which is punishable under Section 85(a) to 85(g) of the Act.

Section - 85(a): Envisages that if an employer fails to pay any contribution payable under the Act within the prescribed time-limit, he thus commits an offence u/s 85(a) of the Act, which is punishable with imprisonment for a term which may extend to three years u/s 85(i) of the Act, provided it shall not be less than One year and fine of Ten thousand rupees u/s 85(i) (a) of the Act where employees' share of contribution is deducted by the employer from their wages but not paid. In other case where term of imprisonment shall not be less than 6 months and fine of Five thousand rupees u/s 85(i) (b).

Section 85(b) to 85(g): Says that if an employer commits an offence under this section for noncompliance with any other provisions of the Act, which is punishable with imprisonment for a term which may extends to One year or with fine up to Four thousand rupees or with both.

Section 85 - A: This section deals with enhanced punishment in certain cases after previous conviction. If any employer convicted by a Court for an offence punishable under the Act, committing the same offence, shall, for every such subsequent offence, be punished with imprisonment for a term which may extend to Two years and with fine of Five thousand rupees.

It is provided that if such subsequent offence is for failure to pay contribution payable under the Act, the employer shall, for every such subsequent offence, be punished with imprisonment for a term which may extend to Five years but which shall not be less than Two years and shall be liable to pay fine of Twenty Five Thousand rupees.

Section 85 - B: Provides that the corporation may recover damages from the employer by way of penalty under this section if any employer fails to pay contribution payable under the Act within the specified time-limit or pays contribution belatedly provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard.
The amount of damages may not exceed the amount of contribution paid / payable.

There is also a provision to reduce or waive damages recoverable under this section in respect of a Factory/Establishment which is a Sick Industrial Unit and in respect of which Rehabilitation Scheme has been sanctioned by BIFR, under Regulation 31-C, of ESI (General) Regulations, 1950.

a. In case of change of Management including transfer of undertaking to worker's Co-operative or in case of merger or amalgamation of Sick Industrial Unit with a healthy company, damages levied/ leviable can be waived completely.

b. In other cases, depending on merits, damages levied/leviable can be waived upto 50%.

c. In exceptional hard cases, the damages levied/leviable can be waived either partially/totally.

Section-85-C: Provides that where an employer is convicted for an offence of non-payment of contribution under this Act, the Court in addition to giving any punishment by order, direct him to pay the amount of contribution for which he was convicted within a time period. The Court can also extend the time given periodically.

If the employer still fails to pay the contribution and submit returns within the time given by the court or within the extended time period given, the employer is deemed to have

	committed a further offence and shall be punishable with imprisonment under Section-85 and is also liable to pay a fine which may extend to one thousand rupees for every day of default. **Section-86:** Provides that no prosecution under this Act shall be instituted without previous sanction of the Insurance Commissioner or of such other officer of the corporation as may be authorized in this behalf by the Director General of the Corporation. It is also provided that No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under this Act. And No Court shall take cognizance of any offence under this Act except on a complaint made in writing in respect thereof.
Section-75: Deals with provisions for Adjudication of Disputes & claims:	If any employer or employee under the Act has any disputes/questions that may be settled by E.I. Court after adjudicating the matter if made before it, subject to the condition that 50 % security deposit is required to be made u/s.75 (2B) (unless it is waived/reduced for the reasons recorded by the Ld. Court).
Penal Action u/s 138 of N.I. Act:	If employer submits a cheque to the corporation towards payment of contribution, interest, damages or any other amount due, which is bounced subsequently by the Bank for the reasons of Insufficient Fund he thereby commits an offence under this section and shall be punished with imprisonment for a term upto One year or with fine which may extend to twice the amount of cheque or with both.
Penal Action u/s 405/406/409 of I.P.C:	If an employer deducts employees' share of contribution from their wages but does not pay the said contribution, he thereby commits an offence of criminal Breach of Trust which is punishable under this section with imprisonment which may extend to 3 years or with fine or with both.

PRACTICE MANUAL

Fill in the blanks

1. The two types of permanent establishment is_____and_____.

2. The term of the members of Medical Benefit Council shall be _____.

3. The rate of contribution is_____ and _____ of worker's wages by employees and employers respectively.

4. The amount recoverable under this Act may be recovered as if it_____.

5. Standing Committee shall consist of_____ members of the Corporation;

6. _____ is the ex-officio member of Medical Benefit Council;

7. A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to_____.

8. The payment towards the expenditure on the funeral of the deceased insured person is payable to the _____.

9. Confinement is the labor resulting in the issue of living child or labor after_____ of pregnancy resulting in the issue of child, whether alive or dead.

10. Factory is defined as any premises including the precincts thereof whereon_____or more persons are employed on any day of the preceding _____.

Choose the correct answer

1. The contribution shall be paid in a bank within ___days of the last day of the calendar month in which the contribution fall due for any wage period.

(a) 7
(b) 14
(c) 21
(d) 30

2. An appeal shall lie to High Court from the orders of ESI within _____ days from the date of order of the ESI Court.

(a) 30
(b) 60
(c) 90
(d) None of the above

3. A member of the Corporation shall cease to be a member if he fails to attend _____ consecutive meeting.

(a) 3
(b) 5
(c) 7
(d) None of the above.

4. ESI Fund consists of

(a) Contribution;
(b) Grants from governments;
(c) Donations;
(d) All the above.

5. The Corporation may with the approval of _____ establish and maintain in a State, hospitals, dispensaries etc.,

(a) Central Government;
(b) State Government;
(c) Local Authority;
(d) None of the above.

6. Who will not the following be considered as an employee?

(a) Canteen workers;
(b) Casual workers;
(c) Partners;
(d) Part time employee.

7. Who, among the following, is not the Principal Employer?

(a) Occupier of the factory;
(b) Owner of the factory;
(c) Legal representative of the owner;
(d) Legal representative of the contractor.

8. Seasonal factory is the one which is engaged for a period not exceeding_____ in a year.

(a) 7 months;
(b) 6 months;
(c) 3 months;
(d) None of the above.

9. Which, among the following, will not be included in the definition of 'wages'?

(a) Payment made on authorized leave;
(b) Travelling allowance;
(c) Payment made on lock out;
(d) Payment made for lay off.

10. ESI Corporation is a

(a) Partnership firm;
(b) Limited Liability Partnership;
(c) Body Corporate;
(d) Hindu Undivided Family.

State whether TRUE or FALSE

1. The members of Indian Naval, military or air force is coming under the definition of 'employee' under ESI Act.
2. Wage does not include any gratuity payable on discharge.
3. Every employee is to register himself under the provisions of ESI Act.
4. An employee insured under the ESI Act can also claim compensation under the Workmen Compensation Act.
5. The benefits of medical benefits under this Act are assignable.
6. Civil Court has no jurisdiction to decide or deal with any dispute or to dispute on any liability to be decided by a medical board or tribunal or ESI Court.
7. Attachment of bank account of the defaulter can be undertaken for recovery of dues.
8. The Central Government cannot supersede the ESI Corporation.
9. Employees represent the Station Commission of ESI Corporation.
10. There shall be one woman among the members representing the medical profession in the Medical Benefit Council.

Model Questions

1. Define the terms 'immediate employer' and 'employee' under ESI Act.
2. Distinguish between the 'permanent partial disablement' and 'permanent total disablement'.
3. What are the various bodies constituted by the ESI Corporation and describe the functions of such bodies.
4. What is 'Employees' State Insurance Fund' and for what purposes the fund may be expended?
5. List the benefits that are entitled to the insured persons under this Act.
6. Discuss the method of recovery of contribution from the employer.
7. Whether an employee can be dismissed or punished during sickness? Substantiate your answer.
8. What are the disputes that can be settled by ESI Court?
9. What are the punishments described under Section 85 of the Act for failure to pay contribution etc.,
10. State the obligations of Principal Employer.

Answers:

Fill in the blanks

1. Permanent partial disablement, permanent total disablement;
2. 4 years;
3. 4.75%, 1.75%;
4. Were an arrear of land revenue;
5. Three;
6. Medical Commissioner of the Corporation;

7. Central Government;
8. Eldest surviving member of the family;
9. 26 weeks;
10. 10 months, 12 months

Choose the correct answer

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

State whether TRUE or FALSE

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

MTP Question:

MTP Dec 2018
Question:1 Write a note on: Medical Benefit Council

Answer:

(i) Medical Benefit Council Section 10 of ESI Act provides for the constitution of Medical Benefit Council consisting of-

- the Director General of ESI, ex-officio – Chairman;
- the Director General, Health Services, ex-officio – Co-Chairman;
- the Medical Commissioner of the Corporation – ex-officio;
- one member each representing each state other than Union territories;
- three members representing employers;
- three members representing employees;
- three members representing the medical profession; among them one shall be a woman.

Term of office
The term of the office of the members of Medical Benefit Council (last three categories) shall be four years from the date on which the appointment is notified.

Duties of Medical Benefit Council
Section 22 provides the duties of the Medical Benefit Council as to-
 advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;

 have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with the medical treatment and attendance; and

 perform such other duties in connection with the medical treatment and attendance as may be specified in the regulations.

MTP Jun 2018
Question:2 State the purposes for which State Insurance Fund under Employees State Insurance Act, 1948 may be utilized.

Answer:
Responsibility of the occupier

The occupier has to follow the procedure-

 to lay down a detailed policy with respect to the health and safety of the workers;

 to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;

 to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

 to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

MTP June 17
Question: 3 Write a note on:
Medical Benefit Council

Answer:
Medical Benefit Council Section 10 of ESI Act provides for the constitution of Medical Benefit Council consisting of-

 the Director General of ESI, ex-officio – Chairman;

 the Director General, Health Services, ex-officio – Co-Chairman;

 the Medical Commissioner of the Corporation – ex-officio;

 one member each representing each state other than Union territories;

 three members representing employers;

 three members representing employees; three members representing the medical profession; among them one shall be a woman.

Term of office
The term of the office of the members of Medical Benefit Council (last three categories) shall be four years from the date on which the appointment is notified.

Duties of Medical Benefit Council
Section 22 provides the duties of the Medical Benefit Council as to-

 advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;

 have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with the medical treatment and attendance; and

 perform such other duties in connection with the medical treatment and attendance as may be specified in the regulations.

Suggested Question:

Suggested Dec2018
Question: 18 Mention the benefits that are entitled to the insured persons under the Employees' StateInsurance Act, 1948.

Answer:
Procedure for Fixing and revising Minimum Wages (Sec 5) In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(**b) Publication of proposals in the Official Gazette**. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1) (b)].

After considering the advice of the committee or committees [under Sec. 5(1) (a)] or all representations received by it before the date specified in the notification [under Sec 5(1) (b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec 5(2)]. The power of the Government under Sec. 5(2) to issue notification revising minimum wages includes power to give retrospective effect to notification.

Suggested Jun2017
Question: 19 What are the different purposes for which employees' state insurance fund may be utilized by the central government?

Answer: The section 28 of the Employee's State Insurance Act, 1948 provides that the central government may utilize the state insurance fund only for the following purposes:

(i) Payments of benefits and provision of medical treatment and attendance to insured persons and where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provision of this Act and defraying the charges and costs in connection therewith

(ii) Payment of fees and allowances to members of the corporation, the standing committee and the Medical Benefit Council, the Regional Board, Local Committees and Regional Local Medical Councils,

(iii) Establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary service for the benefit of insured persons and where the medical benefit is extended to their families,

(iv) Defraying the cost of auditing the accounts of the corporation and of the valuation of its assets and liabilities,

(v) Defraying the cost of the Employees' Insurance Courts set up under this Act,

(vi) Payment of any sums under any contract entered into for the purpose of this Act by the, corporation or the standing committee or any officer duly authorized by the corporation or the standing committee in that behalf,

(vii) Payment of any sums under any decree, order or award of any court or tribunal against the corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceedings or claim instituted or made against the corporation

(viii) Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act,

(ix) Defraying expenditure, within the limits prescribed on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured person who have been disabled or injured, and

(x) Such other purposes as may be authorized by the corporation with the previous approval of the central government.

(xi) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident fund and other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act.

(xii) Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to the insured person and where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation.

Revisionary Question:

Revisionary Dec 2018
Question: 20 Explain the composition of Medical benefit council, under Employees State Insurance Act, 1948.

Answer: As per section 10 of Employees State insurance Act, 1948, the Central Government shall constitute a Medical Benefit Council consisting of:

1. the Director General, Health Services, ex officio, as Chairman;

2. a Deputy Director General, Health Services, to be appointed by the Central Government;

3. the medical commissioner of the Corporation, ex officio;

4. one member each representing each of the States (other than Union Territories) in which this Act is in force to be appointed by the State Government concerned;

5. three members representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government;

6. three members representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and

7. Three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

Question: 21 Features of National Pension System

Answer: The National Pension System shall, on the commencement of this Act, have the following basic features, namely:—

(a) every subscriber shall have an individual pension account under the National Pension System;

(b) withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the conditions, such as purpose, frequency and limits, as may be specified by the regulations;

(c) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;

(d) there shall be a choice of multiple pension funds and multiple schemes: Provided that— (a) the subscriber shall have an option of investing up to hundred per cent of his funds in Government Securities; and

(b) the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the Authority;

(e) there shall be portability of individual pension accounts in case of change of employment;

(f) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;

(g) there shall not be any implicit or explicit assurance of benefits except market-based guarantee mechanism to be purchased by the subscriber;

(h) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and

(i) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

Question: 22 Explain the composition of Medical benefit council, under Employees State Insurance Act, 1948.

Answer: As per section 10 of Employees State insurance Act, 1948, the Central Government shall constitute a Medical Benefit Council consisting of:

1. the Director General, Health Services, ex officio, as Chairman;

2. a Deputy Director General, Health Services, to be appointed by the Central Government;

3. the medical commissioner of the Corporation, ex officio;

4. one member each representing each of the States (other than Union Territories) in which this Act is in force to be appointed by the State Government concerned;

5. three members representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government;

6. three members representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and

7. Three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

Workbook Question:

Question: 23 Define the terms 'family' and 'immediate employer' under ESI Act.

Answer: Family
Section 2(11) of ESI Act defines the term 'family' as all or any of the following relatives of an insured person- a spouse; a minor legitimate or adopted child dependent upon the insured person; a child who is wholly dependent on the earnings of the insured person and who is- receiving education, till he or she attains the age of 25 years; an unmarried daughter; a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues; dependent parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government; in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependent upon the earnings of the insured person.

Immediate employer
Section 2(13) defines the terms 'immediate employer' in relation to employees employed by or through him, as a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent on hire to the principal employer and includes a contractor.

Question: 24 Write short notes on:
(i) Permanent partial disablement
(ii) Permanent total disablement
(iii) Temporary disablement

Answer: (i) Section 2(15A) defines the expression 'permanent partial disablement' as such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement. Every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement.

(ii) Section 2(15B) defines the expression 'permanent total disablement' as such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident in such disablement. The permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100% or more.

(iii) Section 2(21) defines the term 'temporary disablement' as a condition resulting from an employment which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury.

Question: 25 What is the Registration procedure of the employees under Employees State Insurance Act, 1948?

Answer: Registration is the process of obtaining and recording information about his employment which is insurable employment for the purpose of his identification under the Act. This process also identifies to provide the benefits available under the Act that are related to the contributions paid by the employer on behalf of insured employees. The employee is required to give his details and his family details to his employer so that the employer can register the employee online. A family photo is also to be provided so that the employer can register the employee.

This exercise of registering an employee has to be a onetime exercise in life time of an employee. The insurance number generated on the first occasion of registration is to be used throughout his life time irrespective of change of employment including change of place.

Question: 26 Mention the benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948.

Answer: Section 46 provides that the insured persons, their dependents shall be entitled to the following benefits-

(i) Periodical payments to any insured person in case of his sickness;

(ii) Periodical payments to an insured woman in case of confinement or mis-carriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage;

(iii) Periodical payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee;

(iv) Periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee;

(v) Medical treatment for and attendance on insured persons;

(vi) Payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.

The amount of such payment shall not exceed such amount as may be prescribed by the Central Government. The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.

Question: 27 What are the different purposes for which employees' state insurance fund may be utilized by the central government?

Answer: Section 28 of the Act provides the Central Government may utilize the State Insurance Fund only for the following purposes:

- payment of benefits and provision of medical treatment and attendance to insured persons

- payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

- payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;

- establishment and maintenance of hospitals, dispensaries and other institutions;

- payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons;

- defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;

- defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;

- payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;

• payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;

• defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;

• defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and

• such other purposes as may be authorized by the Corporation with the previous approval of the Central Government.

Scanner Question:

Question: 28 2008 - Dec [6] Write note of the following:
'Employment injury' under the Employees State Insurance Act, 1948.

(5 marks) ***[CSEM - II]***

Answer:
Employment injury means an injury caused to an employee arising out of and in the course of his employment being an insurable employment, whether the accident occurs within or outside the territorial limits of India. For an employment injury there must be some nexus (means-relation) between the employment and the accident. Employment injury need not be confined to employer's premises only. It extends to time and place (theory of motional extension)
In the decided case, it was held that mere road accident of an employee while going for employment will not constitute employment injury.

Question: 29 2009 - June [6] Write note on the following:
'Dependent' under the Employees' State Insurance Act, 1948.

(5 marks) ***[CSEM - II]***

Answer:
"Dependant" means any of the following relatives of a deceased insured person, namely,-
(i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter.

[i(a) a widowed mother],

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of twenty five years and is infirm;

(iii) if wholly or in part dependent on the earnings of the fhsured person at* the time of his death,-

(a) parent other than a widowed mother,

(b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,

(c) a minor brother or an unmarried sister or a widcWed sisterlif a minor,

(d) a widowed daughter-in law,

(e) a minor child of a pre-deceased son,

(f) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(g) a paternal grand-parent if no parent of the insured person is alive.

Question: 30 2009 - Dec [6] Write note on the following:
'Benefits to which insured persons are entitled' under the Employees' State Insurance Act,.1948.
(5 marks) ***[CSEM - II]***

Answer:
Section 46 of the Employees State Insurance Act, 1948 provides for the following benefits:-
(a) periodical payments in case of sickness certified by medical practitioner.

(b) periodical payment in case of disablement on account of employment injury.

(c) periodical payment to dependants.

(d) medical treatment related payment.

(e) In case of death of insured, payment at rate of ` 1,500 in relation to funeral expenses.

Question: 31 2010 - June [6] Write note on the following:
Purposes for which ESI fund may be expended under the Employees' State Insurance Act, 1948
(5 marks) ***[CSEM - II]***

Answer:
Various purposes for which ESI fund may be expended under the Employees State Insurance Act, 1948. are as follows:-

□ Payment of benefits to the insured person or their families.

□ Payment in relation to any contract entered for implementing the provisions of the Act.
Payment of salaries to the employees of Employee State Insurance Corporation.

□ Payment of fees to members of standing committee.

Question: 32 2010 - Dec [6] Write note on the following:
Employees' Insurance Court constituted under the Employees' State Insurance Act, 1948. (5 marks) ***[CSEM - II]***

Answer:
□ Employees Insurance court (EIC) is constituted under **Section 74 of the employees State Insurance Act; 1948.**

□ State Government is empowered to notify the EIC in the official Gazette.

□ The judge of such Court should be either-

• Judicial officer or
• Legal practitioner for at least 5 years.

□ EIC needs to perform the function of both adjudicating disputes as well as.determining the claims.

Question: 33 2011 - Dec [6] Write note on the following:
'Employment injury' under the Employees' State Insurance Act, 1948. **(5 marks)** ***[CSEM - II]***

Answer: Please refer 2008 - Dec [6] (i) on page no. 305

Question: 34 2012 - June [6] Write note on the following:
Purposes for which ESI fund may be expended under the Employees' State Insurance Act, 1948.
(5 marks) ***[CSEM - II]***

Answer:
Please refer 2010 - June [6] (ii) on page no.307 .

Question: 34 2012 - Dec [6] Write notes on the following:

Purposes for which Employees' State Insurance Fund may be expended under the Employees' State Insurance Act, 1948. **(5 marks)** ***[CSEM - II]***

Answer:

Please refer 2010- June [6] (ii) on page no. 307

Question: 35 2008 - **Dec** [7] Distinguish between the following:

'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.

(5 marks) ***[CSEM - II]***

Answer:
According to Section 2(17) of the Employees' State Insurance Act, 1948 principal employer means

Factory Occupier	Type of Organisation Under Control of Department of any Government Appointed Authority OR H.O.D.(if none is appointed)	Others Person responsible for control and supervision

'Immediate employer' means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory on establishment of the principal employer.

Question: 36 2010- June [7] (a) Distinguish between the following:

'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.

(5 **marks)** ***[CSEM - II]***

Answer:

Please refer 2008 - Dec [7] (a) (i) on page no. 308

Question: 37 2011- **June** [7] (a) Distinguish between the following:
'Sickness benefit' and 'medical benefit' under the Employees' State Insurance Act, 1948. (5 **marks)** ***[CSEM - II]***

Answer:
Sickness benefit and medical benefit under the **Employee's State nsurance Act, 1948.**

Sickness benefit	Sickness benefit is periodical payment to any insured person in case his sickness is certified by a duly appointed medical practitioner or by any person having such qualification and experience as may be specified by ESI Corporation.
Medical benefit Medical benefit is given to an insured person or a member of his family whose condition requires medical treatment and attendance.	
	Such medical treatment may be given either in the form of out patient treatment and attendance in a hospital or dispensary, clinic etc.

Question: 38 2012- **June** [7] (a) Distinguish between the following:
'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.
(5 **marks)** ***[CSEM - II]***

Answer:
Please refer 2008 - Dec [7] (a) (i) on page no. 308

Question: 39 2017 - June [4] What are the different purposes for which employees' state insurance fund may be utilized by the central government? (10 marks)

Answer:
Purposes for which the fund may be expended
Section 28 of the Act provides the Central Government may utilize the State Insurance Fund only for the following purposes:

• payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;

• payment of fees and allowances to members of the corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

• payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;

• establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;

• payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;

• defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;

• defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;

• payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;

• payment of any sums under any decree, order or award of any Court or tribunal against the corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceedings or claim instituted or made against the corporation;

• defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;

• defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured person who have been disabled or injured; and

• such other purposes as may be authorized by the corporation with the previous approval of the Central Government.

Question: 40 2018 - Dec [4] Mention the benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948. (6 marks)

Answer:

According to **Section 46 of the Employees State Insurance Act, 1948**

states that the insured persons, their dependents shall be entitled to the following benefits

1. Annual payments to any insured person in case of his sickness

2. Annual payments to an insured woman in case of confinement or mis-carriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage

3. Annual payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee

4. Annual payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee

5. Medical treatment for and attendance on insured persons

6. Payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.

The amount of such payment shall not exceed such amount as may be prescribed by the Central Government.

The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.

Question: 41 2009- June [8] Attempt the following stating relevant legal provisions and

decided case law, if any:

(i) Muskan Theatre is maintaining a canteen and a cycle stand through private contractors. Regional Director, ESI Corporation sent notices to the management of the theatre for contribution of the employees engaged in the canteen and cycle stand. The management contends that they are not employees but are the workmen of the contractor. Hence, the management is not liable. Will the management succeed in its contention?

(iv) An employer failed to pay his contribution under the Employees' State Insurance Act, 1948. After 6 years, the ESI Corporation issued a demand notice for payment of arrears of contribution. The employer contended that the arrears of contribution beyond 5 years are not recoverable. Will the employer succeed?

(4 marks each) ***[CSEM - II]***

Answer:

(i) No, the contention of the management of Muskan Theatre is not legally tenable.

The theatre owner is liable as principal employer for the payment of ESI contribution in respect of workers employed in canteen/ cycle stand. In case of ***Royal Talkies Hyderabad V/s ESIC,*** the Supreme Court held that the two operation namely keeping a cycle stand and running a Canteen are incidental or adjuncts to the primary purpose of the theatre and the workers engaged therein are covered under the definition of employees.

(iv) In the above case, the employer contended that the arrears of contribution beyond 5 years are not recoverable. But the employer's contention is not tenable in law as limitation period of 5 years is not applicable in this case.

Question: 42 2010- June [8] Attempt the following stating relevant legal provisions and decided case law, if any:

(vi) An employee was on his way to the factory. He met with an accident one kilometre away from the place of his employment. He pleaded that the injury was caused by accident "arising out of and in the course of employment" and claimed employment injury benefits under the Employees' State Insurance Act, 1948. Will the employee succeed? **(4 marks)** ***[CSEM - II]***

Answer:

The employee will not succeed.

In the case of ***Regional Director ESI v. Francis de Costa, 1997 LLJ***

134 SC, the Court held that where an employee who is on his way to factory meets with an accident, one K.M. from the place of employment the injury cannot be said to be caused by accident arising out of and in the course of his

employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory.

Question: 43 2011- Dec [8] Attempt the following stating relevant legal provisions and decided case law.
(ii) XYZ Ltd., employing more than 50 workmen in its factory, failed to register itself and pay contributions under the **Employees' State Insurance Act, 1948.** The inspector of the ESI Corporation issued a notice to the company and directed it to register and pay contributions towards its employees. On failure to comply with the terms of notice, ESI Corporation determined the contributions payable by the company and demanded payment with interest and penalty. The company disputed its liability and asked the ESI Corporation to approach the ESI Court for adjudication of the claim. Is the company justified? **(4 marks)** ***[CSEM - II]***

Answer:
• In the above case, XYZ Ltd. employed more than 50 workmen in its factory.

• XYZ Ltd. (employer) denies the liability or applicability of the provisions of the Act.

• Employee's State Insurance Act, 1948 does not stipulate as to who has to approach the employees Insurance Court.

• In this case, employer is not justified as by general implication of law, employer should approach the Employees Insurance Court rather than the ESI corporation.

Question: 44 2012- **June [8]** Attempt the following stating relevant legal provisions and decided case law, if any:
(v) Visual Electronics Ltd. sells household consumer durables such as TV, washing machines, electric stoves, ***etc., of*** various manufacturers in its sales outlet. While delivering these items to the homes of the customers, it deputes its employees to install and explain the salient features of these items. It pays its employees an additional amount of defray for the actual travelling expenses. The Employees' State Insurance Corporation demanded contribution on this additional payment including travelling expenses under the head 'wages'. Is the demand of Employees' State Insurance Corporation justified ? **(4 marks)** ***[CSEM - II]***

Answer:

In the above case, the employer is not liable to pay contribution on travelling

allowance.

• Travelling allowance does not form part of wages as defined under **Section** 2 (22) of the ESI Act as held in 'S, Ganeshan v/s The Regional Director, ESI Corporation.'

• Demand of Employee's State Insurance Corporation is not justified.

Question: 45 2012 - Dec [8] Attempt the following stating relevant legal provisions and decided case law, if any:
(iii) Lecktronics Ltd. is an establishment covered under the Employees' State Insurance Act, 1948. The salesmen of the company were paid a commission @ 10 % of the sales done by them every month. The ESI Inspector asked the employer to deposit contributions (the sum of money payable to the ESI Corporation by the principal employer in respect of an employee) in respect of the commission paid. Is he justified? Give reasons.

(4 marks) ***[CSEM - II]***

Answer:

According to ESI Act, 1948 wages includes any remuneration paid at intervals not exceeding two months. The employee receives incentives/ commission in addition to wages. As the commission is paid every month, the ESI Inspector can ask the employer to deposit contributions.

PAYMENT OF BONUS ACT, 1965

Introduction	In the early periods the payment of bonus to the employees was made voluntarily by the business organizations. The Payment of Bonus Act, 1965 has been enacted to provide for payment of bonus to persons employed in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward and drawing salary not exceeding the prescribed amount. Now it has been made as statutory obligation of an employer. It is one of the ways of sharing the profits of the industry or an establishment. It is an incentive to increase the production. The purpose of payment of bonus is to bridge the gap between the wages paid and the idea of living wage.
Object of the Act	The object of Payment of Bonus Act is to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.
What is Bonus?	The term 'Bonus' has not been defined in this Act. The Bonus Commission has observed that it is difficult to define in rigid terms the concept of bonus, but it is possible to urge that once profits exceed a certain base, labor should legitimately have a share in them. In other words, it is proper to construe the concept of bonus as sharing by the workers in the prosperity of the concern in which they are employed. In 'Muir Mills Company V. Muir Mills Mazdoor Union, Kanpur' – AIR 1955 SC 170 the Supreme Court held that the bonus was neither gratuitous nor deferred payment of wages and that where wages fell short of the living standard and the industry made profits, part of which was due to the contribution of the labor, a claim for bonus might be made legitimately by the workmen. In 'State of Tamil Nadu V. K. Sabanayagam' – (1998) 1 SCC 318 the Supreme Court held that the Bonus Act is a piece of welfare legislation enacted for the benefit of a large category of workmen seeking a living wage to make their lives more meaningful and for fructifying the benevolent guarantee of Article 21 of the Constitution. The bonus may be also customary bonus. Such bonus is not covered under the Bonus Act and therefore it is payable over and above the bonus payable under the Act. In 'Baidyanath Ayurveda Bhawan Mazdoor Union V. Management' – (1984) 1 SCC 279 the following tests have been laid by the Supreme Court to determine whether a particular payment is customary or festival bonus: • that the payment has been made over an unbroken series of years; • that it has been paid for a sufficiently long period – the period has to be longer in the case of an implied term of employment; • that it did not depend on the earning of profits; and • that the payment has been made at a uniform rate throughout.
Applicability of the Act	Territorial wise this act is applicable to the whole of India. This Act shall apply to the following: • every factory; and • every other establishment in which twenty or more persons are employed on any day during an accounting year; • any establishment or class of establishments as notified by the appropriate Government, employing such number of persons less than twenty as may be specified in the notification, that the number of persons so specified shall in no case be less than ten. • an establishment to which this act applies shall continue to be governed by the Act notwithstanding that the number of persons employed falls below twenty or the number specified in the notification. In deciding the number of persons employed in an

	establishment all employees, even those drawing more than the threshold limit must be taken into consideration. The strength of the employees of an establishment would be taken into consideration, irrespective of their place of work.
What is establishment?	The term 'establishment' is of two types – establishment in private sector and establishment in public sector. The term 'establishment in private sector' is defined under Section 2(15) of the Act as any establishment other than an establishment in public sector. The term 'establishment in public sector' is defined as an establishment owned controlled or managed by- • A Government company; • A corporation in which not less than 40% of its capital is held, either singly or taken together by the Government or Reserve Bank of India or a Corporation owned by the Government or the Reserve Bank of India. Section 3 provides that where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment.
What is Appropriate Government?	Section 2(5) defines the term 'appropriate Government' as- • in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government; • in relation to any other establishment, the Government of the State in which that other establishment is situate.
Exempted establishments	The Act will not apply to the following classes of employees- • Employees employed by the Life Insurance Corporation of India; • Seaman as defined in Section 3(42) of the Merchant Shipping Act, 1958; • Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers; • Employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority; • Employees employed by ▪ The Indian Red Cross Society or any other institution of like nature; ▪ Universities and other educational institutions; ▪ Institutions (including hospitals, Chambers of Commerce and Social Institutions) established not for the purpose of profit; • Employees employed through contractors on building operations; • Employees of the Reserve Bank of India;

	• Employees of ▪ The Industrial Finance Corporation of India; ▪ Any financial corporation established unde4r Section 3 or Section 3A of the State Financial Corporation Act, 1951; ▪ The Deposit Insurance Corporation; ▪ The Agriculture Refinance Corporation; ▪ The Unit Trust of India; ▪ The Industrial Development Bank of India; ▪ Any other financial institution, being an establishment in public sector which the Central Government notifies in the Official Gazette with regard to the capital structure, its objects, its extent of financial assistance and any other relevant factor. • Employees of inland water transport establishments operating on routes passing through any other country. Besides the appropriate Government is empowered to exempt any establishment or class of establishments from the applicability of this Act, if it is of the opinion that in regard to the financial position and other relevant circumstances, it would not be in the public interest to apply all or any of the provisions of the Act.
Award	Section 2(7) defines the term 'award' as an interim or a final determination by an industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under Section 10A of Arbitration and Conciliation Act, 1996.
Banking Company	Section 2(8) defines the term 'banking company' as a banking company as defined in Section 5 of the Banking Companies Act, 1949 and includes- • State bank of India and any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959; • Any corresponding new bank as specified in the I Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; • Any corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; • Any co-operative bank as defined in Section 2(bii) of the Reserve Bank of India Act; and • Any other banking institution which may be notified in this behalf by the Central Government.
Employee	Section 2(13) defines the term 'employee' as any person employed on a salary or wage not exceeding `21,000/- per mensem (with effect from 01.04.2014) in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

	Where the salary/wage of an employee exceeds ` 7,000/- per month, the bonus calculation shall be made assuming his salary as ` 7,000/- per month. Apprentice will not be treated as an employee. The following case laws illustrate the eligibility of type of employees eligible for bonus- • A temporary workman is entitled to bonus on the basis of the total number of days worked by him – 'Cooper Allen & Co. Limited V. Their Workmen' – 1951 (2) LLJ 576; • A part time employee as a sweeper engaged on regular basis is entitled to bonus – 'Automobile Karmachari Sangh V. Industrial Tribunal' – 1970 (38) FJR 268; • A dismissed employee, reinstated with back wages, is entitled to bonus – 'Gannon India Limited V. Niranjan Das'- 1984 (40 LLJ 223; • A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period – 'Bank of Madura Limited V. Bank of Madura Employees' Union' – 1961 (1) LLJ 720; • A piece rated worked is entitled to bonus – 'Malabar Tile Works V. Industrial Tribunal' – 1970 (I) LLJ 79.
Employer	Section 2(14) defines the term 'employer' including • in respect of factory – ■ the owner or occupier of the factory including the agent of such owner or occupier; ■ the legal representative of a deceased owner or occupier and ■ the manager of the factory; • in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.
Salary or wage	Section 2(21) of the Act defines 'salary or wage'. According to this definition 'salary or wage' includes all remuneration except over time allowance payable to an employee in respect of his employment. Salary includes dearness allowance. Salary does not include- • any other allowance which the employee is for the time being entitled; • the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles; • any travelling concession; • any bonus, including incentive, production and attendance bonus; • any contribution to provident fund or pension fund under any law for the time being in force; • any retrenchment compensation or gratuity or other retirement benefits payable to the employee or any ex-gratia payment made to him; • any commission payable to the employee. Where an employee is given in lieu of the whole or part of the salary or wage payable to

	him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage of such employee.
Allocable Surplus [Section 2(4)]	It means – (a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year; (b) in any other case sixty per cent of such available surplus.
Available Surplus [Section 2(6)]	It means the available surplus under Section 5. [Section 2(6)]
Eligibility for bonus	Section 8 provides that every employee shall be entitled to receive bonus from his employer in an accounting year. For this he has to work in the establishment for not less thirty workings days in that accounting year. An employee suspended but subsequently reinstated with full back wages cannot be treated to be ineligible for bonus for the period of suspension as held in 'Project Manager, Ahmadabad Project, ONGC V. Sham Kumar Senegal' – (1995) 1 LLJ 863.
Computation of working days	Section 14 provides that an employee shall be deemed to have worked in an establishment in any accounting year on the days on which- • he has been laid off under an agreement or as permitted by the Standing orders under the Industrial Employment (Standing Orders) Act, 1946 or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment; • he has been on leave with salary or wage; • he has been absent due to temporary disablement caused by accident arising out of an in the course of his employment; and • the employee has been on maternity leave with salary or wage during the accounting year.
Disqualification for bonus	Section 9 provides that an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment. In 'Pandian Roadways Corporation Limited Madurai V. Presiding Officer, Labor Court'- 1977 LLR 83 (Mad HC) the High Court held that the right of the management to forfeit bonus on the ground that the workman was dismissed from service for misconduct, would be only with reference to the accounting year in which the said Act of misconduct was committed and not with reference to any year or years preceding or succeeding the accounting in question.
Minimum and Maximum Bonus	Section 10 provides that the employer shall be bound to pay every employee in respect of the accounting year a minimum bonus which shall be 8.33 % of the salary or wage earned by the employee during the accounting year or `100/- whichever is higher, whether or not the employer has any available surplus in the accounting year.

	Section 11 provides that if the allocable surplus exceeds the amount of minimum bonus payable to the employee, the employer shall be bound to pay to every employee in that year in proportion to the salary or wage earned by the employee during the accounting year subject to the maximum of 20% of such salary or wage. In absence of any allocable surplus in the concerned accounting year, only the minimum bonus is payable. However, in view of the settlement entered into by the employer before the Conciliation Officer for paying bonus at a higher rate the bonus was held accordingly payable for that year as held in 'Dishergarh Power Supply Co., Limited V. Workmen' – (1986) 3 SCC 450.
Calculation of Bonus with Respect to certain employees	Section 12 states that, where the salary or wage of an employee exceeds seven thousand rupees per mensem, the bonus payable to such employee under section 10 or, as the case may be under section 11, shall be calculated as if his salary or wage were seven thousand rupees per mensem.
Computation of bonus	The following are the steps required to be done for the computation of bonus: • Computation of gross profits; • Sums deductible from gross profits; • Computation of available surplus ; • Computation of allocable surplus
Computation of gross profit	Section 16 of the Act provides that the gross profit derived by an employer from an establishment in respect of the accounting year shall- • in the case of banking company, be calculated in the manner as specified in the First Schedule; • in any other case, be calculated in the manner as specified in the Second Schedule.
Sums deductible from gross profit	Section 6 of the Act provides the following to be deductible from the gross profit- • depreciation admissible under Section 32 of the Income Tax Act, 1961; • development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income Tax Act, 1961; • any direct tax payable for the accounting year by the employer; • such other sums as specified in Third Schedule ■ Company other than banking company – the following are deductible ♦ Dividends payable on preference share capital; ♦ 8.5% of its paid up equity share capital as the commencement of the accounting year; ♦ 6% of its reserves shown in the balance sheet at the commencement of the accounting year; ■ Foreign company – 8.5% on the aggregate of the value of net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities in India; ■ Banking companies – the following are deductible-

	♦ Dividends payable on preference share capital; ♦ 7.5% of its paid up equity share capital as at the commencement of the accounting year; ♦ 5% of its reserves shown in the balance sheet as at the commencement of the accounting year; ♦ Any sum transferred to a reserve fund under Section 17(1) of the Banking Regulation Act, 1949 or to any reserves in India in pursuance of any direction or advice given by RBI; ■ Foreign banking company – the following are deductible- ♦ Dividends payable to its preference shareholders; ♦ 7.5% of its total paid up equity share capital as its total working funds in India bears to its total working funds; ♦ 5% of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total working funds; ♦ Any sum deposited with RBI under Section 11(2)(b)(ii) of the Banking Regulation Act, 1949 not exceeding the amount required to be deposited; ■ Corporation – the following are deductible- ♦ 8.5% of its paid up capital as at the commencement of the accounting year; ♦ 6% of its reserves, if any, shown in its balance sheet as at the commencement of the accounting year; ■ Co-operative society – the following are deductible- ♦ 8.5% of the capital invested by such society in its establishment; ♦ Such sum as has been carried forwarded to a reserve fund under any relating to co-operative societies; ■ Any other employer not falling under any of the aforesaid categories – the following are deductible- ♦ 8.5% of the capital invested at the commencement of the accounting year;
Computation of available surplus	Section 5 provides that the available surplus in respect of any accounting year shall be the gross profit for that year after deducting there from the eligible sums. The available surplus shall be the aggregate of- • The gross profits for that accounting year after deducting the sums; • An amount equal to the difference between ■ The direct tax, calculated under Section 7, in respect of an amount equal to gross profits of the employer for the immediately preceding accounting year; and ■ The direct tax, calculated under Section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting the bonus which the employer has paid or is liable to pay to his employee in accordance with the provisions of the Act for that year.
Set on and set off of allocable surplus	Section 15(1) provides that if the allocable surplus, in any accounting year, exceeds the amount of maximum bonus payable then the excess shall subject to a limit of 20% of the total salary or wave of the employees be carried forward for being set on in the

succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of bonus.

Section 15(2) provides that where for any accounting year, there is no available surplus or allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees and there is no amount or sufficient amount carried forward and set on which could be utilized for the purpose of payment of the minimum bonus, then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in Fourth Schedule.

Section 15(4) provides that where in any accounting year any amount has been carried forward and set on or set off, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest account year, shall first be taken into account.

Illustration:

Year	Amount equal to 60% or 65% as the case may be, or available surplus allocable as bonus (₹)	Amount payable as bonus (₹)	Set on or set off of the year carried forward (₹)	Total set on or set off carried forward (₹) of year
(1)	(2)	(3)	(4)	(5)
1	104167	104167**	NIL	NIL
2	635000	250000*	Set on ₹250000	Set on 250000 (2)
3	220000	250000 * (inclusive of 30000 from year 2)	NIL	Set on 225000 (2)
4	375000	250000*	Set on125000	Set on 220000(2) 125000 (4)
5	140000	250000 *(inclusive of 110000 from year 2)	NIL	Set on 110000(2) 125000 (4)
6	310000	250000*	Set on 60000	Set on NIL + (2) 125000 (4) 60000 (6)
7	100000	250000* (inclusive of 125000 from year 4 and 25000 from year 6)	NIL	Set on 35,000 (6)
8	NIL (due to loss)	1046167** (inclusive of 35,000 from year 6)	Set off 69167	Set off 69167 (8)
9	10000	104167**	Set Off 94167	Set off 69176(8) 94167 (9)
10	215000	104167**	NIL	Set off 52501 (9)

* **Maximum bonus payable**

+ The balance of `1,10,000 set on from year (2) lapses;

** **Minimum bonus**

Bonus limit	Section 12 provides that where the salary or wage of an employee exceeds `10,000/- per month, the bonus payable to such employee shall be calculated as if his salary or wage were `10,000/- per month.
Proportionate reduction	Section 13 provides that where an employee has not worked for all the working days in an accounting year, the minimum bonus of `100/- or as the case may be, of `60/- if such bonus is higher than 8.33% of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.
Adjustment of customary bonus or interim bonus	Section 17 provides that where in any accounting year an employer has paid any puja bonus or other customary bonus to an employee or an employer has paid a part of the bonus payable, then the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee in respect of that accounting year and the employee shall be entitled to receive only the balance.

Deduction from bonus	Section 18 provides that where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee in respect of that accounting year only and the employee shall be entitled to receive the balance, if any. In 'Wheel & Rim Company of India Limited V. Government of Tamil Nadu' – 19971 II LLJ 299 (Mad HC) the High Court held that Section 18 provides for what should be done in case of a misconduct of an employee causing financial loss to employer. The employer can deduct any of the loss from the bonus payable under the Act for that Accounting year only. The section deals with minor misconduct causing financial loss to the employer.
Time limit	Section 19 provides that all amount payable to an employee by way of bonus shall be paid in cash by his employer. The time limit for making payment of bonus is- • If there is a dispute regarding the payment of bonus is pending before any authority, then the payment shall be made within a month on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute; • In any other case, within a period of 8 months from the close of the accounting year. The appropriate Government or such authority as the appropriate Government may specify, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fit; so however that the total period so extended shall not in any case exceed 2 years.
Recovery of bonus due from an employer	Section 21 of the Act provides the procedure for the recovery of bonus in case the employer has not paid under a settlement or an award or agreement. In such cases • the employee himself; or • any other person authorized by him in writing in this behalf; or • in the case of death of the employee, his assignee or heirs may make an application to the appropriate Government for the recovery of the money due to him. If the appropriate Government or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for that amount to the Collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue. It may be noted that every such application shall be made within one year from the date on which the money become due to the employee from the employer. As such application may be entertained after the expiry of the said preiod of one years; if the Appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.
Reference of dispute	Section 22 provides that where any dispute arises between an employer and his employee- • in regard to the bonus payable; or • with respect to the application of this Act to an establishment in public sector then such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act apply accordingly.

Presumption about accuracy of balance sheet	Section 23 deals with the presumption about accuracy of balance sheet and profit and loss account of corporations and companies. Section 23(1) provides that where, during the course of proceedings before any arbitrator or Tribunal, the balance sheet and the profit and loss account of an employer, being a corporation or a company other than a banking company, duly audited by the Comptroller and Auditor General of India or by auditors, the authority may presume the statements and particulars contained in such balance sheet and profit and loss account to be accurate. It shall not be necessary to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode. If the said authority is satisfied that the particulars contained in the balance sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars. Section 23(2) provides that when an application is made to the said authority by the trade union or a party to the dispute requires any clarification regarding to any item in the balance sheet or the profit and loss account, the authority may, after satisfying itself that it is necessary to provide, order the company to furnish to them such clarification within such time as may be specified. The corporation or the company shall comply with the said direction.
Audit of accounts	Section 24 provides that in the course of dispute the banking company is to submit the duly audited accounts of the banking company to the authority. The authority shall not permit any trade union or employees to question the correctness of such accounts. The trade union or the employees may be permitted to obtain from such company such information as is necessary for verifying the amount of bonus due under the Act. The trade union or the employees cannot obtain any information which the banking company is not compelled to furnish under the provisions of Section 34A of the Banking Regulation Act, 1949. The employer other than a corporation or a company is to submit the duly audited accounts before the authority. The authority shall not permit any trade unions or employees to question the correct of such accounts. When the authority finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary it may direct the employer to get his accounts audited within such time specified or within such further time as it may allow by such auditor as it thinks fit. The employer shall comply with such direction. If an employer fails to get the accounts audited, the said authority may get the accounts audited by such auditor as it thinks fit. The expenses incurred in this regard shall be met by the employer. If default of such payment the same shall be recoverable from the employer through Collector as arrears of land revenue.
Obligations of the employer	Section 26 requires that every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may be prescribed. Rule 4 of the Payment of Bonus Rules, 1975 provides that every employer shall prepare and maintain the following registers- • a register showing the computation of the allocable surplus in Form A; • a register showing the set on and set off of the allocable surplus in Form B; • a register showing the details of the amount of bonus due to each of the employee, the deduction and the amount actually disbursed in Form C.
Annual Return	Rule 5 provides that every employer shall on or before the 1st day of February in each year upload annual report in Form D on the web portal of the Ministry of Labor and Employment giving information as to the particulars specified in respect of the preceding year. Annual return may also be filed to Inspector on or before 1st day of February in each year.

Inspectors	Section 27 provides that the appropriate Government may appoint such persons as Inspectors for the purposes of this Act. The Government may define the limits within which they shall exercise jurisdiction. This section gives the Inspectors the following powers: • to require an employer to furnish such information as he may consider necessary; • to enter any establishment or any premises at any reasonable time and with such assistance require any one found in charge to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment; • to examine the employer, his agent or servant or any other person found in charge of the establishment or any person whom the Inspector has reasonable cause to be or have been an employee in the establishment; • to make copies of, or take extracts from any book, register or other document maintained in relation to the establishment. Any person required producing any accounts, books, register or other documents or to give information by an Inspector shall be legally found to do so.
Penalty	If any person contravenes any of the provisions of this Act or any rule made thereunder; he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Likewise if any person, to whom a direction is given or a requisition is made under this Act, fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both (Section 28).
Offences by companies	Section 29 provides that if any offence is committed by a company, every person, who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, and the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. If such person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of offence he will not be punished. Where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, then such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
Cognizance of Offences	Section 30 provides that no court shall take cognizance of any offence punishable unless a complaint is made by the authority of the appropriate Government or an offence not below the rank of a Regional Labor Commissioner in the case of Central Government and not below the rank of a Labor Commissioner in the case of State Government. No court inferior to that of a Presidency Magistrate or a magistrate of the I class shall try any offence punishable under this Act.
Productivity Linked Bonus	Section 31A provides that- • where an agreement or a settlement has been entered into by the employee with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 or • where the employees enter into any agreement or settlement with their employer after such commencement,

	for payment of annual bonus linked with production or productivity in lieu of bonus based on profits payable then such employees shall be entitled to receive bonus due to them under such agreement or settlement. Any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus shall be null and void in so far as it purports to deprive them of such right. Such employees shall not be entitled to be paid in excess of 20% of the salary or wage earned by them during the relevant accounting year.

PRACTICE MANUAL

Fill in the blanks

1. The two types of establishments under the Payment of Bonus Act are_____,_____.

2. To get eligible for bonus an employee is to work_____in that accounting year.

3. Wage limit for getting bonus is `_____.

4. The minimum bonus payable is at _____of the salary or wage earned by the employee during the accounting year or `_____ whichever is higher.

5. The time limit for bonus payment by issue of an award passed on the dispute regarding the payment of bonus is_____ .

6. Annual return is to be filed in Form No._____.

7. Any dispute arises between an employer and his employee in regard to the payment of bonus shall be deemed to be an_____.

8. Bonus is an_____to increase the production.

9. Bonus is neither _____ nor _____ deferred payment of wages.

10. The establishment in public sector is an establishment owned, controlled or managed by_____.

Choose the correct answer

1. Which one of the following is not applicable to the Bonus Act?

(a) Every factory;
(b) Every establishment in which 20 or more persons are employed on any day during an accounting year;
(c) Life Insurance Corporation of India.

2. Who is not eligible to get bonus?

(a) A temporary workman;
(b) A dismissed employee;
(c) A piece rated employee;
(d) A retrenched employee.

3. The maximum bonus payable during an accounting year is _____ of the salary.

(a) 8.33%
(b) 12%
(c) 15%
(d) 20%

4. If an employee draws pay of `15,000/- what is the maximum bonus payable to him?

(a) `10,000/-
(b) 15,000/-
(c) 21000/-
(d) None of the Above

5. The time limit for making bonus payment is-

(a) Within a period of one month from the close of the accounting year;
(b) Within a period of three months from the close of the accounting year;
(c) Within a period of six months from the close of the accounting year;
(d) Within a period of eight months from the close of the accounting year.

6. Annual return shall be filed by every employer on or before

(a) 31st March;
(b) 30th September;
(c) 1st February;
(d) 30th June.

7. Which of the following is included in the definition of 'salary' or 'wage'?

(a) Commission;
(b) Dearness allowance;
(c) Retrenchment compensation;
(d) Value of any house accommodation.

8. Which one of the following is deductible from the gross profit?

(a) Depreciation;
(b) Development rebate;
(c) Any direct tax payable;
(d) All of the above.

9. _____% of the paid up equity share capital as at the commencement of the accounting year is allowed deduction from the gross profit in respect of banking companies.

(a) 7.5%
(b) 6%
(c) 8.5%
(d) 5%

10. 6% of the reserves shown in the balance sheet as at the commencement of the accounting year is allowed for_____ company.

(a) Foreign company;
(b) Banking company;
(c) Company other than banking company;
(d) Corporation.

State whether TRUE or FALSE

1. Customary bonus is covered under the Payment of Bonus Act, 1965.
2. Bonus Act is not applicable to Government Departments.
3. A dismissed employee, reinstated with back wages is entitled to bonus.
4. Where an employee has not worked for all the working days he is entitled to full bonus.

5. Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then the employer may deduct the amount of loss from the bonus payable to the employee.
6. During the proceeding before any arbitrator or Tribunal it is required to prove the accuracy of accounts of the establishment.
7. No court shall take cognizance or any offence punishable unless a complaint is made by the authority by appropriate Government.
8. Where an establishment is newly set up the bonus shall be payable only in respect of the accounting year in which the employee derives profit from such establishment.
9. An establishment shall be deemed to be newly set up by reason of a change in its location, management, ownership.
10. Customary bonus can be adjusted against the amount of bonus paid to the employee.

Model Questions

1. Narrate the circumstances which disqualify an employee to receive bonus.
2. What is available surplus and allocable surplus?
3. Write notes on 'set on' and 'set off' of allocable surplus with example.
4. What are the various methods in computation of bonus?
5. What are the obligations of the employer under the Act?
6. Write short notes on Productivity Linked Bonus.
7. What are the powers of the Inspector under this Act?
8. Discuss Section 21 of the Act which deals with the recovery of bonus due to an employee.
9. Define the term 'banking company'. Whether a co-operative bank is a banking company.
10. List the establishments that are exempted from this Act.

Answers:

Fill in the blanks

1. Establishment in private sector, establishment in public sector;
2. Not less than 30 days;
3. `21,000/-;
4. 8.33%, `100;
5. One month within the award becomes enforceable;
6. D;
7. Industrial dispute;
8. Incentive;
9. Gratuitous, deferred;
10. A Government company.

Choose the correct answer

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

State whether TRUE or FALSE

1. FALSE;
2. TRUE;
3. TRUE;
4. FALSE;

5. TRUE;
6. FALSE;
7. TRUE;
8. TRUE;
9. FALSE;
10. TRUE.

MTP Question:

MTP June 2019
Question:1 Kelson Limited has two separate unHs at Delhi and Mumbai in India. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. Delhi unit Is Incurring continuous losses and hence bonus Is not paid to the employees of this unit.
Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Answer: All the two units shall be trated as two separate establishments since all the two units maintain separate B?S and P&L Account.

Employee's of the unit which is incurring losses

• are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment:
• are entitled to minimum bonus as per the provisions of Sec. 10,12,13 and 14 of the Payment of Bonus Act,1965,since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss)

MTP Dec 2018
Question:2 Who is an employee as per Payment of Bonus Act, 1965.

Answer: Section 2(13) defines the term ‗employee' as any person employed on a salary or wage not exceeding `21,000/- per mensem (with effect from 01.04.2014) in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. Apprentice will not be treated as an employee.
The following case laws illustrate the eligibility of type of employees eligible for bonus-

 A temporary workman is entitled to bonus on the basis of the total number of days worked by him – Cooper Allen & Co. Limited V. Their Workmen – 1951 (2) LLJ 576;

 A part time employee as a sweeper engaged on regular basis is entitled to bonus – Automobile Karmachari Sangh V. Industrial Tribunal' – 1970 (38) FJR 268;

 A dismissed employee, reinstated with back wages, is entitled to bonus – Gannon India Limited V. Niranjan Das'- 1984 (40 LLJ 223;

 A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period – Bank of Madura Limited V. Bank of Madura Employees' Union' – 1961 (1) LLJ 720

 A piece rated worked is entitled to bonus Malabar Tile Works V. Industrial Tribunal' – 1970 (I) LLJ 79.

Question:3 Narrate the circumstances which disqualify an employee to receive bonus.

Answer: Disqualification for receiving bonus

Section 9 provides that an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

In Pandian Roadways Corporation Limited Madurai V. Presiding Officer, Labor Court'- 1977 LLR 83 (Mad HC) the High Court held that the right of the management to forfeit bonus on the ground that the workman was dismissed from service for misconduct, would be only with reference to the accounting year in which the said Act of misconduct was committed and not with reference to any year or years preceding or succeeding the accounting in question.

MTP Jun 2018
Question:4 Mr. Rahul is the owner of a company and he is in the process of declaring bonus. For the purpose of declaring bonus Mr. Rahul would like to know how the gross profit is being calculated and what are the allowable deductions from it?

Answer: Steps required to be done for the computation of bonus

The following are the steps required to be done for the computation of bonus:

- Computation of gross profits;
- Sums deductible from gross profits;
- Computation of available surplus ;
- Computation of allocable surplus

Computation of gross profit

Section 16 of the Act provides that the gross profit derived by an employer from an establishment in respect of the accounting year shall-

- in the case of banking company, be calculated in the manner as specified in the First Schedule;
- in any other case, be calculated in the manner as specified in the Second Schedule.

Sums deductible from gross profit
Section 6 of the Act provides the following to be deductible from the gross profit –

- depreciation admissible under Section 32 of the Income Tax Act, 1961;
- development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income Tax Act, 1961;
- any direct tax payable for the accounting year by the employer;
- such other sums as specified in Third Schedule-
- Company other than banking company – the following are deductible –
  - Dividends payable on preference share capital;
  - 8.5% of its paid up equity share capital as the commencement of the accounting year;
  - 6% of its reserves shown in the balance sheet at the commencement of the accounting year;
- Foreign company
  - 8.5% on the aggregate of the value of net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities in India;

- Banking companies – the following are deductible-
  - ❖ Dividends payable on preference share capital;
  - ❖ 7.5% of its paid up equity share capital as at the commencement of the accounting year;
  - ❖ 5% of its reserves shown in the balance sheet as at the commencement of the accounting year;
  - ❖ Any sum transferred to a reserve fund under Section 17(1) of the Banking Regulation Act, 1949 or to any reserves in India in pursuance of any direction or advice given by RBI;
- Foreign banking company – the following are deductible-
  - ❖ Dividends payable to its preference shareholders;
  - ❖ 7.5% of its total paid up equity share capital as its total working funds in India bears to its total working funds;
  - ❖ 5% of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total working funds;
  - ❖ Any sum deposited with RBI under Section 11(2)(b)(ii) of the Banking Regulation Act, 1949 not exceeding the amount required to be deposited;
- Corporation – the following are deductible –
  - ❖ 8.5% of its paid up capital as at the commencement of the accounting year;
  - ❖ 6% of its reserves, if any, shown in its balance sheet as at the commencement of the accounting year;
- Co-operative society – the following are deductible -
  - ❖ 8.5% of the capital invested by such society in its establishment;
  - ❖ Such sum as has been carried forwarded to a reserve fund under any relating to co-operative societies;
- Any other employer not falling under any of the aforesaid categories – the following are deductible-
  - ❖ 8.5% of the capital invested at the commencement of the accounting year;

MTP Jun 2017
Question: 5 What procedure shall an employee adopt for the recovery of the amount of bonus due to him from his employer under the Payment of Bonus Act 1965?

Answer: Recovery of bonus due from an employer

In those cases where any money by way of bonus is due to an employee from his employer under a settlement or an award or agreement, the employee is entitled to recover the same by following the procedure prescribed in section 21 of the act. It is important to note here that the mode of recovery of bonus prescribed under this section shall be available only if the bonus sought to be recovered is due under a settlement or an award or an agreement. It will not apply to recovery of bonus which is payable under the act.

The provisions relating to the recovery of bonus, as contained in section 21, are as under: (1) The bonus due to an employee from his employer under a settlement or an award or agreement, can be recovered by him by making an application to the Appropriate Government for the recovery of the same.

(2) The application may be made by the employee himself or by any person authorised by him in writing. In case of death of the employee, such an application may be made by his assignee or heirs.

(3) On receipt of the application, if the Appropriate Government is satisfied that any money is so due to the employee, it shall issue the certificate for that amount to the collector, and the collector shall proceed to recover the same in the same manner as an arrear of land revenue.

(4) The application to the Appropriate Government should be made within one .year' from the date on which the money became due to the employee from the employer. However, the Government may entertain such application even after the expiry of said period of one year, if it is satisfied that the applicant had sufficient cause for not making the application within the prescribed period of one year.

MTP Dec 2017
Question:6 Narrate the circumstances which disqualify an employee to receive bonus.

Answer: Disqualification for receiving bonus

Section 9 provides that an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

In 'Pandian Roadways Corporation Limited Madurai V. Presiding Officer, Labor Court'- 1977 LLR 83 (Mad HC) the High Court held that the right of the management to forfeit bonus on the ground that the workman was dismissed from service for misconduct, would be only with reference to the accounting year in which the said Act of misconduct was committed and not with reference to any year or years preceding or succeeding the accounting in question.

Question:7 Who is an employee as per Payment of Bonus Act, 1965.

Answer: Section 2(13) defines the term _employee' as any person employed on a salary or wage not exceeding `21,000/- per mensem (with effect from 01.04.2014) in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. Apprentice will not be treated as an employee.

The following case laws illustrate the eligibility of type of employees eligible for bonus-

 A temporary workman is entitled to bonus on the basis of the total number of days worked by him – Cooper Allen & Co. Limited V. Their Workmen' –1951 (2) LLJ 576;

 A part time employee as a sweeper engaged on regular basis is entitled to bonus – Automobile Karmachari Sangh V. Industrial Tribunal' – 1970 (38) FJR 268;

 A dismissed employee, reinstated with back wages, is entitled to bonus – Gannon India Limited V. Niranjan Das'- 1984 (40 LLJ 223;

 A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period – _Bank of Madura Limited V. Bank of Madura Employees' Union' – 1961 (1) LLJ 720

 A piece rated worked is entitled to bonus – Malabar Tile Works V. Industrial Tribunal' – 1970 (I) LLJ 79.

Suggested Question:

Suggested June2018
Question:8 Kelson Limited has two separate units at Delhi and Mumbai in India. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. Delhi unit is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Answer: All the two units shall be treated as two separate establishments since all the two units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses:

 are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;

 are entitled to minimum bonus as per the provisions of Sec. 10,12,13 and 14 of the Payment of Bonus Act,1965, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).

However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the two units taken together.

Suggested Jun2017
Question:9 Discuss the procedure for the recovery of bonus due from an employer.

Answer: Section 21 of the Payment of Bonus Act, 1965 provides the procedure for the recovery of bonus in case the employer has not paid under a settlement or an award or agreement. In such cases either the employee himself or any other person authorized by him in writing in this behalf or in the case of death of the employee, his assignee or heirs may make an application to the appropriate government for the recovery of the money due to him. If the appropriate government, or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for that amount to the collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue.
Application for the recovery of money shall be made within one year from the date on which the money becomes due to the employee from the employer. After expiry of such one year period, an application may be entertained by the appropriate government only if it satisfied that the applicant had sufficient causes for not applying within said period.

Revisionary Question:

Revisionary Dec 18
Question:10 Notun Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Answer: All the 3 units shall be treated as 3 separate establishments since all the 3 units maintain separate B/S and P&L Account**.**
Employees of the unit which is incurring losses:

 are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;

 are entitled to minimum bonus as per the provisions of Sec. 10, 12, 13 and 14 of the Act, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).

 However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the 3 units taken together.

Question:13 Ambay Textiles Ltd. employed 20 full – time and 5 part -time employees who were drawing salary of less than ` 21,000 per month. After completing service of 28 days, in an accounting year, 10 full - time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full - time employees and to the part - time employees. Against the decision, all the employees applied to the authorities for relief. Decide, stating the provisions of the Payment of Bonus Act, 1956, whether the employees, who resigned, the remaining full - time employees and part - time employees will get relief.

Answer: In accordance with the provisions of Section 2(13) of the Payment of Bonus Act, 1965 any person other than an apprentice employed on a salary or wage not exceeding ` 21,000 per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward whether the terms of employment be express or implied is eligible for bonus.

Further, in accordance with the provisions of Section 8 of the Payment of Bonus Act, 1965 every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year.

The problem as asked is based on the above provisions of the Act and the answer may be given as follows:

(a) As regards the employees who resigned: The employees who have resigned are not entitled to bonus because they worked only for 28 days in an accounting year although they are drawing salary less than ` 21,000 per month.

(b) As regards full time remaining employees: These employees are entitled to get the bonus as they fulfil both the requirements as stated under Sections 2 (13) and 8 of the Act. Although the employees in this case have been reduced to 10, once the Act is applicable, it continues to apply even if number of employees fall below 20.

(c) As regards part time employees: Even a part time employee is entitled to bonus on the basis of total number of days worked by him in an accounting year. The definition of an employee under the Act does not exclude part time employees from the definition of employee. Therefore, if such employees work for over 30 days in the accounting year and have drawn salary of less than ` 21,000 per month, they shall be entitled to receive bonus for that accounting year. The Payment of Bonus Act, 1965 does not prohibit such employees as long as they fulfill all the requirements stated above [Automobile Karmachari Sangh vs. Industrial Tribunal (1971)].

Revisionary June 2018

Question:14 Notun Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Answer: All the 3 units shall be treated as 3 separate establishments since all the 3 units maintain separate B/S and P&L Account**.**

Employees of the unit which is incurring losses:

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;

- are entitled to minimum bonus as per the provisions of Sec. 10, 12, 13 and 14 of the Act, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).

- However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the 3 units taken together.

Revisionary June 2018

Question:14 Abhay Textiles Ltd. employed 20 full-time and 5 part-time employees who were drawing salary of less than ` 10,000 per month. After completing service of 28 days, in an accounting year, 10 full-time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full-time employees and to the part-time employees. Against the decision, all the employees applied to the authorities for relief. Decide, stating the provisions of the Payment of Bonus Act, 1965, whether the employees, who resigned, remaining full-time employees and part-time employees will get relief.

Answer: The Act is applicable to the establishment since the establishment has employed 20 or more persons during any day of the AY; and if the provisions of the Act become applicable to an establishment once, they shall continue to be applicable notwithstanding subsequent reduction in the number of persons employed (Sec. 1).

20 full-time and 5 part-time employees are 'employees' within the definition of 'employee' [Sec. 2(13)].

The 10 full-time employees who resigned are not eligible for bonus since they have not worked for 30 days (Sec. 8).

The remaining 10 full-time employees and all the 5 part time employees are eligible for bonus, since they have worked for 30 days or more during the AY (Sec. 8)and even a part-time employee is entitled to bonus (Automobile Karmchari Sangh v Industrial Tribunal).

Workbook Question:

Question:15 Discuss the applicability of the Payment of Bonus Act, 1965.

Answer: Territorial wise this act is applicable to the whole of India. This Act shall apply to the following:
(i) Every factory; and

(ii) Every other establishment in which twenty or more persons are employed on any day during an accounting year;

(iii) Any establishment or class of establishments as notified by the appropriate Government, employing such number of persons less than twenty as may be specified in the notification, that the number of persons so specified shall in no case be less than ten.

(iv) An establishment to which this act applies shall continue to be governed by the Act notwithstanding that the number of persons employed falls below twenty or the number specified in the notification.

In deciding the number of persons employed in an establishment all employees, even those drawing more than the threshold limit must be taken into consideration. The strength of the employees of an establishment would be taken into consideration, irrespective of their place of work.

Question:16 What are the disqualifying situations from receiving bonus?

Answer: Section 9 provides that an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

Question:17 Discuss the procedure for the recovery of bonus due from an employer.

Answer: Section 21 of the Act provides the procedure for the recovery of bonus due from an employer. In such cases-

- the employee himself; or
- any other person authorized by him in writing in this behalf; or
- in the case of death of the employee, his assignee or heirs

may make an application to the appropriate Government for the recovery of the money due to him. If the appropriate Government or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for that amount to the Collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue.

Every such application shall be made within one year from the date on which the money become due to the employee from the employer and after the date of expiry of one year if Appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the one year period .

Scanner Question:

Question:17 2010- Dec [3] (a) Write short note on :
(v) 'Available surplus' and 'Allocable surplus'. **(4 marks)**

Answer:
Available surplus and Allocable surplus:
Available Surplus: From the gross profit certain deductions are made as provided in the act. Then a sum is added representing the tax benefit for bonus payment in the previous years i.e. difference between the direct tax calculated on gross profit for the previous year and direct tax calculated on gross profit arrived at after deducting the bonus paid or payable to the employees. This is available surplus.
Allocable Surplus:
(i) 67% of Available surplus if the company (not banking company) has not made provisions for payment of dividend as per Income Tax Act.
(ii) 60% of available surplus for any other case.

Question:18 2008- Dec [1] {C} Comment on the following statements based on legal provisions:
(b) Every employee in an establishment is entitled to bonus under the Payment of Bonus Act. **(2 marks)**

Answer:
False: Following conditions should be satisfied for entitlement of bonus under Payment of Bonus Act. (i) he has worked not less than 30 days (ii) his salary/ wage does not exceed ` 21,000 per month. **[Section 2(13)]** (iii) provided such establishment comes under the Payment of Bonus Act.
However, an employee who is dismissed from service for fraud or riotous behaviour or theft, mis-appropriation or sabotage of any property of an establishment is not entitled to bonus.
The Amendment Act has amended the Principal Act in the following manner:
Amendment of Eligibility Limit through Amendment of Sec. 2(13).

Question:19 2008- Dec [4] (b) A dismissed employee is not entitled to bonus under Bonus Act.-Comment, based on legal provision. **(2 marks)**

Answer:
Following conditions should be satisfied for entitlement of bonus under Payment of Bonus Act. (i) he has worked not less than 30 days (ii) his salary/wage does not exceed ` 21,000 per month **[Section 2(13)]** (iii) provided such establishment comes under the Payment of Bonus Act.

Section 21 of the Bonus Act, states that for the purpose of bonus due from employer, the term employee includes a person who is no longer in service. Hence a dismissed/retrenched employee is also entitled to receive bonilis. However, if the dismissal or retrenchment is on account of fraud, riotous behaviour, misappropriation, theft and sabotage, he shall not be entitled to any bonus.

Question:20 2009- June [2] (d) Is there any time limit for payment of bonus under Bonus Act? **(2 marks)**
Answer:
(a) Where there is dispute regarding payment of bonus pending before any Authority, under Sec. 22 all amounts payable within a month from the date on which the award becomes enforceable or the settlement comes into operation in respect of such disputes.
(b) In any other case within 8 months from the close of accounting year.
Appropriate Government or such Authority authorized by Govt, may extend the said period of 8 months but total period so extended shall not in any case exceed 2 years.

Question:21 2010- Dec [1] {C} Comment on the following based on legal provisions (No marks for wrong reasons/justjfication)
(a) **A dismissed employee who was reinstated without wages for the period of dismissal is entitled to bonus.** **(2 marks)**

Answer:

No. It is incorrect. A reinstated employee is entitled to bonus if he is reinstated with wages for the period of dismissal. In this case, the dismissed employee is reinstated but without wages for the period of dismissal hence he/she is not entitled to bonus. Bonus is related with the wages paid and when wages have not been paid, question of paying bonus does not arise.

Question:22 2011 Dec [2] (e) Under Payment of Bonus Act number of days actually worked is one of the conditions and therefore state the method of calculation of working days. **(3 marks)**

Answer:
In addition to actual attendance following shall also be considered in computation of numbers of working days :
Section 14, of the Payment of Bonus Act, 1965 provides that an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:
(a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act 1946 (20 of 1946) or under the Industrial Disputes Act 1947 (14 of 1947) or under any other law applicable to the establishment;
(b) he has been on leave with salary or wages;
(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of employment; and
(d) the employee has been on maternity leave with salary or wage, during the accounting year.

Question:23 2012- June [1] {C} Comment on the following based on legal provisions:
(e) ABC Ltd. which incurred heavy loss during 2011 -12 has not paid Bonus to any of its employees. **(2 marks)**

Answer:
As per Payment of Bonus Act, 1965 the employer should pay minimum bonus of 8.33% to the employee on his salary or wages earned during the accounting year. The minimum bonus should not be less than INR 100 otherwise INR 100 will be paid. Minimum bonus will have to be paid even if the employer does not have any allocable surplus in the concerned accounting year. If the employee has not attained fifteen year of age at the beginning of th6 year, the minimum bonus will not be less than INR 60.

Question:24 2014 - Dec [2] (d) (iii) The workers of a factory were paid a lump sum Bonus during Id festival, which was not in a fixed time of the year. When the statutory bonus becomes due, can the employer adjust the festival bonus from it? What other dues, if any, may be deducted from the statutory bonus?
(3 marks)

Answer:
It is very customary these days to pay interim bonus in the form of puja bonus or other customary bonus, then the employer is entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee will be entitled to receive only the balance. Moreover, if an employee is found guilty of misconduct causing financial loss to the employer, then the employer can deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only. If an employee has not worked for all the working days in an accounting
year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 percent of his salary or wage for the days he has worked in that accounting year, is proportionately reduced.

Question:25 2015 - June [2] Answer the question:
(d) (ii) A worker was caught red handed for theft and was suspended for four days after proper enquiry. Is he entitled to bonus payable to an employee under The Payment of Bonus Act, 1965? (2 **marks)**

Answer:
Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:
(a) Fraud; or
(b) Riotous or violent behaviour while on the premises of the establishment; or
(c) Theft, misappropriation or sabotage of any property of the establishment. Hence, the worker is not entitled to bonus.

Question:26 2016- June [2] **Answer the question:**
(c) (i) What procedure shall an employee adopt for the recovery of the amount of bonus due to him from his employer under the Payment of Bonus Act, 1965? (7 marks)

Answer:
Recovery of bonus due from an employer:
In those cases where any money by way of bonus is due to an employee from his employer under a settlement or an award or agreement, the employee is entitled to recover the same by following the procedure prescribed in **Section 21** of the Act. It is important to note here that the mode of recovery of bonus prescribed under this section shall be available only if the bonus sought to be recovered is due under a settlement or an award or an agreement. It will not apply to recovery of bonus which is payable under the act.
The provisions relating to the recovery of bonus, as contained in
Section 21, are as under:
1. The bonus due to an employee from his employer under a settlement or an award or agreement, can be recovered by him by making an application to the Appropriate Government for the recovery of the same.

2. The application may be made by the employee himself or by any person authorised by him in writing. In case of death of the employee, such an application may be made by his assignee or heirs.

3. On receipt of the application, if the Appropriate Government is satisfied that any money is so due to the employee, it shall issue the certificate for that amount to the collector, and the collector shall proceed to recover the same in the same manner as an arrear of land revenue.

4. The application to the Appropriate Government should be made within one year from the date on which the money became due to the employee from the employer. However, the Government may entertain such application even after the expiry of said period of one year, if it is satisfied that the applicant had sufficient cause for not making the application within the prescribed period of one year.

Question:27 2016 - Dec [2] Answer the question:

(b) (i) Explain the 'time limit for payment of bonus' to the employees in different circumstances under the provisions of the Payment of Bonus Act, 1965. (5 marks)

Answer:
Time limit for payment of bonus:
Section 19 of the Payment of Bonus Act, 1965 prescribes the time limit for the payment of bonus under the following conditions:
(1) **Under Section 19 (1) (a)** of the said Act, where the dispute is between the employer and the employees regarding the payment of bonus and such dispute is under reference to the prescribed authority, the employer is bound to pay his employee bonus in cash within one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
(2) Under Section 19 (1) (b) of the said Act, in all other cases, the payment of bonus is to be made within a period of 8 months from closing of the accounting year. But,this period of 8 months may be extended up to a maximum of 2 years by the Appropriate Government or by any authority prescribed by the Appropriate Government only on an application to it by the employer and is satisfied that sufficient reasons exist for granting extension. Moreover, the extension can be made only by an order.

Question:28 2017- June [7] (b) Discuss the procedure for the recovery of bonus due from an employer. **(5 marks)**

Answer:

Procedure for the Recovery of Bonus Due from an Employer Section 21 of the Act provides the procedure for the recovery of bonus in case the employer has not paid under a settlement or an award or agreement. In such cases:
• the employee himself; or
• any other person authorized by him in writing in this behalf; or
• in the case of death of the employee, his assignee or heirs
may make an application to the appropriate Government for the recovery of the money due to him. If the appropriate Government or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for

that amount to the Collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue.
It may be noted that every such application shall be made within one year from the date on which the money become due to the employee from the employer. As such application may be entertained after the expiry of the said period of one years; if the Appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

Question:29 2012- Dec [2] (g) All the employees who are covered under Bonus Act were paid Holi Bonus of ` 500/- each. Later on due to loss, the Employer paid minimum Bonus @ 8.33% but after deduction of said ` 500/-. Whether Employer was justified. (2 marks)

Answer:
Yes, Employer was justified as per provisions of **Section 17 of the Payment of Bonus Act, 1965.** The Employer is entitled to deduct the amount of any Puja Bonus or other customary Bonus (here Holi Bonus) so paid from the amount of bonus payable to the employees in respect of that accounting year.

Question:30 2013- June [1] {C} **Comment on the following based on legal provision:**
(d) Mr. E joined as Supervisor on monthly salary of INR 6,450 on 1st Feb 2013 and resigned on 28th Feb 2013. His employer paid Bonus @ 10% to all the eligible employees. Hence Mr. E is entitled to Bonus for the period of his service. (2 marks)

Answer:
Following conditions should be satisfied for entitlement of bonus under Payment of Bonus Act. (i) he has worked for not less than 30 days' (ii) his salary/wages does not exceed ` 21,000 per month **[Section 2(13)]** (iii) provided such establishment comes under the Payment of Bonus Act. Mr. E ' is not entitled to bonus as he has not worked for minimum period of 30 days.

Question:31 2013- Dec [4] (a) **(ii) A company having its registered head office in Kolkata has three departments in Delhi, Chennai and Mumbai. The company paid minimum bonus under Payment of Bonus Act, to all its entitled employees of head office excepting the employees of departments located outside Kolkata. State whether employer was right. (3 marks)**

Answer:
The employer is wrong. As per **Section 3 of the Payment of Bonus Act,** 1965, for the purpose of computation of bonus, an establishment shall include departments, undertakings, and branches. It is immaterial whether these are situated in same place or not.

Exception: A branch, department or undertaking shall not be treated as part of an establishment if the following 2 conditions are satisfied:
(a) A separate B/S and P&L A/c has been prepared for such branch, department or undertaking.

(b) Such branch, department or undertaking has never been treated as part of the establishment for the purpose of computation of bonus.

But since the question is silent regarding the above mentioned exceptions, we may assume that the establishment consists of different departments, undertakings, and branches and all such units are treated as part of same establishment for the purpose of computation of bonus.
Hence, the employer's contention is not correct and the employees of all the three departments are entitled to bonus.

Question:32 2014- June [2] (b) Mr. Sharma is a supervisor in a factory drawing salary of ` 7,000 pm. In a particular accounting year he was on one month leave with salary. His employer declared minimum bonus payable as per the Payment of Bonus Act, 1965, to all eligible employees. State in this connection:
(i) What shall be the salary that shall be taken into account for the purpose of calculating bonus payable to him?
(ii) What shall be the total bonus payable to him in that accounting year?
(iii) What would be your answer if the company suffer losses in that accounting year?
(iv) Is bonus payable to him if he was illegally terminated?
(1x4 = 4 marks)

Answer:
(i) The bonus will be calculated on ` 7,000 even if the employee earns a higher salary. Where the salary or wage of an employee exceeds ` 7,000 per mensem, the bonus payable to such employee under **Section 10** or, as the case may be under Section 11, shall be calculated as if his salary and wage were ` 7,000 per mensem **(Section 12).** This means employees getting salary or wage upto ` 1,000 will be covered by the Act, but for payment of bonus their salary will be taken as ` 7,000.

Amendment of Calculation of Bonus through Amendment of Sec. 12.
Sec. 12 of the Principal Act, provided that the bonus payable to an employee shall be in proportion to his/her salary. However, where an employee's salary was over INR 3,500 per month, for the purpose of calculating bonus, the salary was assumed to be ` 3,500 per month. With a view to maximise bonus earnings, the Amendment Act, has increased the wage ceiling from ` 3,500 per month to ` 7,000 per month or the minimum wage for the scheduled employment as fixed by the appropriate government, whichever is higher.

.Again for the purpose of this section, the Scheduled Employment shall have the same meaning as assigned to it in Clause (g) of Sec. 2 of the Minimum Wages Act, 1948.

(ii) The total bonus payable to him in that accounting year should be ? (7,000 x 12 x 8.33%) = ` 6,997.2. For the purpose of calculating the total working days, leave with salary or wages shall be deemed to be working days for the employee. Therefore, Mr. Sharma would be eligible for 12 months bonus.

(iii) The bonus shall have to be paid by the employer notwithstanding anything contained in **Section 10(1),** but this payment is subject to the other provisions of the Act. And even if the employer suffers loss during the accounting year, he is bound to pay the minimum bonus as prescribed in **Section 10** ***(State*** vs ***Sardar Dalip Singh Majhithia, 1979).***

(iv) Disqualifications for payment of Bonus: **(Section 9)** notwithstanding anything contained in the Act, an employee shall be disqualified from receiving bonus under the Act, if he is dismissed from services for:

(a) Fraud;

(b) Riotous or violent behavior while on the premises of the establishment; or

(c) Theft, misappropriation or sabotage of any property of the establishment.
If an employee is illegally terminated from service, he still remains qualified and eligible to receive bonus. Where an employee was prevented from working by reason of an illegal order, he would be eligible for bonus.

Question:33 2015- Dec [2] (d) (iii) A workshop is employing 50 workmen. A shop- supervisor is drawing a monthly wages of ` 9,000. HRD paid bonus to all employees except the supervisor. The supervisor contends that he is also entitled to bonus. Referring to the provisions of Payment of Bonus Act, 1965, decide whether HRD's action is correct? (2 marks)

Answer
No, HRD's action is not correct. The upper limit of salary fixed in **Section 2** (13) by the Payment of Bonus (Amendment) Act, 2015. Every employee whose gross salary is less than ` 21,000 shall be entitled to be paid bonus by his employer provided he has worked in the establishment for not less than thirty working days. In view of this, the supervisor drawing monthly salary of ` 9,000 is entitled to receive bonus from the company.

Question:34 2018- June [7] (b) Kelson Limited has two separate units at Delhi and Mumbai in India. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. Delhi unit is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment ? (5 marks)

Answer:
All the two units shall be treated as two separate establishments since all the two units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses:
• are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;
• are entitled to minimum bonus as per the provisions of Sections 10,12,13 and 14 of the Payment of Bonus Act,1965, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).

However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the two units taken together.

Minimum Wages Act, 1948

Introduction	The concept of minimum wages first evolved with reference to remuneration of workers in those industries where the level of wages was substantially low as compared to the wages for similar types of labor in other industries. The International Labor Conference of International Labor Organization (ILO) adopted a draft convention on minimum wages. It was required the member countries to create and maintain a machinery whereby minimum wages can be fixed for workers employed in industries in which no arrangements exist for the effective regulation of wages and where wages are exceptionally low. The Indian Government appointed a committee called as Labor Investigation Committee to look into the conditions of labor, in terms of their wages, housing, social conditions, employment etc., This committee was appointed on the basis of the recommendations of the ILO. The Committee recommended for a separate legislation for the fixation of minimum wages, working hours etc., especially on unorganized sectors. The bill on minimum wage was introduced in the Lok Sabha. A Standing Committee was appointed which set definitions and guidelines for formulating a wage structure in India. The Committee defined minimum wages as – "The minimum wages must be provided not merely for the bare subsistence of life but also for the preservation of efficiency of the workers by providing for some measures of education, medical requirement and amenities". The Central Government also made 'The Minimum Wages (Central) Rules, 1950 for the purposes of the Act. The rules came into effect form 14.10.1950.
Object of the Act	The object of this Act is to provide for fixing minimum rates of wages in certain employments. In 'Bakshish Singh V. Darshan Engineering Works' – 1994 LLR 61 SC the Supreme Court held that there is one principle which admits of no exception. No industry has right to exist unless it is able to pay its workmen at least a bare minimum wage. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms.
Applicability	This Act extends to whole of India. The Act provides the list of employments for which this Act applicable in the schedule to this Act.
Effect	This Act came into effect from 15.03.1948.
Important definitions Adolescent	Section 2(a) defines the term 'adolescent' as a person who has completed his fourteenth year of age but has not completed his eighteenth year.
Adult	Section 2(aa) defines the term 'adult' as a person who has completed his eighteenth year of age.
Appropriate Government	Section 2(b) defines the term 'appropriate Government' as • in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration or in relation to a mine oilfield or major port or any corporation established by a Central Act - the Central Government; and • in relation to any other scheduled employment the State Government;
Child	Section 2(bb) defines the term 'child' as in relation to any other scheduled employment of the State Government.
Cost of living index	Section 2(d) defines the expression 'cost of living index number' in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed as the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to

	employee in such employment.
Employer	Section 2(e) defines the term 'employer' as any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act and includes except in sub-section (3) of section 26 – (i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of section 7 of the Factories Act 1948 (63 of 1948) as manager of the factory; (ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such government for the supervision and control of employees or where no person or authority is so appointed the head of the department; (iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the persons appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority; (iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages; In 'Shiv Prasad Ghosh V. District Judge' – 1963 (6) FJR 447 it was held that under the definition of the word 'employer' in Section 2(e) (iv) of the Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages them is also an employer. In 'A.V. Prakash V. Senior Labour Inspector' – 1994 LLR 304 (Karn) it was held by the High Court that the definition of 'employer' is a restrictive definition and only a person who employs one or more employees in any scheduled employment would be employer within the meaning of the Act and no doubt it includes the employees as detailed in the various sub clauses of Section 2(e).
Wages	Section 2(h) defines the term 'wages' as all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include – • the value of – • any house accommodation, supply of light, water, medical attendance; or • any other amenity or any service excluded by general or special order of the appropriate government • any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance; • any traveling allowance or the value of any traveling concession; • any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or • any gratuity payable on discharge;

	Section 2(h) defines the term 'wages' and not 'minimum wages'. It is up to the appropriate Government to fix the minimum wages considering into the various aspects of the employment, sectoral organization etc., In many a case the Courts declare who are eligible to receive minimum wages apart from the decisions of the appropriate Governments. In 'Bandhua Mukti Morcha V. Union of India' – (1984) SCC (L&S) 389 the Supreme Court held that a piece rated worker is also entitled to receive the minimum wages irrespective of his output. In 'Patel Ishwerbhai Pramod Bhai V. Taluka Development Officer' – 1983 Lab IC 321 it was held that where certain tube well operators were working in the District and Taluka Panchayats they would be in the scheduled employment as contemplated by Section 2(g), employment under any local authority being item 6 in the schedule to the Act, and as such would be entitled to minimum wages under the Act.
Employee	Section 2(i) defines the term 'employee' as any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate government; but does not include any member of the Armed Forces of the Union. In 'Athni Municipality V. Shettappa Laxman Pattan' – (1965) II LLJ 307 it was held that having regard to the context and object of the Act, a discharged employee must also be held to be an employee within the meaning of the Act.
Scheduled employment	Section 2(g) of the Act defines the terms 'scheduled employment' as an employment specified in the Schedule, or any process or branch of working forming part of such employment. The Schedule is divided into two parts – Part I and Part II. Part I of the schedule has 18 entries. It was realized that it would be necessary to fix minimum wages in many more employments to be identified in course of time. Accordingly, powers were given to appropriate Government to add employments to the Schedule by following the procedure laid down in Section 21 of the Act. As a result the State Government and Central Government have made several additions to the Schedule and it differs from State to State. Part II relates to employment in agriculture. Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry and any practice performed by a farmer on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market from produce).
Act – not violative of fundamental rights	In 'T.G. Lakshmaiah Setty Sons, Adoni V. State of Andhra Pradesh,' – 1981 Lab IC 690 it was held that the Minimum Wages Act does not violate any of the fundamental rights. On the other hand, it fulfills, in part, at least, the obligations of the State under the Directive Principles of State Policy.
Fixing of minimum rates of wages	Section 3 provides that the appropriate Government shall fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the

	Schedule and in an employment added to either Party by notification under section 27. The appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof. The appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment but if at any time the appropriate government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more it shall fix minimum rates of wages payable to employees in such employment as soon as may be after such finding. The appropriate Government may fix minimum rate of wages for- time work, known as a Minimum Time Rate; piece work, known as a Minimum Piece Rate; a guaranteed time rate; overtime rate.
Different minimum wages	Section 3(3) (a) provides that different minimum rates of wages may be fixed for- different scheduled employments; different classes of work in the same scheduled employment; adults, adolescents, children and apprentices; different localities;
Minimum wages on wage period	Section 3(3) (b) provides that minimum of wages may be fixed by any one or more of the following wage periods- by the hour; by the day; by the month or by such other larger wage-period as may be prescribed and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day as the case may be may be indicated. Where any wage-periods have been fixed under section 4 of the Payment of Wages Act 1936, minimum wages shall be fixed in accordance therewith.
Review of Minimum wages	Section 3(1)(b) provides that the appropriate Government may review at such intervals, as it may think fit, such intervals not exceeding five years and revise the minimum rate of wages, if necessary. Where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect or any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

Minimum wages when a dispute is pending	Section 3(2A) provides that where in respect of an industrial dispute relating to the rate of wages payable to any employees employed in a schedule employed is pending before- A Tribunal or National Tribunal under the Industrial Disputes Act, 1947; or Before any like authority under any other law for the time being force; or An award made by any Tribunal, National Tribunal or such authority is in operation and a notification is issued by the appropriate Government for fixing the minimum wages or revision of minimum wages, during the pendency of the above proceedings, no minimum wage cannot be fixed by the appropriate Government during the said period.
Minimum Rate of wages	Section 4(1) provides that any minimum rate of wages fixed or revised by the appropriate government in respect of scheduled employments may consist of – a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers; or a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of suppliers of essential commodities at concession rates, where so authorized; or an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any. Section 4(2) provides that the cost of living allowance and the cash value of the concessions in respect of supplied of essential commodities at concession rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government. In 'Karnataka Film Chamber of Commerce, Bangalore V. State of Karnataka' – 1986 Lab IC 1890 it was held that Section 4 is a definite indication that basic wage is an integral part of the minimum wage. It is not correct to say that a minimum wage under Section 4(1) necessarily should consist of basic wage and dearness allowance. The language of Section 4 does not lend itself to such an interpretation. On the plain terms of Section 4(1) it is clear that that the payment of dearness allowance would arise only if the basic wage fixed for a category of workmen fell short of the minimum wage which the State Government has to fix taking into consideration the needs of the workers' family consisting of three consumption units. **Example** Revised minimum rates of wages in Delhi with effect from 01.04.2016 are as follows: Unskilled employees – ` 9568 per month; Semi skilled employees – ` 10,582/- per month; Skilled categories – ` 11,622/- per month; and Graduate & Above – ` 12,662/- per month
Procedure for fixing and revising minimum wages	Section 5 (1) provides that In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall, either – appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be; or by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration.

	Section 5(2) provides that after considering the advice of the committee or committees all representations received by it before the date specified in the notification, the appropriate government shall by notification in the Official Gazette, fix, or, as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue. Where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate government shall consult the Advisory Board also. In 'Bijay Unchana Paul V. State of Assam' – 1969 (19) FLR 11 it was held that it is necessary that the appropriate Government in issuing notifications for prescribing the rates of minimum wages under the Minimum Wages Act, 1948, punctiliously follows the letter of law and strictly complies with all the procedures laid down in the Act. In 'T.G. Lakshmaiah Setty & Sons, Adoni V. State of Andhra Pradesh' – 1981 Lab IC 690 it was held that what is contemplated by the Act to be notified under Section 5(1)(b) is no doubt draft proposals. The objection to draft proposals can be made both by employers and employees as well. Thus, if the employees had exercised their privilege to represent and ask for higher wages and if eventually the State authorities had adopted higher rates of minimum wages.
Correction of errors	Section 10 of the Act provides that if there is any clerical or arithmetical mistake in any order fixing or revising minimum rates of wages or errors arising therein from any accidental slip or omission, the appropriate Government may, at any time, by notification correct the same. Every such Notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information.
Advisory Board	Section 7 of the Act provides that the purpose of co-coordinating work of committees and subcommittees appointed under section 5 and advising the appropriate government generally in the matter of fixing and revising minimum rates of wages the appropriate government shall appoint an Advisory Board The Advisory body has no functioning of quasi judicial nature. Their recommendation/decision is not binding on the State Government but the same remains only a recommendation and nothing more than that. Merely because one member of the Board was extra, the recommendation of the Advisory Board would not be vitiated as held in 'Charadharpur Bidi and Tobacco Merchants Association V. State of Bihar' – 1997 (77) FLR 339
Central Advisory Board	Section 8 of the Act provides that for the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-coordinating the work of the Advisory Board, the Central Government shall appoint a Central Advisory Board. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments who shall be equal in number and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.
Composition of Committee	Section 9 of the Act provides that each of the committees sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate government representing employers and employees in the scheduled employments who shall be equal in number and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate government.
Wages in kind	Section 11(1) of the Act provides that Minimum wages payable under this Act shall be paid in cash. Section 11(2) provides that where it has been the custom to pay wages wholly or partly in kind, the appropriate government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette,

	authorize the payment of minimum wages either wholly or partly in kind. Section 11(3) of the Act provides that if appropriate government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate government may, by notification in the Official Gazette, authorize the provision of such supplies at concessional rates. Section 11(4) of the Act provides that the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates shall be estimated in the prescribed manner.
Payment of minimum rate of wages	Section 12 of the Act provides that where in respect of any scheduled employment a notification under section 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed. This provision will not affect the provisions of the Payment of Wages Act, 1936. In 'Militant Security Bureau Private Limited V. B.R. Hehar' – (1991) 2 CLR 245 (Bom) it was held that once a contractor's establishment is covered under the Minimum Wages Act the employees engaged through the contractor shall be entitled to the wages as fixed under the Act.
Forced Labor	In 'Union for Democratic Rights V. Union of India' – 1982 Lab IC 1646 it was held that where a person provides labor or service to another for remuneration which is less than the minimum wages, such labor is 'forced labor' within the meaning of Article 23 of the Constitution.
Fixing hours for a normal working day	Section 13(1) of the Act provides that in regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act the appropriate government may – fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals. Rule 24 provides that the number of hours which shall constitute a normal working day shall be- in the case of an adult – 9 hours; the working day of an adult worker shall be so arranged that inclusive of the intervals of rest, if any, shall not spread over more than 12 hours on any day; in case of a child – 4.5 hours. No child shall be permitted to work for more than 4.5 hours on any day. provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest; provide for payment for work on a day of rest at a rate not less than the overtime rate. Section 13(2) provides that the provisions of sub-section (1) shall in relation to the following classes of employees apply only to such extent and subject to such conditions as may be prescribed : employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented; employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned; employees whose employment is essentially intermittent;

	employees engaged in any work which for technical reasons has to be completed before the duty is over; employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces. Section 13(3) provides that for the purposes of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate government on the ground that the daily hours of duty of the employee or if there be no daily hours of duty as such for the employee the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.
Overtime	Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher. Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages- in case of employment in agriculture - one and a half times the ordinary rate of wages; in case of any other scheduled employment – double the ordinary rate of wages. A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made. Section 14(2) provides that this Act shall not prejudice the operation of the provisions of Section 59 of the Factories Act in any case where those provisions are applicable. In 'Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules.
Wages of worker who works less than normal working day	Section 15 of the Act provides that if an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day. However that he shall not be entitled to receive wages for a full normal working day – in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and in such other cases and circumstances as may be prescribed.
Wages for two or more classes of work	Section 16 of the Act provides that where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.
Minimum time rate wages for piece work	Section 17 of the Act provides that where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act the employer shall pay to such employee wages at not less than the minimum time rate.

Cash value of wages	Rule 20 provides that the retail prices at the nearest market shall be taken into account in computing cash value of wages paid in kind and of essential commodities supplied at concessional rates. The computation shall be made in accordance with such directions as may be issued by the Central Government from time to time.
Time of payment of wages	Rule 21(1) provides that the wages of a worker in any scheduled employment shall be paid on a working day- in the establishment for which less than 1000 persons are employed – before the expiry of 7th day; in other establishments – before the expiry of 10th day after the last wage period in respect of which the wages are payable. Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day after the day on which his employment is terminated.
Condition for payment of wages	The wages of an employed person shall be paid to him without deduction of any kind except those authorized by or under the rules.
Deductions	Every payment made by the employed person to the employer or his agent shall be deemed to be a deduction of wages. Deductions from the wages shall be one of or more of the following- fines; absence from duty; damage or loss of goods entrusted to the employed person for custody where the damage is directly attributable to his neglect or default; loss of money for which he is required to account where such loss is directly attributable to his neglect or default; house accommodation supplied by the employer; such amenities and services supplied by the employer; advances or for adjustment of over payment of wages; income tax payable by the employed person; by order of a Court or other competent authority; repayment of advances from any provident fund; payment to co-operative societies; loans advanced by the employer; payment of insurance premium; adjustment of amounts, other than wages paid in error in excess of what is due to him; with the written authorization of the employed person; with the written authorization for contributions to National Defence Fund or the Prime Minister's National Relief Fund or to any Defence Savings Scheme approved by the Central Government;

	loans granted for house building. The prior approval of the Inspector or any other officer authorized is obtained in writing before making such deductions, unless the employee given his consent in writing to such deductions. The total amount of deductions from the wages shall not exceed- 75% of such wages where such deductions are wholly or partly made for payments to Consumer Co-operative Stores run by any Co-operative Society; and 50% of such wages in any other case. If the total amount of deductions that have to be made in wage period from the wages exceeds the limit, the excess shall be carried forward and recovered from the wages of succeeding wage period or wager periods in such number of installments as may be necessary.
Fines	Fine may be imposed on an employed person for damage or loss caused by him. The act or omission or the damage or loss in respect of which the find is proposed, the employed persons shall be explained personally and also in writing about the same. The employed person shall be given an opportunity to offer any explanation in the presence of another person. The amount of fine that is imposed on him shall also be intimated to him. The fine imposed shall be subject to such limits imposed by the Central Government. All fines imposed and deductions made shall be recorded in the register.
Weekly day of rest	Rule 23 provides that an employee to whom this Act is applicable shall be allowed a day of rest every week which shall ordinarily be Sunday, but the employer may fix any other day of the week as the rest day for any employee in his employment. The employee should be informed about his weekly day of rest. To get the weekly day of rest the employee has to work for a continuous period of not less than six days in a week.
Night shift	Rule 24A provides that where a worker in a scheduled employment works on shift which extends beyond midnight- a holiday for the whole day for the purposes of week day rest shall, in his case mean a period of 24 consecutive hours beginning from the time when his shift ends; and the following day in such a case shall be deemed to be the period of 24 hours beginning from the time when such shift ends and the hours after midnight during which such worker was engaged in work shall be counted towards the previous day.
Claims	If there is any short payment of wages or wages at the over time etc., may be claimed by the employee himself or through any legal practitioner or any official of a registered trade union authorized by him or any Inspection or any person acting with the permission of the Authority by applying to the concerned authority. For this purpose the appropriate Government may appoint- any Commissioner for Workmen's Compensation; or any Officer of the Central Government exercising functions as a Labor Commissioner for any region; or any Officer of the State Government not below the rank of Labor Commissioner; or any other Officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims.

	The claim shall be presented to the authority by the employee within six months from the date on which the minimum wages or other amount became payable. The Authority may a claim beyond the six months if he is satisfied that the applicant had sufficient cause for not making the application within the prescribed period. Rule 27 provides that a single application in respect of a number of employees may be filed before the authority. The application shall be made in duplicate in Forms VI, VIA or VII, one copy of which shall bear the prescribed court fee. The authorization shall be given in Form VIII. The Authority shall serve the copy of the application to the employer by registered post a notice in Form IX to appear before him on a specified date. He shall hear the applicant and the employer and after such further inquiry, if any, as it may consider necessary may, without prejudice of any other penalty to the employer, direct- the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with compensation as the authority may think fit, not exceeding 10 times the amount of such excess; in any other case, the payment of the amount together with the payment of such compensation as the Authority may think fit, not exceeding `10. If the employer fails to appear on the specified date the Authority may hear and determine the application ex-parte. If the applicant fails to appear on the specified date the application will be dismissed. Any such order may be set aside on sufficient cause being shown by the defaulting party within one month of the date of the said order and the application shall be re-heard. If the Authority finds the application is a vexatious one he may impose penalty on the employees not exceeding `50/- to the employer. The amount due may be recovered as if it were a fine imposed by the Authority as a Magistrate. Every direction of the Authority shall be final. In 'Awadh Lal Sah V. State of Bihar' – 1984 Lab IC 169 (Pat HC) it was held that the minimum wages becoming payable can be claimed by an application presented within six months from the date on which it became payable and if presented after the expiry of the period of limitation, the applicant has to satisfy the authority that he had sufficient cause for not making the application within such period. In 'B. Ramdas V. The Authority under the Minimum Wages Act, Guntur Region, Guntur' – 1987 Lab IC 1493 it was held that while making the enquiry into the claim petition under Section 20 of the Act, the authority acts in quasi judicial capacity and ipso facto should ensure that no prejudice is caused to the employer by failure to follow the rules of natural justice. In 'Premier Tobacco Packers (P) Limited V. Assistant Labor Officer' – 1988 Lab IC 283 it was held that an order imposing a monetary liability caused by violation of provisions of a statute cannot be upheld except in the presence of strict proof. In 'Executive Engineer, Rural Works Division, Mayurbhanj V. Additional District Magistrate' – 2005 LLR 121 it was held that the claim of arrears of differential wages made by employee. There was delay in filing application beyond limitation period. Claimant submitted that they were pursuing their grievance before Labor Officer. Only when they failed, they approached the authority. It was held that delay has been rightly condoned.
Exemption to employer	Section 23 provides that where an employer is charged with an offence against this Act, he shall be entitled, upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the Court at the time appointed for hearing

	the charge; and if, after the commission of the offence has been proved the employer proves to the satisfaction of the Court- that he has used due diligence to enforce the execution of this Act; and that the said other person committed the offence in question without his knowledge, consent or connivance, that the other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged. For this purpose the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.
Obligation of employer	Section 18 imposes some obligations on the employer in keeping and maintenance of registers and records. Section 18(1) provides that every employer shall maintain such registers and records giving such particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such Form as may be prescribed. Section 18(2) provides that every employer shall keep exhibited, in such manner as may be prescribed, in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of outworkers, in such factory, workshop or place as may be used for giving out-work to them, notices in the prescribed form containing the prescribed particulars. Section 18(3) provides that the appropriate Government may, by rules made under the Act, provide for issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribe the manner in which the entries shall be made and authenticated in such wage books or wage slips by the employer or his agent. Maintaining such registers and records are mandatory. There is no exemption to this mandatory obligation of the employer including any contractor. Therefore every employer, including a contractor who engaged laborers for others who owns the establishment/factory etc., is bound by the provisions of this Act, to comply with the requirements of maintaining registers etc., The following are the forms prescribed for registers and records- Form – I : Register of Fines; Form – II : Register of deductions for damage or loss caused to the employer, By the neglect or default of the employed persons; Form III : Unified Annual Return; Form IV ; Overtime Register for workers; Form V : Muster Roll; Form IX-A : Notice Form X : Register of Wages; Form XI : Wage slip. A wage slip shall be issued by every employer to every person employed by him at least a day prior to the disbursement of wages. Entries in the Register of Wages and wage slips

	shall be authenticated by the employer or any person authorized by him in this behalf. The registers shall be kept at the work spot and maintained up-to-date. If no fine is imposed for any wage period a NIL entry is to be made. The above documents shall be preserved for a period of three years after the date of last entry made therein. All registers and records shall be produced on demand before the Inspector during the course of inspection of the establishment. Any infringement of the provisions as noticed and communicated by the Inspector shall be rectified by the employer and compliance report shall be submitted to the Inspector on or before the date specified by him. Every employer, including a contractor who engages laborers for others who owns the establishment/ factory etc., is bound by the provisions of this Act, to comply with the requirement of maintaining registers etc., There is no exemption to this mandatory obligation of the employer including any contractor as held in 'V.V. Surya Rau V. Surendra Ramakrishna Tendulkar' – 1977 (77) FLR 280..
Annual Return	Rule 21 (4A) provides for filing of annual returns by employer. The Annual Return shall be filed by the employer on or before 1st of February in each year by uploading the same in Form III on the web portal of the Ministry of Labor and Employment and also filed with the Inspector.
Publicity of notice	Rule 22 provides that notices in Form IXA containing the minimum rates of wages fixed together with the extracts of the Act, the rules made there under and the name and address of the Inspector shall be displayed in English and in a language understood by the majority of the workers in the employment at the main entrances to the establishment and at its office and shall be maintained in a clean and eligible condition. Such notices shall also be displayed on the notice boards of all sub divisional and district officers.
Unpaid amount	Section 22D provides that if the employer could not able to pay the amount due to the employee on account of his death before payment or on account of his whereabout is not known, the same should be deposited with the prescribed authority who shall deal with the money so deposited in such manner as may be prescribed.
Contracting out	Section 25 of the Act provides that any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act. The right of minimum wages under this Act is a definite one. In 'Yadav Stores, Nagpur V. Presiding Officer, Labor Court – III' – 1984 Lab IC 756 it was held that in a compromise or a settlement between the employer and employee resulting in the employee relinquishing or reducing his claim with regard to wages under the Minimum wages act is shall be null and void.
Penalties	Section 22 provides punishment for certain offences. The section provides that any employer who- pays to an employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act; or contravenes any rule or order made under Section 13 (fixing hours for normal working days etc.,) shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to `500/- or with both. In imposing any fine for an offence the court shall take into consideration the amount of any compensation already awarded

	against the accused in any proceedings under Section 20. Section 22A provides general provision for punishment of other offences. This section provides that any employer who contravenes any provision of this Act or of any rule or order made there under shall, if no other penalty is provided for such contravention by this Act, be punishable with fine which may extend to `500.
Offences of by companies	Section 22C provides that if the person coming any offence is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. If the concerned person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. If it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be proceeded against and punished accordingly.
Cognizance of offences	Section 22B provides that no court shall take cognizance of a complaint against any person for an offence- under Section 22(a) unless an application in respect of the facts constituting such offence has been presented under Section 20 and has been granted wholly or in part, and the appropriate Government or an officer authorized by it in this behalf has sanctioned the making of the complaint; under Section 22(b) or under Section 22A, except on a complaint made by, or with the sanction of an Inspector. No Court shall take cognizance of an offence under Section 22, unless a complaint is made within one month of the grant of sanction and under Section 22A, unless a complaint is made within six months of the date on which the offence is alleged to have been committed.
Bar of suits	Section 24 provides that no Court shall entertain any suit for the recovery of wages for the sum claimed forms the subject of an application under Section 20 which has been presented by or on behalf of the plaintiff; or has formed the subject of a direction under that section in favor of the plaintiff; or has been adjudged in any proceeding under that shall not be due to the plaintiff; or could have been recovered by an application under that that Act.
Powers of appropriate Government	The following are the powers of the appropriate Government Section 26provides that the appropriate Government may, subject to such conditions, direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees or all or any class of employees employed in the scheduled employment; Section 27 gives power to State Government to add any employment in either part of the schedule; Section 28 gives power to the Central Government to directions to a State Government as to carrying into execution of this Act in the State; Section 29 gives power to the Central Government to make rules;

	Section 30 gives power to appropriate Government to make Rules

PRACTICE MANUAL

Fill in the blanks

1. Adult is a person who has completed his_____year.

2. Any person who is responsible to the owner for the supervision and control of the employee or for the payment of wages is an_____.

3. The schedule is divided into two parts. Part I of the schedule has_____ entries.

4. The minimum wages shall be paid in_____.

5. Where a person provides labor or service to another for remuneration which is less than the minimum wage, such labor is called_____.

6. When a worker works more than 9 hours on any day or more than 48 hours a week, he shall be entitled to overtime wages 1.5 times of the ordinary wages in case of employment in_____.

7. The minimum wages shall be paid in an establishment in which more than 1000 persons are employed before the expiry of _____th day.

8. Total amount of deductions from the wages shall not exceed_____of such wages where such deductions are paid to co-operative societies.

9. To set the weekly day of rest the employee has to work for a continuous period for not less than ____ days in a week.

10. The claim for minimum wages shall be made in _____.

Choose the correct answer

1. Schedule II of this Act relates to an employment of –

(a) State Government;
(b) Central Government;
(c) Agriculture;
(d) Local authority.

2. Minimum wages may be fixed by

(a) The hour;
(b) The day;
(c) Month;
(d) By any of the above method.

3. Review of minimum wages is to b e done at such interval not exceeding

(a) 3 years;
(b) 5 years;
(c) 7 years;
(d) 10 years.

4. No minimum wages cannot be fixed where

(a) Dispute is pending before the Tribunal;
(b) Dispute is pending before any authority under any other law for the time being in force;

(c) An award in operation;
(d) Any one of the above three.

5. Wages of a worker shall be paid before the expiry of 7th day in the establishment for which less than _____ persons are employed.

(a) 1000;
(b) 500;
(c) 250;
(d) 100.

6. If the authority finds the application for claim of minimum wages is a vexatious one, he may imposed penalty a sum no exceeding

(a) `100/-;
(b) ` 50;
(c) `500/-
(d) `250/

7. The Central Government proposes the minimum rate of wages at

(a) `5000/-
(b) `7500/-
(c) `10000/-
(d) `15,000/

8. A wage slip shall be issued by every employer to every employee

(a) at least a day prior to the disbursement of wages;
(b) on the day on which the wages is disbursed;
(c) none of the above.

9. Rule 24 provides that the number of hours which shall constitute a normal working day in respect of an adult shall be

(a) 4.5 hours;
(b) 9 hours;
(c) 12 hours;
(d) None of the above.

10. The appropriate government may fix minimum rate of wages for

(a) Time work;
(b) Piece work;
(c) Guarantee time rate;
(d) All he above.

Model Questions

1. Define the term 'cost of living index number' and 'scheduled employment'.
2. Elaborate the procedure for fixing and revising minimum wages;
3. What are the roles of Advisory Board?
4. What are the deductions that can be made from the wages?
5. List the forms prescribed for registers and records that are to be maintained under this Act.
6. Define 'contracting out'.
7. What are the powers of appropriate Government under this Act?
8. What are the obligations of the employers under this Act?
9. Describe the procedures for an employee to claim the short payment of wages or nonpayment of wages.
10. Under what circumstances fine may be imposed on an employed person.

Answers:

Fill in the blanks

1. 18th;
2. Employer;
3. 18;
4. Cash;
5. Forced labor;
6. Agriculture;
7. 10th day;
8. 75%;
9. Six;
10. Duplicate.

Choose the correct answer

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

State whether TRUE or FALSE

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

MTP Question:

MTP June 2019
Question: 1 Elaborate the procedure for fixing and revising minimum wages

Answer: Section 5 (1) provides that In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall, either – appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be; or by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration. Section 5(2) provides that after considering the advice of the committee or committees all representations received by it before the date specified in the notification, the appropriate government shall by notification in the Official Gazette, fix, or, as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue. Where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate government shall consult the Advisory Board also.

In 'T.G. Lakshmaiah Setty & Sons, Adoni V. State of Andhra Pradesh' – 1981 Lab IC 690 it was held that what is contemplated by the Act to be notified under Section 5(1)(b) is no doubt draft proposals. The objection to draft proposals can be made both by employers and employees as well. Thus, if the employees had exercised their privilege to represent and ask for higher wages and if eventually the State authorities had adopted higher rates of minimum wages.

MTP Dec 2018
Question: 2 How is overtime Wages fixed as per Minimum Wages Act, 1948.

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages –

- in case of employment in agriculture - one and a half times the ordinary rate of wages;
- in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made.

Section 14(2) provides that this Act shall not prejudice the operation of the provisions of Section 59 of the Factories Act in any case where those provisions are applicable.

In Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules.

MTP Jun 2017
Question: 3 The Minimum Wages Act, 1948 prescribes payment of wages in cash only. Comment

Answer: Payment of Minimum Wages in cash only

1. Minimum wages payable under the Minimum Wages Act shall be paid in cash.

2. Where it has been the custom to pay wages wholly or partly in kind, the Appropriate Government being of the opinion that it is necessary in the circumstances of the case may by notification in the Official Gazette authorise the payment of minimum wages either wholly or partly in kind

3. If Appropriate Government is of the opinion that provision should be made for the supply at essential commodities al concession rates the Appropriate Government may by notification in the Official Gazette authorise the provision of such supplies at concessional rates.

4. The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner.

MTP Dec 2017
Question: 4 How is overtime Wages fixed as per Minimum Wages Act, 1948.

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages –

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→ in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made.

Section 14(2) provides that this Act shall not prejudice the operation of the provisions of Section 59 of the Factories Act in any case where those provisions are applicable.

In 'Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules.

MTP Jun 2017
Question: 5 How is overtime Wages fixed as per Minimum Wages Act, 1948.

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages -

→ in case of employment in agriculture - one and a half times the ordinary rate of wages;

→ in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made.

Section 14(2) provides that this Act shall not prejudice the operation of the provisions of Section 59 of the Factories Act in any case where those provisions are applicable.

In Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules

Suggested Question:

Suggested Dec2018
Question: 6 (a) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, 1948

Answer: Procedure for Fixing and revising Minimum Wages (Sec 5)
In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(**b) Publication of proposals in the Official Gazette**. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1) (b)].

After considering the advice of the committee or committees [under Sec. 5(1) (a)] or all representations received by it before the date specified in the notification [under Sec 5(1) (b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec 5(2)]. The power of the Government under Sec. 5(2) to issue notification revising minimum wages includes power to give retrospective effect to notification.

Question: 7 (a) E-Contracts

Answer: E-contracts are paperless contracts. It is in electronic form. They are conceptually very similar to traditional contracts. E-contract also require basis of contract. The following are ingredients of the e-contracts –

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

The main feature of this type of contract is speed, accuracy and reliability. The parties to the contract have to obtain digital certificate from competent authority. The Information Technology Act, 2000 regulates such contracts. Contract is signed through E-Mail is valid & enforceable.

Revisionary Question:

Revisionary Dec 2018

Question: 7 Explain the procedure for fixing and revising minimum wages under Minimum Wages Act 1948.

Answer: Procedure for Fixing and revising Minimum Wages (Sec 5)
In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(b) Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1)(b)].

After considering the advice of the committee or committees [under Sec. 5(1)(a)] or all representations received by it before the date specified in the notification [under Sec.]

5(1)(b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec. 5(2)]. The power of the Government under Sec. 5 (2) to issue notification revising minimum wages includes power to give retrospective effect to notification

Question: 8 With whom does the responsibility of fixing minimum rates of wages lie?

Answer: This is provided in Sec 3 of the Minimum Wages Act, 1948.

The responsibility of fixing minimum wages lies with appropriate government. The appropriate government shall in the manner hereinafter provided-

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

Provided that the appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) review at such intervals as it may think fit such intervals not exceeding five years the minimum rates of wages so fixed and revise the minimum rates if necessary:

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

Revisionary June 2018
Question: 9 Explain the procedure for fixing and revising minimum wages under Minimum Wages Act 1948

Answer: Procedure for Fixing and revising Minimum Wages (Sec 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(b) Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1)(b)].

After considering the advice of the committee or committees [under Sec. 5(1)(a)] or all representations received by it before the date specified in the notification [under Sec. 5(1)(b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec. 5(2)]. The power of the Government under Sec. 5 (2) to issue notification revising minimum wages includes power to give retrospective effect to notification

Question: 10 With whom does the responsibility of fixing minimum rates of wages lie?

Answer: This is provided in Sec 3 of the Minimum Wages Act, 1948.

The responsibility of fixing minimum wages lies with appropriate government. The appropriate government shall in the manner hereinafter provided-

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

Provided that the appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) review at such intervals as it may think fit such intervals not exceeding five years the minimum rates of wages so fixed and revise the minimum rates if necessary:

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

Workbook Question:

Question: 11 Define Wages and Minimum wages as per Minimum Wages Act, 1948?

Answer: Section 2(h) of Minimum Wages Act, 1948 defines the term 'wages' as all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include –

• The value of – any house accommodation, supply of light, water, medical attendance; or any other amenity or any service excluded by general or special order of the appropriate government;

• any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

• any traveling allowance or the value of any traveling concession;

• any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

• any gratuity payable on discharge; Section 2(h) defines the term 'wages' and not 'minimum wages'. It is up to the appropriate Government to fix the minimum wages considering into the various aspects of the employment, sectoral organization etc., In many a case the Courts declare who are eligible to receive minimum wages apart from the decisions of the appropriate Governments.

Question: 12 Explain the procedure for fixing and revising minimum wages under Minimum Wage Act, 1948.

Answer: Section 5 (1) provides that In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall, either –

appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be; or

by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration.

Section 5(2) provides that after considering the advice of the committee or committees all representations received by it before the date specified in the notification, the appropriate government shall by notification in the Official Gazette, fix, or, as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue. Where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate government shall consult the Advisory Board also.

Question: 13 Discuss the provision relating with overtime under Minimum Wages Act, 1948

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages-

in case of employment in agriculture - one and a half times the ordinary rate of wages;

in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made.

Question: 14 What are the different registers to be maintained by the employer under Minimum Wages Act, 1948?

Answer: Every employer, including a contractor who engaged laborers for others who owns the establishment/ factory etc., is bound by the provisions of this Act, to comply with the requirements of maintaining registers etc., The following are the forms prescribed for registers and records-

Form – I: Register of Fines;

Form – II: Register of deductions for damage or loss caused to the employer, by the neglect or default of the employed persons;

Form III: Unified Annual Return; Form IV; Overtime Register for workers;

Scanner Question:

Question: 15 2009 - June [4] (a) Write explanatory note on:

(ii) Powers of Inspectors (Minimum Wage Act). (4 marks)

Answer:

Powers of Inspector: (Minimum Wages Act)
The inspector may enter at all reasonable hours any premises for the purpose of examining any register, record of wages or notices and require the production of such documents for inspection.
Examine any person whom he finds in any such premise or place and who he has reasonable cause to believe is an employee/employed therein or an employee to whom work is given out therein.
Require any person giving out work and outworkers to give any information.
Seize or take copies of such register, record of wages or notice, or portion thereof as he may consider relevant in respect of an offence under the Minimum Wages Act 1948, which he has reasons to believe has been committed by an employer and exercise such other powers as may be prescribed.

Question: 16 2018 - Dec [8] Write short notes on:
(d) 'Overtime' under Minimum Wages Act, 1948 (5 marks)

Answer:

Overtime:

According to **Section 14(1)** states that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be authorize, works on any day in excess of the number of

hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.
• Rule 25 states that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to overtime wages.
• In case of employment in agriculture - one and a half times the ordinary rate of wages; in case of any other scheduled employment - double the ordinary rate of wages.
• A register in this regard shall be maintained. If no overtime wage is paid for a particular month a NIL entry in register should be made.
• **Section 14(2)** states that this Act shall not prejudice the operation of the provisions of **Section 59 of the Factories Act** in any case where those provisions are applicable.

Question: 17 2011- June [1] {C} Comment on the following based on legal provisions:
(f) Mr. Malhotra, Factory Manager, stated that payment of wages can also be made in kind. (Minimum Wages Act 1948) - offer your views. (2 marks)

Answer:

The Minimum Wages Act 1948 states that the wages shall be paid in cash and not in kind. If payment in kind is approved by the Govt, then and only then the wages can be paid in kind.

Question: 18 2011 - Dec [3] (e) Mr. Singh is engaged in two types of jobs in a factory that of a welder and security guard. As the wage rates are different for two different jobs, the employer calculates his minimum wages at an average rate. Whether this is correct. (2 **marks)**

Answer:

Where an employee performs two or more classes/types of work having different minimum rates of wages the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class. Thus employer just can not pay him at simple average rate of both wages of both classes of job. **(Sec. 16 of the Minimum Wages Act, 1948)**

Question: 19 2014- June [5] (a) (i) Explain Cost of living Index Number under The Minimum Wages Act, 1948. (2 marks)

Answer:
"Cost of living Index Number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the Index Number ascertained and declared by the Competent Authority by notification in the official gazette to be the cost of living index number applicable to employee in such employment.

Question: 20 2014 - Dec [2] (c) (ii) A is engaged in two types of job in a factory, that of mechanic and watchman. The wage rates are different for two different jobs. The employer calculates his minimum wage on an average rate. State whether this is correct, and explain your views as per Payment of Minimum Wages Act, 1948.

(2 marks)

Answer:
Where an employee does two or more classes of work, to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class. Thus, employer just cannot pay him at simple average rate of both wages of both classes of job.

Question: 20 2015- Dec [2] (c) (iv) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, 1948. (3 marks)

Answer:

Procedure for Fixing and revising Minimum Wages (Sec.5):
(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed the appropriate government shall either:

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be, or
(b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committee appointed under clause (a) of sub- sec. (1) or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate government shall by notification in the Official Gazette, fix or as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue :
Provided that where the appropriate, government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-sec. (1) the appropriate government shall consult the Advisory Board also.

Question: 21 2015 - Dec [2] (d) (iv) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, 1948. (4 marks)

Answer:

Please refer 2015 - Dec [2] (c) (iv) on page no. 343

Question: 22 2016 - June [2] Answer the question:
(b) (ii) The Minimum Wages Act, 1948 prescribes payment of wages in cash only. Comment. ' (4 marks)

Answer:
1. Minimum wages payable under this Act shall be paid in cash.

2. Where it has been the custom to pay wages wholly or partly in kind, the Appropriate Government being of the opinion that it is necessary in the circumstances of the case may by notification in the Official Gazette authorise the payment of minimum wages either wholly or partly in kind.

3. If Appropriate Government is of the opinion that provision should be made for the supply at essential commodities at concession rates the Appropriate Government may by notification in the Official Gazette authorise the provision of such supplies at concessional rates.

4. The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner.

Question: 23 2018 - Dec [4] (a) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, **1948. (9 marks)**

Answer:

Procedure for Fixing and revising Minimum Wages (Sec. 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

1. Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be

2. Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification.

After considering the advice of the committee or committees [under Sec. 5(1) (a)] or all representations received by it before the date specified in the notification [under Sec. 5(1.) (b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment.

The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides **[Sec. 5(2)].**

The power of the Government under Sec. 5(2) to issue notification revising minimum wages includes power to give retrospective effect to notification.

PAYMENT OF WAGES ACT, 1936

Introduction	The Payment of Wages Act, 1936 regulates the payment of wages to certain classes of persons employed in industry. It was enacted to ensure that the wages payable to employees covered by the Act are disbursed by the employers within the prescribed time limit and that no deductions other than authorized by law are made by the employers. The Act applies proprio vigore to the payment of wages to persons employed in any factory or to persons employed in a railway by a railway administration either directly or through a sub contractor. Further the State Governments are empowered to extend the provisions of the Act to cover persons employed in any industrial establishment or any class or group of industrial establishments as defined in the Act.
Note:	With effect from 11.09.2012 the employees drawing wages upto `18,000 per month is covered under this Act.
Applicability of the Act	The Act extends to the whole of India.
Effect	The Act came into effect from 28th March, 1937.
Important definitions Employed person	Section 2(i) defines the expression 'employed person' as including the legal representative of a deceased employed person;
Employer	Section 2(ia) defines the term 'employer' as including the legal representative of a deceased employer;
Industrial establishment	Section 2(ii) defines the expression 'industrial establishment' as any- • tramway service, or motor transport service engaged in carrying passengers or goods or both by road, for hire or reward; • air transport service other than such service belonging to or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India; • Dock, wharf or jetty; • inland vessel, mechanically propelled; • mine, quarry or oil-field; • plantation; • workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale; • establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on; • any other establishment or class of establishments which the Central Government or a State Government may having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification, in the Official Gazette.
Wages	Section 2(vi) defines the term 'wages' as all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment, express or implied, were fulfilled, by payable to a person employed in respect of his employment or of work done in such employment and

	includes – • any remuneration payable under any award or settlement between the parties or order of a court; • any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period; • any additional remuneration payable under the terms of employment (whether called a bonus or by any other name) • any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum whether with or without deductions, but does not provide for the time within which the payment is to be made; • any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include ▪ any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court; ▪ the value of any house-accommodation or of the supply of light water medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government; ▪ any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon; ▪ any travelling allowance or the value of any travelling concession; ▪ any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or ▪ any gratuity payable on the termination of employment.
Responsibility for payment of wages (Section 3)	Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,— (a) in factories, if a person has been named as the manager of the factory under clause (f) of subsection (1) of section 7 of the Factories Act, 1948 (63 of 1948); (b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment; (c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned; (d) in the case of contractor, a person designated by such contractor who is directly under his charge; and (e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act; the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be,

	shall be responsible for such payment.
Fixation of wage period (Section 4)	In payment of the wages it is important to fix the wage period. Section 4 of the Act provides that every responsible for the payment of wages shall fix periods in respect o f which wages shall be paid. This section further provides that no wage period shall exceed one month. The wage period may be daily, weekly or fortnightly or for any period but the period should not exceed one month.
Time of payment of wages	Section 5 provides the date on which the payment of wages are to be done. The wages of every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the **seventh day;** **The wages of** every person employed upon or in any other railway, factory or industrial or other establishment, shall be paid before the expiry of the **tenth day**, after the last day of the wage-period in respect of which the wages are payable. in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid **before the expiry of the seventh day** from the day of such completion; Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated; where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognized holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated. All payments of wages shall be made on a working day.
Exemption	Section 5(3) provides that the appropriate Government may by general or special order, exempt to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) or to persons employed as daily-rated workers in the Public Works Department of the appropriate Government from the operation of this section in respect of wages of any such persons or class of such persons. Provided that in the case of persons employed as daily-rated workers as aforesaid, no such order shall be except in consultation with the Central Government.
Mode of payment	Section 6 provides that, 'All wages shall be paid in currency coins or currency notes or by cheque crediting the wages in the bank account of an employee', with or without the consent of the employees. Provided that the Appropriate Government may by notification in the Official Gazette, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.
Deduction from wages	Section 7 gives the details of deduction from wages. The wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under this Act. Every payment made by the employed person to the employer or his agent shall for the purposes of this Act, be deemed to be a deduction from wages.

	Any loss of wages resulting from the imposition, for good and sufficient cause upon a person employed of any of the following penalties, namely: • the withholding of increment or promotion (including the stoppage of increment at an efficiency bar); • the reduction to a lower post or time scale or to a lower stage in a time scale; or • suspension; shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements if any which may be specified in this behalf by the Appropriate Government by notification in the Official Gazette. Section 7(2) provides that Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act and may be of the following kinds only namely: • fines; • deductions for absence from duty; • deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default; • deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the appropriate Government by notification in the Official Gazette; • deductions for such amenities services supplied by the employer as the Appropriate Government or any officer specified by it in this behalf may by general or special order authorize; • deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages; • deductions for recovery of loans made from any fund constituted for the welfare of labor in accordance with the rules approved by the appropriate Government and the interest due in respect thereof; • deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof; • deductions of income-tax payable by the employed person; • deductions required to be made by order of a court or other authority competent to make such order; • deductions for subscriptions to and for repayment of advances from any provident fund to which the Provident Funds Act 1952 applies or any recognized provident funds as defined in section 2(38) of the Indian Income Tax Act 1961 or any provident fund approved in this behalf by the appropriate Government during the continuance of such approval;

	• deductions for payments to co-operative societies approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office and • deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Saving Bank in furtherance of any savings scheme of any such government. • deductions made with the written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families, or both, and approved by the appropriate Government or any officer specified by it in this behalf, during the continuance of such approval; • deductions made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926; • deductions, for payment of insurance premium on Fidelity Guarantee Bonds; • deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes; • deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage wharfage and cranage or in respect of sale of food in catering, establishments or in respect of sale of commodities in grain shops or otherwise; • deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default; • deductions, made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette specify; • deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees. Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force other than the Indian Railways Act 1890.
Limit of deductions	Section 7(3) provides up to which limit of the wage, the deductions may be made from the wages of the employees. Notwithstanding anything contained in this Act the total amount of deductions which may be made in any wage-period from the wages of any employed person shall not exceed – • in cases where such deductions are wholly or partly made for payments to co-operative societies - 75% of such wages and • in any other case – 50% of such wages.

	Where the total deductions authorized under sub-section (2) exceed seventy five per cent or as the case may be, fifty per cent of the wages the excess may be recovered in such manner as may be prescribed.
Fines	Section 8 of the Act provides imposing of fines by the employer on the employees. The procedure of imposition of fine is detailed as below: • No fine shall be imposed on any employed person who is under the age of fifteen years; • No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of the prescribed authority, may have specified by notice; • A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places. • No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines. • The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period. • No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of 90 days from the day on which it was imposed. • Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed. • All fines and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.
Deductions for absence of duty (Section 9)	Section 9 provides for the deductions from wages of the employed person for his absence from duty. Deductions may be only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work. The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period, within such wage-period during which by the terms of his employment, he was required to work. Subject to any rules made in this behalf by the Appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice. For the purposes of this section an employed person shall be deemed to be absent from the place where he is required to work if although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

	In 'United Commercial Bank V. Gujarat Bank Workers Union' – (2003) 1 Lab.L.J. 1046 (Guj) the High Court held that the bank had already issued a notice and also a public notice stating that if any employee of the bank does not report for work or does not work for any part of his working hours, it will be in breach of his service contract and will not earn any salary for that and subsequently need not report for the work for rest of the hours of the day but despite this, the employees resorted to strike and did not work during the banking hours, during which the Bank transacts public business. In such circumstances the bank was justified in deducting the wages for the whole day.
Deductions for damage or loss	Section 10 provides for the deductions to be made from the wages of the employee for the damage or loss caused to the employer by the employee in the course of his work. A deduction shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person. A deduction shall not be made until the employed person has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.
Register for deductions	Section 10(2) provides all deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.
Deduction for services rendered	A deduction under clause (d) or clause (e) of sub-Section (2) of Section 7 shall not be made from the wages of an employed person, unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and, in the case of deduction under the said clause shall be subject to such conditions as the Appropriate Government may impose.
Deductions for recovery of advances	Section 12 provides that deductions for the recovery of advances shall be subject to the following conditions namely: • recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling-expenses; • recovery of an advance of money given after employment began shall be subject to such conditions as the appropriate Government may impose; • recovery of advances of wages not already earned shall be subject to any rules made by the approproate Government regulating the extent to which such advances may be given and the installments by which they may be recovered.
Deductions for recovery of loans	Section 12A provides that deductions for recovery of loans granted shall be subject to any rules made by the appropriate Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.
Deductions for payments to Co-operative Societies and Insurance Schemes	Section 13 provides that deductions shall be subject to such conditions as the approproate Government may impose.
Maintenance of Registers and records	Section 13A provides that every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed. Every register and record required to be maintained under this section shall for the

	purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.
Inspectors	Section 14 provides for the appointment of Inspector for the purposes of this act. An Inspector of Factories appointed under sub-section (1) of section 8 of the Factories Act 1948 shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him. The appropriate Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies. The appropriate Government may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial or other establishments in respect of which they shall exercise their functions.
Powers of Inspectors	Inspector may,- • make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made there under are being observed; • with such assistance, if any, as he thinks fit, enter inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act; • supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment; • require by a written order the production at such place, as may be prescribed, of any register maintained in pursuance of this Act and taken on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act; • seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer; • exercise such other powers as may be prescribed: No person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself. Every employer shall afford an Inspector all reasonable facilities for making any entry inspection supervision examination or inquiry under this Act. **Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims** Section 15 deals with claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. It provides that the appropriate Government may, by notification in the Official Gazette, appoint- (a) any Commissioner for Workmen's Compensation; or (b) Any officer of the Central Government exercising functions as, (i) Regional Labour Commissioner; or (ii) Assistant Labour Commissioner with at least two years' experience; or (c) Any officer of the State Government not below the rank of Assistant Labour

Commissioner with at least two years' experience; or

(d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or

(e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

Sub-section (2) of section 15 provides that where contrary to the provisions of the Act any deduction has been made from the wages of an employed person or any payment of wages has been delayed such person himself or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person acting with the permission of the authority appointed under subsection(1) may apply to such authority for a direction under sub-section (3)

However, every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be. Any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

As per sub-section (3) when any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give the man opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees.

A claim under the Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority. It may be noted that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner.

No direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or

	(c) the failure of the employed person to apply for or accept payment. As per sub-section (4) if the authority hearing an application under this section is satisfied that the application was either malicious or vexatious the authority may direct that a penalty not exceeding three hundred seventy-five Rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or in any case in which compensation is directed to be paid under sub-section (3) the applicant ought not to have been compelled to seek redress under this section the authority may direct that a penalty not exceeding three hundred seventy five Rupees be paid to the State Government by the employer or other person responsible for the payment of wages.
Single application in respect of claims from an unpaid group	Section 16 provides that employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if deductions have been made from their wages in contravention of this Act for the same cause and during the same wage-period or periods or if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5. A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group and in such case every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in sub-section (2) of section 15. The authority may deal with any number of separate pending applications presented under section 15 in respect of persons belonging to the same unpaid group as a single application presented under sub-section (2) of this section and the provisions of that sub-section shall apply accordingly.
Appeal	Section17 provides that an appeal against an order dismissing either wholly or in part an application made under section 15(2) or against a direction made under sub-section (3) or sub-section (4) of that section may be preferred within thirty days of the date on which the order or direction was made in a Presidency-town before the Court of Small Causes and elsewhere before the District Court – • by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees or • by an employed person or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf or any Inspector under this Act or any other person permitted by the authority to make an application under section 15(2) if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees or • by any person directed to pay a penalty under section 15(4). No appeal shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against. Any order dismissing either wholly or in part an application made under section 15(2) or a direction made under sub-section (3) or sub-section (4) of that section shall be final. Where an employer prefers an appeal under this section the authority against whose decision the appeal has been preferred may, and if so directed by the Court shall, pending the decision of the appeal withhold payment of any sum in deposit with it. Where an employer prefers an appeal under this section the authority against whose

	decision the appeal has been preferred may, and if so directed by the Court shall, pending the decision of the appeal withhold payment of any sum in deposit with it.
Attachment of property of the employer or other person responsible for payment of wages	Section 17A provides that where at any time after an application has been made section 15(2) the authority, or where at any time after an appeal has been filed under section 17 by an employed person or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf or any Inspector under this Act or any other person permitted by the authority to make an application under section 15(2) the Court referred to in that section, is satisfied that the employer or other person responsible for the payment of wages under section 3 is likely to evade payment of any amount that may be directed to be paid under section 15 or section 17 the authority or the Court, as the case may be, except in cases where the authority or court is of opinion that the ends of justice would be defeated by the delay, after giving the employer or other person an opportunity of being heard, may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages as is in the opinion of the authority or Court, sufficient to satisfy the amount which may be payable under the direction.
Penalties	Section 20 provides for the penalties that are imposable under this Act. Section 20(1) provides that Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely section 5 except sub-section (4) thereof section 7 section 8 except sub-section (8) thereof, section 9 section 10 except sub-section (2) thereof and section 11 to 13 both inclusive shall be punishable with fine which shall not be less than two hundred rupees but which may extend to `1,000.  Section 20(2) provides that whoever contravenes the provisions of section 4 sub-section (4) of section 5 section 6 sub-section (8) of section 8 sub-section (2) of section 10 or section 25 shall be punishable with fine which may extend to `3,750/-. Section 20(3) provides that whoever being required under this Act to maintain any records or registers or to furnish any information or return – • fails to maintain such register or record; or • willfully refuses or without lawful excuse neglects to furnish such information or return; or • willfully furnishes or causes to be furnished any information or return which he knows to be false; or • refuses to answer or willfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act shall for each such offence be punishable with fine which shall not be less than `1,500/- but which may extend to `7,500/-. Section 20(4) provides that whoever – • willfully obstructs an Inspector in the discharge of his duties under this Act; or • refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision or inquiry authorized by or under this Act in relation to any railway, factory or industrial or other establishment; or • willfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or • prevents or attempts to prevent or does anything which he has any reason to believe is

	likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act; shall be punishable with fine which shall not be less than `1,500 but which may extend to `7,500. Section 20(5) provides that If any person who has been convicted of any office punishable under this Act is again guilty of an offence involving contravention of the same provision he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which shall not be less than `3,750 but which may extend to `22,000. No cognizance shall be taken of any conviction made more than two years before the date on which the commission of the offence which is being punished came to the knowledge of the Inspector. Section 20(6) provides that if any person fails or willfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any other action that may be taken against him be punishable with an additional fine which may extend to `750 for each day for which such failure or neglect continues. In 'Divisional Superintendent, Northern Railway, Lucknow V. Ram Prasad, Material Checker, Northern Railway, Varanasi, Lucknow' – (2003) 1 Lab. L.J. 93 (All) it was held that against order rejecting the application under Section 20(6) of the Payment of Wages Act, no appeal lies.
Bar of suits	Section 22 provides that no Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed – • forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or • has formed the subject of a direction under section 15 in favor of the plaintiff; or • has been adjudged in any proceeding under section 15 not to be owned to the plaintiff; or • could have been recovered by an application under section 15.
Contracting out	Section 23 of the Act provides that any contract or agreement whether made before or after the commencement of this Act whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.
Display of the Act	Section 25 provides that the person responsible for the payment of wages of persons employed in a factory or an industrial or other establishment shall cause to be displayed in such factory or industrial or other establishment a notice containing such abstracts of this Act and of the rules made there under in English and in the language of the majority of the persons employed in the factory, or industrial or other establishment as may be prescribed.
Payment of undisbursed wage in case of death of employed person	Section 25A provides that subject to the other provisions of the Act all amounts payable to an employed person as wages shall if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known – • be paid to the person nominated by him in this behalf in accordance with the rules made under this Act; or

	• where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed. Where, in accordance with the provisions of sub-section (1), all amounts payable to an employed person as wages – • are paid by the employer to the person nominated by the employer person; or • are deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to pay those wages.

PRACTICE MANUAL

Fill in the blanks

1. The wage period shall not exceed_____.

2. The term 'employer' includes the _____deceased employer.

3. All payment of wages shall be made on_____.

4. The wage of employed person shall be paid to him with deduction of any kind except those _____ under this Act.

5. The total amount of fine which may be imposed in any wage period shall not exceed an equal to _____ of the wages payable to him in respect of wage period.

6. Every register and record shall be preserved for a period of _____ after the date of last entry made therein.

7. The claim for delayed payment of wages for deduction made from the wage is to be made in Form_____ in case of individual employed person.

8. The proviso to Section 15(2) provides that an application against the delayed payment of wages is to be filed within _____ months to the authority from the date on which the payment is due.

9. The wages in respect of any person terminated shall be payable before the expiry of ____ working day from the date of termination.

10. The limitation for a claim would always start from the date on which the wage is _____.

Choose the correct answer

1. The payment of wages Act applies to wages payable to an employed person in respect of wage period if such wages for that wage period do not exceed `_____ per month.

(a) `6500/-
(b) `10000/-
(c) `18,000/-
(d) `25,000/

2. Payment of wages shall be made

(a) In current coins;
(b) By currency notes;
(c) Cheque;
(d) By crediting in bank account;

(e) Any of the above.

3. No fine shall be imposed on the employees under the age of –

(a) 10
(b) 15
(c) 18
(d) None of the above

4. The authorization to act on behalf of an employed person or persons for the claim of delayed payment of wages is to be given to the authority in Form No. –

(a) A
(b) B
(c) C
(d) D

5. In appeal against the order of the authority may be filed to the District Court within

(a) 30 days;
(b) 45 days;
(c) 60 days;
(d) 90 days;

6. The wages of employed persons in an establishment where less than 1000 persons are employed, shall be paid before

(a) 7th day;
(b) 10th day;
(c) 15th day;
(d) Second working day.

7. No fine shall be recovered after the expiry of _____ days from the day on which it was imposed.

(a) 30;
(b) 60;
(c) 90;
(d) 1 year.

8. Which shall be deemed to be absent by an employed person?

(a) Refused to work;
(b) Participating in work;
(c) None of the above;
(d) Either (a) or (b).

9. The Authority may refuse to entertain an application for the claim

(a) That the applicant is not entitled to present the application;
(b) That the application is barred by limitation;
(c) That the applicant shows no sufficient cause for making a direction;
(d) Any of the above.

10. If the employee does not attend the hearing the application will be

(a) Dismissed;
(b) Decided as ex-parte;
(c) None of the above.

State whether TRUE or FALSE

1. All deductions and all realizations shall be recorded in a registered to be kept open by the person responsible for the payment of wages.

2. Every payment made by the employed person to the employee shall be deemed to be a deduction from wages.

3. Any loss of wage, resulting the suspension of an employee amounts to deduction of wages.

4. If the application for the claim of wrong deduction is filed beyond limitation period, the authority would reject the application.

5. The term 'employed person' includes the legal representatives of a deceased employed person.

6. Every employer shall be responsible for the payment of wages to be paid under the Act to persons employed by him.

7. A notice is not required to be issued before imposing fines on the employed person.

8. Fine may be recovered from the employed person by installments.

9. No recovery shall be made of advances given before employment against the advance given for travelling expenses.

10. The application for claim of delayed payment of wages should be filed in duplicate. One copy shall bear such Court fee as may be prescribed.

Model Questions

1. What is the procedure in imposition of fine on the employee under this Act?

2. What are the remedies available against wrong deductions?

3. Describe the procedure to claim the delayed payment of wages or deductions made from the wages.

4. What are the kinds of deductions that can be made from the wages?

5. Whether a property of an employer can be attached for nonpayment of wages? Discuss the procedure involved in this regard.

6. What is the punishment imposable

(a) If the employer fails to maintain registers;
(b) Willfully obstructs an Inspector in the discharge of his duties under this Act by any person.

7. Describe the procedure for filing of nomination for the purpose of this Act.

8. Elaborate the provisions of Section 5 which deals with the time within which wages shall be paid.

9. Define the terms 'wages' and 'wage period.

Answer:

Fill in the blanks

1. One month;
2. Legal representative;
3. A working day;
4. Authorized;
5. 3%

6. 3 years;
7. A; 8. 12 months;
9. Second;
10. Accrues.

Choose the correct answer

1. C;
2. E;
3. B;
4. D;
5. A;
6. A;
7. C;
8. D;
9. D;
10. A.

State whether TRUE or FALSE

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

MTP Question:

MTP Dec 2018
Question: 1 State the limits for deductions permissible and the procedure for imposition of fine as per Payment of Wages Act, 1936.

Answer: (i) Section 2(13) defines the term ‗employee' as any person employed on a salary or wage not exceeding `21,000/- per mensem (with effect from 01.04.2014) in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. Apprentice will not be treated as an employee.

The following case laws illustrate the eligibility of type of employees eligible for bonus-

- A temporary workman is entitled to bonus on the basis of the total number of days worked by him – ‗Cooper Allen & Co. Limited V. Their Workmen' – 1951 (2) LLJ 576;
- A part time employee as a sweeper engaged on regular basis is entitled to bonus – Automobile Karmachari Sangh V. Industrial Tribunal' – 1970 (38) FJR 268;
- A dismissed employee, reinstated with back wages, is entitled to bonus – Gannon India Limited V. Niranjan Das'- 1984 (40 LLJ 223;
- A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period – Bank of Madura Limited V. Bank of Madura Employees' Union' – 1961 (1) LLJ 720
- A piece rated worked is entitled to bonus – Malabar Tile Works V. Industrial Tribunal' – 1970 (I) LLJ 79.

MTP Dec 2017
Question: 2 On whom does the responsibility for payment of wages lie under the Payment of Wages Act, 1936?

Answer: Every employer shall be responsible for payment to persons employed by him of all wages required to be paid under the Payment of Wages Act, 1936 (Sec 3). But in the case of persons employed (otherwise than by a contractor) in factories, industrial establishments or upon railways, the following persons shall also be responsible for the payment of wages:

(i) in factories if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948;

(ii) in industrial or other establishments if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;

(iii) upon railways (other than in factories) if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned.

(iv) in the case of contractor, a person designated by such contractor who is directly under his charge; and

(v) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

Notwithstanding anything contained in sub-section(1), it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.

MTP Jun 2017
Question: 3 State the limits for deductions permissible and the procedure for imposition of fine as per Payment of Wages Act, 1936.

Answer: Limit of deductions
Section 7(3) provides up to which limit of the wage, the deductions may be made from the wages of the employees. Notwithstanding anything contained in this Act the total amount of deductions which may be made in any wage-period from the wages of any employed person shall not exceed –

- in cases where such deductions are wholly or partly made for payments to cooperative societies - 75% of such wages and
- in any other case – 50

Where the total deductions authorized under sub-section (2) exceed seventy five per cent or as the case may be, fifty per cent of the wages the excess may be recovered in such manner as may be prescribed.

Revisionary Question:

Revisionary Dec 2018
Question: 4 What do you understand by the term „Industrial establishment‟ under the Payment of Wages Act, 1936?

Answer: According to Section 2(ii) of the Payment of Wages Act, 1923, "industrial or other establishment" means any

(a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;

(i) dock wharf or jetty;

(ii) Inland vessel mechanically propelled;

(iii) mine quarry or oil-field;

(iv) plantation;

(v) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;

(vi) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;

(vii) any other establishment or class of establishments which the Central Government or a State Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

Revisionary June 2018
Question: 5 What do you understand by the term 'Industrial establishment' under the Payment of Wages Act, 1936?

Answer: According to Section 2(ii) of the Payment of Wages Act, 1923, "industrial or other establishment" means any

(a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;

(b) dock wharf or jetty;

(c) Inland vessel mechanically propelled;

(d) mine quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;

(g) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;

(h) any other establishment or class of establishments which the Central Government or a State Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

Workbook Question:

Question: 6 Write short note on Contracting out.

Answer: Section 23 of Payment of Wages Act, 1936 provides that any contract or agreement whether made before or after the commencement of this Act whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

Question: 7 What is wage period under Payment of Wages Act, 1936?

Answer: In payment of the wages it is important to fix the wage period. Section 4 of the Act provides that every responsible for the payment of wages shall fix periods in respect of which wages shall be paid. This section further provides that no wage period shall exceed one month. The wage period may be daily, weekly or fortnightly or for any period but the period should not exceed one month.

Question: 8 What is the provision regarding displaying of the Act in the establishment under Payment of Wages Act, 1936?

Answer: Section 25 of Payment of Wages Act, 1936 provides that the person responsible for the payment of wages of persons employed in a factory or an industrial or other establishment shall cause to be displayed in such factory or industrial or other establishment a notice containing such abstracts of this Act and of the rules made there under in English and in the language of the majority of the persons employed in the factory, or industrial or other establishment as may be prescribed.

Question: 9 State the procedure of payment of undisbursed wage in case of death of employed person under Payment of Wages Act, 1936

Answer: Section 25A of Payment of Wages Act, 1936 provides that subject to the other provisions of the Act all amounts payable to an employed person as wages shall if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known –

- be paid to the person nominated by him in this behalf in accordance with the rules made under this Act; or

- where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.

Where, in accordance with the provisions of sub-section (1), all amounts payable to an employed person as wages –

- are paid by the employer to the person nominated by the employer person; or

- are deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to pay those wages.

Scanner Question:

Question: 10 2017 - June [8] Write short note on the following: (d) Limit of deductions from wages

(5 marks)

Answer:

Limit of Deductions from Wages

Section 7(3) provides up to which limit of the wage, the deductions may be made from the wages of the employees. Notwithstanding anything contained in this Act the total amount of deductions which may be made in any wage-period from the wages of any employed person shall not exceed:

- in cases where such deductions are wholly or partly made for payments to co-operative societies - 75% of such wages and
- in any other case - 50% of such wages.

Where the total deductions authorized under **sub-section (2)** exceed seventy five per cent or as the case may be, fifty per cent of the wages the excess may be recovered in such manner as may be prescribed.

Question: 11 2008 - Dec [4] (a) Write explanatory note on:

(ii) Permissible deduction under Payment of Wages Act; **(4 marks)**

Answer:

The deductions from wages of an employee may be of the following kinds subject to limit on deductions as prescribed in the Act. The deductions relate to following may be made as per the provisions of the Act:

(i) For fines

(ii) for absence from duty

(iii) for damage or loss

(iv) for services

(v) for recovery of advances

(vi) for payments to cooperative societies and insurance claims

(vii) other permissible deductions. It is needless to state the deductions made should not exceed the prescribed limits. If the aggregate of deductions made exceeds the limits prescribed in this regard, the excess recovery may be made in such manner as prescribed.

Question: 12 2009 - Dec [1] {C} Comment on the following statements based on legal provisions:

(a) Wages of all the workers shall be paid before 5th of following month. (2 marks)

Answer:

This relates to Payment of Wages Act, 1936.

Particulars	Wage payment
Any railway, factory, industrial establishment, other establishment where less than 1,000 employees are employed.	Before expiry of 7^{lh} day of last day of working period.
Where 1,000 or more employees are employed.	Before expiry of 10^{lh} day of last day of working period.
Dock Wharf or Jetty or Mine.	Before expiry of 7th day of last day of working period.

Question: 13 2011- June [3] (d) Mr. Bakshi wants to submit claims arising out of deduction made contrary to the provision of the Act from his wages, by his employer. Following information be informed (Payment of Wages Act):

(i) Besides the Employee, who can apply to the Authority for direction for refund and compensation ? (2 marks)

(ii) Time limit within which to apply ? (1 mark)

(iii) Besides refund of deducted amount, whether any compensation is allowed ? (1 mark)

Answer:

(i) Employee himself or any legal practitioner or any official of a Registered Trade Union authorized in writing or any Inspector under payment of wages Act or any other person acting with the permission of the Authority appointed under the Act may apply for direction.

(ii) Every such application be presented within **12** months from the date on which the deduction from the wages was made or from the date on which the payment was due to be made. Application may be admitted after the said 12 months subject to certain condition.

(iii) Yes, refund of the deducted, compensation not exceeding 10 times the amount so deducted be allowed after hearing of both the parties.

Question: 14 2011 - Dec [3] (f) The employer is not liable to pay any wages or compensation to workman when an undertaking closes down.- State legal position. (2 **marks)**

Answer:

Where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than weekly or other recognised holiday, the wages earned by him shall be paid before expiry of the second day from the day on which his employment is so terminated. **(Sec. 5(2) of the Payment of Wages Act, 1936)**

Question: 15 2012- June [1] {C} Comment on the following based on legal provisions:

(f) Works Manager has deducted INR 500 from wages towards the cost of tools and raw materials supplied to workers for purpose of employment (Payment of Wages Act). **(2 marks)**

Answer:

As per Payment of Wages Act, 1936, the deductions will be made only if there is a provision in this regard. Tools etc. are not eligible for deductions as per this Act, hence the works manager is wrong if he deducts any amount on account of tools and raw materials.

Question: 16 2013- June [4] (d) (ii) Wages can not be paid by cheque but can be paid in kind. Answer based on provision of Payment of Wages Act 1936. **(2 marks)**

Answer:

Employer may after obtaining written authorization of employed persons pay them the wages either by cheque of by crediting to their Bank A/c. In all other cases, wages shall be paid in current coins or currency notes or both but cannot be paid in kind.

Question: 17 2013 - Dec [5] (c) What are the conditions to deduct for recovery of advances made under the Payment of Wages Act, 1936? **(3 marks)**

Answer:

Deductions under **Clause (f) of sub-Section** (2) **of Section** 7 **(the Payment of Wages Act,** 1936) shall be subject to the following conditions namely:

(i) recovery of advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advances given for travelling expenses;
(ii) recovery of an advances of money given after employment began shall be subject to such conditions as the Appropriate Government may impose;
(iii) recovery of advances of wages not already earned shall be subject to ^hy rules made by the Appropriate Government regulating the extent to which such advances may be given and the installments by which it may be recovered.

Question: 18 2014- Dec [2] (c) (i) Anil Pvt. Ltd. imposed a fine on Anurag, one of its employees for regularly reporting late for work. The fine was imposed on 4* June 2014. The management wanted to recover the amount in November 2014 during half yearly increment. Can the Company recover this amount of fine, state your views as per Payment of Wages Act, 1936. **(2 marks)**

Answer:

As per **Section 8 (6) of the Payment of Wages Act 1936** no fines can be recovered after expiry of 90 days from the date on which it is imposed. So ABC Pvt. Ltd. will not be able to recover the fine in November 2014 as the gap exceeded 90 days.

Question: 19 2015 - June [2] Answer the question:

(c) (i) The responsibility for payment of wages is that of employer'. Explain. **(3 marks)**

Answer:

Sec. 3 of Payment of Wages Act, 1936, lays down that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act. In addition to the employer, the following persons shall also be responsible for the payment of wages.

(a) In factories, the person named as manager,

(b) In industrial or other establishments, the person, if any, who is responsible to the employer for the supervision and control of the industrial or other establishments;

(c) Upon railways otherwise than in factories, the person nominated by the railway administration in this behalf for the local area concerned;

(d) In case of a contractor, a person designated by such contractor;

(e) In any other case, a person designated as responsible for complying with the provisions of the Act.

Question: 20 2017 - Dec [4] (a) What are the different kinds of deduction that can be made from wages under the Payment of Wages Act, 1936? (10 marks)

Answer:

Section 7 gives the details of deduction from wages. The wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under this Act. Every payment made by the employed person to the employer or his agent shalf for the purposes of this Act, be deemed to be a deduction from wages.

Any loss of wages resulting from the imposition, for good and sufficient cause upon a person employed of any of the following penalties, namely:-

• the withholding of increment or promotion (including the stoppage of increment at an efficiency bar);

• the reduction to a lower post or time scale or to a lower stage in a time scale; or

• **Suspension;**

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements if any which may be specified in this behalf by the Appropriate Government by notification in the Official Gazette.

Section 7(2) provides that Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act and may be of the following kinds only namely:

• fines;

• deductions for abjsence from duty;

• deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

• deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the appropriate Government by notification in the Official Gazette;

• deductions for such amenities services supplied by the employer as the Appropriate Government or any officer specified by it in this behalf may by general or special order authorize;

• deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages;

• deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the appropriate Government and the interest due in respect thereof;

• deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;

• deductions of income-tax payable by the employed person;

• deductions required to be made by order of a court or other authority competent to make such order;

• deductions for subscriptions to and for repayment of advances from any provident fund to which the Provident Funds Act, 1952 applies or any recognized provident funds as defined in **Section 2(38) of the Indian Income Tax Act, 1961** or any provident fund approved in this behalf by the appropriate Government during the continuance of such approval;

• deductions for payments to co-operative societies approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office and

• deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Ins^ ance Corporation Act, 1956 or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Saving Bank in furtherance of any savings scheme of any such government.

• deductions made with the written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families, or both, and approved by the appropriate Government or any officer specified by it in this behalf, during the continuance of such approval;

• deductions made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926;

• ' deductions, for payment of insurance premium on Fidelity Guarantee

Bonds;

• deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;

• deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage wharfage and carnage or in respect of sale of food in catering, establishments or in respect of sale of commodities in grain shops or otherwise;

• deductions for recovery of losses sustained by a railway adrninistration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;

• deductions, made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette specify;

• deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force other than the Indian Railways Act 1890.

Question: 21 2009 - Dec [3] (b) Mr. Sham was terminated from employment by the employer on 25.11.09. Personnel Manager directed him to collect his wages earned on 1.12.09. Mr. Sham objected to the date. State legal provision as to the date of payment. **(2 marks)**

Answer:

Sham's objection is right. When any worker is terminated, his wages earned should be paid to him before the expiry of second working day from the day of his termination. It is not so in the given case. Sham's wages should be paid to him before the expiry of 27/11/2009.

Question: 22 2009 - Dec [4] (b) Manager of ABC Ltd. told that total amount of deduction which may be made from the wages of any workman during a month shall not exceed 90% of such wages.—State legal provisions.

(2 marks)

Answer:

Section 7 (2) **of the Payment of Wages Act, 1**936 contains the illustrations of various kinds of deductions which the employer can make from the wages of an employed person.

As per the **Section 7(3) of the Payment of Wages Act, 1936** the total amount of deductions, which may be made in any wage period from the wages of any employee, shall not exceed

(i) 75% of such wages in cases where such deductions are wholly or partly made for payments to co-operative societies;

(ii) in any other case, they shall not exceed 50% of such wages.

Where the total deductions authorised under **Section 7(2)** exceed 75%, or 50% of the wages as the case may be, the excess may be recovered in such a manner as may be prescribed.

In the light of legal provisions, the action of employer is not valid.

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY ACT, 2013

INTRODUCTION	Short title, extent and commencement 1. This Act may be called the Pension Fund Regulatory and Development Authority Act, 2013. 2. It extends to the whole of India. 3. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
Definitions	In this Act, unless the context otherwise requires,— **(a) "Authority"** means the Pension Fund Regulatory and Development Authority established under sub-section (1) of Section 3; **(b) "Central recordkeeping agency"** means an agency registered under Section 27 to perform the functions of recordkeeping, accounting, administration and customer service for subscribers to schemes; **(c)** "**Chairperson"** means the Chairperson of the Authority; **(d)** "**Document"** shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, in printed or in electronic version, which is intended to be used, or which may be used, by the Interim Pension Fund Regulatory and Development Authority, or Authority or an intermediary or any other entity connected with the National Pension System, for the purpose of recording that matter; **(e) "Individual pension account"** means an account of a subscriber, executed by a contract setting out the terms and conditions under the National Pension System; **(f) "intermediary"** includes pension fund, central recordkeeping agency, National Pension System Trust, pension fund adviser, retirement adviser, point of presence and such other person or entity connected with collection, management, recordkeeping and distribution of accumulations; **(g)** "**member"** means a member of the Authority and includes its Chairperson; **(h)** "**National Pension System"** means the contributory pension system referred to in Section 20 whereby contributions from a subscriber are collected and accumulated in an individual pension account using a system of points of presence, a central record-keeping agency and pension funds as may be specified by regulations; **(i) "National Pension System Trust"** means the Board of Trustees who hold the assets of subscribers for their benefit; **(j) "Notification"** means a notification published in the Official Gazette; **(k)** "**Pension fund"** means an intermediary which has been granted a certificate of registration under sub-section (3) of Section 27 by the Authority as a pension fund for receiving contributions, accumulating them and making payments to the subscriber in the

	manner, as may be specified by regulations; **(l) "Pension Regulatory and Development Fund"** means the fund constituted under sub-section (1) of Section 40; **(m) "Point of presence"** means an intermediary registered with the Authority under sub-section (3) of Section 27 as a point of presence and capable of electronic connectivity with the central recordkeeping agency for the purposes of receiving and transmitting funds and instructions and pay out of funds; **(n) "Prescribed"** means prescribed by rules made under this Act; **(o) "Regulated assets"** means the assets and properties, both tangible and intangible, owned, leased or developed by and other rights belonging to, the central recordkeeping agency; **(p) "Regulations"** means the regulations made by the Authority under this Act; **(q) "Scheme"** means a scheme of pension fund approved by the Authority under this Act; **(r) "Securities Appellate Tribunal"** means a Securities Appellate Tribunal established under subsection(1) of Section 15-K of the Securities and Exchange Board of India Act, 1992; **(s) "Subscriber"** includes a person who subscribes to a scheme of a pension fund; **(t) "Trustee Bank"** means a banking company as defined in the Banking Regulation Act, 1949.
National Pension System [Section 20]	(1) The contributory pension system notified by the Government of India in the Ministry of Finance vide notification number F. No. 5/7/2003-ECB & PR, dated the 22nd December, 2003, shall be deemed to be the National Pension System with effect from the 1st day of January, 2004, and such National Pension System may be amended from time to time by regulations. (2) Notwithstanding anything contained in the said notification, the National Pension System shall, on the commencement of this Act, have the following basic features, namely:— a) every subscriber shall have an individual pension account under the National Pension System; (b) withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the conditions, such as purpose, frequency and limits, as may be specified by the regulations; (c) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency; (d) there shall be a choice of multiple pension funds and multiple schemes: Provided that— (a) the subscriber shall have an option of investing up to hundred per cent of his funds in Government Securities; and (b) the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the

	Authority; (e) there shall be portability of individual pension accounts in case of change of employment; (f) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency; (g) there shall notbeany implicit or explicitassurance ofbenefits except market-basedguarantee mechanism to be purchased by the subscriber; (h) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and (i) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations. **(3)** In addition to the individual pension account mentioned in Clause (a) of sub-section (2), a subscriber may also, at his option, have an additional account under the National Pension System having the features mentioned in Clauses (c) to (g) of sub-section (2) and also having the additional feature that the subscriber shall be free to withdraw part or all of his money at any time from the additional account.
Central Recordkeeping Agency [Section 21]	(1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central recordkeeping agency: Provided that the Authority may, in public interest, appoint more than one central recordkeeping agency. (2) The central recordkeeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations. (3) All the assets and properties owned, leased or developed by the central record-keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf: Provided that the central recordkeeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations: Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central recordkeeping agency shall not be entitled to claim any compensation in respect of such regulated assets.
Point of presence [Section 22]	(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a point of presence for the purpose of receiving contributions and instructions, transmitting them to the Trustee Bank or the central recordkeeping agency, as the case may be, and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard. (2) A point of presence shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

Pension funds [Section 23]	(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations. (2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds: Provided that at least one of the pension funds shall be a Government company. EXPLANATION. — For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in Section 617 of the Companies Act, 1956. (3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act. (4) The pension fund shall manage the schemes in accordance with the regulations. **Certain restrictions on foreign companies or individual or association of persons [Section 24]** The aggregate holding of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees or by an individual or by an association of persons, whether registered or not under any law of a country outside India taken in aggregate in the pension fund shall not exceed twenty-six per cent of the paid-up capital of such fund or such percentage as may be approved for an Indian insurance company under the provisions of the Insurance Act, 1938, whichever is higher. **EXPLANATION**. — For the purposes of this section, the expression "foreign company" shall have the meaning assigned to it in Clause (23-A) of Section 2 of the Income Tax Act, 1961. **Prohibition of investment of funds of subscribers outside India [Section 25]** No pension fund shall, directly or indirectly invest outside India, the funds of subscribers. **Eligibility norms of the central recordkeeping agency, etc. [Section 26]** The central recordkeeping agency, points of presence and pension funds, shall satisfy the eligibility norms as may be specified by the regulations, including minimum capital requirement, past trackrecord including the ability to provide guaranteed returns, costs and fees, geographical reach, customer base, information technology capability, human resources and such other matters.

Scanner Question:

Question: 1 2019- June [4] (b) What are the basic features of the national pension system as contained in the Pension Fund Regulatory and Development Authority Act, 2013?**(8 marks)**

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

Question: 2 Write short notes on Central Recording Keeping Agency.

Answer:

Central Record keeping Agency:

1. The Authority shall, by granting a certificate of registration under sub-section (3) of **Section 27,** appoint a central record keeping agency: Provided that the Authority may, in public interest, appoint more than one central record keeping agency.

2. The central record keeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

3. All the assets and properties owned, leased or developed by the central record-keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central record keeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central record keeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Question: 3 Write short notes on Point of Presence.

Answer:

Point of presence:

1. The Authority may, by granting a certificate of registration under sub-section (3) of **Section 27,** permit one or more persons to act as a point of presence for the purpose of receiving contributions and instructions, transmitting them to the Trustee Bank or the central record keeping agency, as the case may be, and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard.

2. A point of presence shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

Question: 4 Write short notes on Pension Fund.

Answer:

Pension funds:

1. The Authority may, by granting a certificate of registration under sub-section (3) of **Section 27,** permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

2. The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds: Provided that at least one of the pension funds shall be a Government company.

Explanation: For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in **Section 617** of the Companies Act, 1956.

3. The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

4. The pension fund shall manage the schemes in accordance with the regulations.

Question: 5 Explain the Provision of National Pension System.

Answer:

National Pension System [Section 20]

1. The contributory pension system notified by the Government of India in the Ministry of Finance vide notification number F. No. 5/7/2003-ECB & PR, dated the 22nd December, 2003, shall be deemed to be the National PensiQn

System with effect from the 1 st day of January, 2004, and such National Pension System may be amended from time to time by regulations.

2. Notwithstanding anything contained in the said notification, the National Pension System shall, on the commencement of this Act, have the following basic features, namely:

(a) every subscriber shall have an individual pension account under the National Pension System;

(b) withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the conditions, such as purpose, frequency and limits, as may be specified by the regulations;

(c) the functions of record keeping, accounting and switching of options by the subscriber shall be effected by the central record keeping agency;

(d) there shall be a choice of multiple pension funds and multiple schemes: Provided that—

(i) the subscriber shall have an option of investing up to hundred per cent of his funds in Government Securities; and

(ii) the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the Authority;

(e) there shall be portability of individual pension accounts in case of change of employment;

(f) collection and transmission of contributions and instructions shall be through points of presence to the central record keeping agency;

(g) there shall not be any implicit or explicit assurance of benefits except • market-based guarantee mechanism to be purchased by the

subscriber;

(h) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and

(i) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

3. In addition to the individual pension account mentioned in Clause (a) of sub-section (2), a subscriber may also, at his option, have an additional account under the National Pension System having the features mentioned in Clauses (c) to (g) of sub-section (2) and also having the additional feature that the subscriber shall be free to withdraw part or all of his money at any time from the additional account.

Question: 6 What are the eligibility norms of the central record keeping agency.

Answer:

Answer: Eligibility norms of the central record keeping agency:

The central record keeping agency, points of presence and pension funds, shall satisfy the eligibility norms as may be specified by the regulations, including minimum capital requirement, past track- record including the ability to provide guaranteed returns, costs and fees, geographical reach, customer base, information technology capability, human resources and such other matters.

COMPANIES ACT, 2013

PRACTICE MANUAL

Fill in the blanks

1. The Board shall have a minimum number of _____ directors in the case of private company.

2. The maximum number of directors shall be _____.

3. Small shareholder means a share holder holding shares of nominal value not more than `_____.

4. The company shall, within _____ days of the appointment of a director, file consent of director with the Registrar.

5. DIN stands for _____.

6. A return containing the appointment of directors and KMP and changes therein shall be filed with the Registrar within _____ days of such appointment or change by the company.

7. The maximum age limit of Managing Director is _____ years.

8. The total managerial remuneration payable by a public company to its directors, including Managing Director and Whole Time Director in respect of a financial year shall not exceed _____ of the net profits of the company.

9. Sitting fees shall not exceed _____ per meeting of the Board or Committee.

10. The office of a Director shall become vacant in case he absent himself from all the meeting of the Board of Directors held during a period of _____ with or without seeking leave of absence of Board.

Choose the correct answer

1. The minimum number of directors for a public company is

(a) 1
(b) 2
(c) 3
(d) 7

2. What is the paid up share capital fixed for the appointment of a woman director?

(a) `100 crores;
(b) `300 crores;
(c) `500 crores;
(d) None of the above.

3. The appointment of an independent director shall be approved by the

(a) Board meeting;
(b) General meeting;
(c) Registrar of Companies;
(d) Central Government.

4. The tenure of director appointed by small share holders shall be

(a) Up to the date of next AGM;
(b) 1 year;
(c) 3 years;
(d) 5 years.

5. No independent director shall hold office for more than ____ consecutive terms.

(a) 2
(b) 3
(c) 4
(d) 5

6. Which public company is required to appoint independent director"

(a) The public company having turnover of `100 crores or more;
(b) The public company having paid up share capital of `10 crores or more;
(c) The public companies which have, in aggregate, outstanding loans, debentures and deposits exceeding `50 crores;
(d) Any of the above.

7. Which one of the following is not the criterion for the appointment of independent director?

(a) He shall not be a promoter of the company.
(b) He shall relate to the promoters of the company;
(c) He shall not have any pecuniary relationship with the company or their promoters or directors during two immediately preceding financial year.
(d) His relatives have not held any pecuniary relationship with the company amounting to 2% or more of its gross turnover.

8. A director may be elected by small share holders upon a notice by

(a) Not less than 1000 small shareholders;
(b) One tenth of the total number of shareholders;
(c) Not less than 1000 small shareholders or one tenth of such shareholders, whichever is lower;
(d) None of the above.

9. At every AGM, not less than _____ of the total number of directors shall retire by rotation.

(a) One third;
(b) Two third;
(c) Three fourths;
(d) Half.

10. The minimum age prescribed for the appointment of Managing Director is

(a) 18 years;
(b) 21 years
(c) 30 years
(d) 70 years.

State whether TRUE or FALSE

1. A company may appoint more than 15 directors after passing a resolution.

2. All companies are required to appoint one woman director.

3. An independent director shall not be entitled to any stock option.

4. Whole time director is not the employee of the company.

5. Additional director shall hold office up to the date of next AGM.

6. The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the new Act.

7. Non obtaining of DIN does not amount to disqualification of a director.

8. The Board may accept the resignation of a Director on his submission of his application for resignation.

9. The removed directors shall not be reappointed as director by the Board of Directors.

10. In any financial year, if a company has no profits or its profits are inadequate, the company shall not pay remuneration to its directors.

Model Questions

1. Define 'independent director'.

2. Write on various types of directors.

3. Discuss the procedure for rotation of directors and re-appointment of directors.

4. Director Identification Number – discuss the provisions relating to this.

5. What are the disqualifications for the appointment of director?

6. When the office of a Director shall become vacant?

7. Can a director be removed? If so give the procedure in detail.

8. Write notes on

(a) Overall remuneration payable by a public company;
(b) Remuneration payable to Managing Director or Whole Time Director.
(c) Remuneration payable to Directors.

9. Which will not form part of the remuneration of a Director?

10. What are the duties of a director in a company?

Answers:

Fill in the blanks

1. 2;
2. 15;
3. 20000;
4. 30;
5. Director Identification Number;
6. 30;
7. 70;
8. 11%;
9. ` 1 lakh;
10. 12 months.

Choose the correct answer

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

State whether TRUE or FALSE

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

MTP Question:

Question: 1 June 2019 What are the documents to be submitted to Registrar of Companies for incorporation of a company

Answer: Section 7 of the Companies Act, 2013 provides for the procedure to be followed for the incorporations of a company. The promotor of the company shall submit the following documents to the Registrar of companies within whose jurisdiction the registered office of the company is proposed to be situated for registration. (a)Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed; (b)A declaration in the prescribed form by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of the Act and rules made there under in respect of registration;

(c)A declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that — (Form No. INC-9)
(1)he is not convicted of any offence in connection with the promotion, formation or management of any company, or

(2)he has not been found guilty of any fraud or misfeasance or of any breach of duty to company under this Act or any previous company law during the last five years and

(3) that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

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

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

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

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

Question: 2 Explain the provisions relating to pay commission in connection with the subscription to the securities, by a company

Answer: Section 40(6) provides that a company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed in the Rules.

Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

• the payment of such commission shall be authorized in the company's articles of association;

• the commission may be paid out of proceeds of the issue or the profit of the company or both;

• the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company's articles, whichever is less;

• the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;

• commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;

• a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration

Question: 3 Discuss the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director.

Answer: (a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undercharged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d)he has been convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence; If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;

(e)an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force;

(f)he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(g)he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(h)he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications. The disqualifications referred under (d), (e) and (g) above shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification

Question: 4 What are the duties of a director in a company?

Answer: Section 166 of the Act prescribes the duties of a director under the provisions of this Act as detailed below:

• A director of a company shall act in accordance with the articles of the company;

• A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment;

• A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;

• A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;

• A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;

• A director of a company shall not assign his office and any assignment so made shall be void;If a director of the company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Question: 5 Write short notes

(a) Alternation of Share Capital

(b) Revocation of licence

Answer: (a) Alteration of share capital

Section 61 provides that a limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting-

• increase its authorized share capital by such amount as it thinks expedient;

• consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

• convert all or any of is fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination;

• sub division of shares,or any of them,into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount,if any,unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

• cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation shall not be deemed to reduction of share capital.

(b) Revocation of licence

Section 8(6) provides that the Central Government may, by order, revoke the licence granted to the company registered under this section-

• if the company contravenes any of the requirements of this section; or

• any of the conditions subject to which a licence is issued; or

• the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest.
The Central Government shall direct the company to convert its status and change its name to add the words 'Limited' or 'Private Limited' to its name. No such order will not be passed without giving opportunity to the company of being heard. A copy of such order shall be given to the Registrar. The Registrar shall, without prejudice to any action taken, on application, in the prescribed form, register the company accordingly.

Question: 6 What are the prohibitions of buy back spelt out in Section 70 of the Act?

Answer: Prohibition of buy back in certain circumstances Section 70 provides that no company shall directly or indirectly purchase its own shares or other specified securities-

• through any subsidiary company including its own subsidiary companies;

• through any investment company or group of investment companies; or

• if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company. The buy back is not prohibited if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

Question: 7 June,2019 Enumerate the provisions relating to provisions relating to Restrictions on powers of Board

Answer: Section 180: Restrictions on powers of Board The Board can exercise the following powers only with the consent of the company by special resolution, namely –

(a)to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings;

(b)to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c)to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business;

(d)to remit, or give time for the repayment of, any debt due from a director. The special resolution relating to borrowing money exceeding paid up capital, free reserves and securities premium share specify the total amount up to which the money may be borrowed by Board.

The title of buyer or other person who buys or takes on lease any property, investment or undertaking in good faith cannot be affected and also in case if in the ordinary business of the company comprises such selling or leasing.

The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except in accordance with the provisions contained in this Act.

The debt incurred by the company exceeding the paid up capital, free reserves and securities premium is not valid and effectual, unless the lender proves that the loan was advanced in good faith and also having no knowledge that limit imposed had been exceeded

Question: 8 June,2019 Describe the term 'Independent Director' as per companies Act,2013

Answer: 'independent director' is defined under Section 149(6) of the Act as a director other than a Managing Director or a whole time director or a nominee director-

■ who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

■he shall not be a promoter of the company or its holding, subsidiary or associate company;

■he shall not be related to the promoters or directors in the company, its holding, subsidiary or associate company; he shall not have any pecuniary relationship other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

■ neither he or any of his relatives-

• holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company, in any of the three financial years immediately preceding the financial year;

• is or has been an employee or proprietor or partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of-

■ a firm of auditors or company secretaries in practice or cost auditors of the company; or

■any legal or a consulting firm that has or had any transaction with the company, amounting to 10% or more of the gross turnover of such firm.

• holds together with his relatives 2% or more of the total voting power of the company; or

• is a Chief Executive or Director of any nonprofit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or

■ who possess such other qualifications as may be prescribed.

Question: 8 June 2019 Director Identification Number

Answer: Director Identification Number
Every individual, who is to be appointed as director of a company shall make an application electronically in Form No.DIR-3 to the Central Government for allotment of DIN along with the prescribed fees. The applicant can download the said from the website of Ministry of Corporate Affairs ('MCA' for short) duly filled in all respects along with photograph and signed digitally. The form shall be verified by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

On application, the system shall generate an application number. The Central Government shall process the application and decide the approval or rejection and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode within 30 days from the receipt of such application.

If any defect is found in the application the Central Government shall give intimation of such defect or incompletion to the applicant by placing it on its web site and by email to the applicant to rectify such defects within 15 days from the date of intimation. If the same has not been rectified the Government shall reject the application directing to file a fresh application. In case of rejection or invalidation of application the fee so paid with the application shall neither be refunded nor adjusted with any other application.

The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the present Act. The DIN allotted shall be valid up to the life time of the Director. The said number shall not be allotted to any other person. Similarly a person shall be allotted only one DIN. The director, on allotment of DIN, is to intimate the company in Form No.DIR-3C within 15 days from the intimation, given to him. Every company shall, within 15 days of the receipt of intimation, fumish the same with the Registrar. If a company fails to famish DIN the company shall be punishable with fine which shall not be less than Rs 25,000/- but which may extend to ' 1/- lakh. Every officer of the company who is default shall be punishable with tine which shall not be less than ' 25,000/- but which may extend to Rs1/- lakh.

Question: 9 Dec 2018 Discuss the procedure for conversion of a One Person Company into a Public Company or a Private Company.

Answer: (i) Conversion of OPC to convert into a Public Company or a private company

Rule 6 provides that where the paid up share capital of an OPC exceeds `50 lakhs and its average annual turnover during the relevant period exceeds `2 crores, it shall cease to be entitled to continue as OPC. Such company is mandatorily to be required to convert within six months into either a public limited company with at least 7 members or a private company with minimum two members.

The OPC has to alter its memorandum and articles by passing a resolution according to Section 122(3) to give effect to the conversion and to make necessary changes incidental thereto.

The OPC shall within a period of 60 days from the date of the applicability give a notice to the Registrar in Form No. INC-5 informing that it has ceased to be a OPC and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover having exceeded the threshold limit laid for OPC.

Question: 10 Can a director be removed? If so, give the procedure in details.

Section 169 of Companies Act, 2013 deals with the procedure of removal of directors. A company may remove a director by passing ordinary resolution. A company cannot remove a director appointed by the Tribunal. The following is the procedure to remove a director and to appoint another director in the place of removed director:

- A special notice of any resolution, shall be sent for a meeting in which the director is to be removed to the company;
- On receipt of notice of a resolution to remove a director, the company shall send a copy of it to the director concerned;
- The director, whether he is a member or not, is entitled to be heard on the resolution at the meeting;
- The director concerned may make his representation in writing to the company;
- The director may request the company to send his representation to the members of the company;
- The Company, if the time permits it to do so-
  - in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
  - send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representation of the company.

If a copy of the representation is not sent due to insufficient time or for the company‘s default, the director may required that the representation shall be read out at the meeting.

The copy of the representation need not be sent out and read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter. The Tribunal may order at company‘s costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of the director may be filled by the appointment of another director in his place at the meeting at which he is removed. For this purpose special notice of the intended appointment has been given. The new director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. If the vacancy is not filled it may be filled as casual vacancy in accordance with the provisions of the Act.

The removed director shall not be reappointed as director by the Board of Directors. He shall not be eligible any compensation or damage payable for his removal as director, as per the terms of contract or terms of his appointment as director or of any other appointment terminating with that as director or as derogating from any power to remove a director under other provisions of the Act.

Question: 11 Discuss briefly about the benefits of a one person company

Answer: (i) The benefits of a one person company may be enumerated as below:

- The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection available to companies.

- Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery. Earlier they were working as artisans and weavers on their own, so they did not have a legal entity of a company. But now the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure.

- Further, the amount of compliance by a one person company is much lesser in terms of filing returns, balance sheets, audit etc. Also, rather than the middlemen usurping profits, the one person company will have direct access to the market and the wholesale retailers. The new concept would also boost the confidence of small entrepreneurs**.**

Question: 11 What do you understand by the term 'Red-Herring Prospectus'

Answer: Red herring prospectus

The Explanation to Section 32 defines the term _red herring prospectus' as a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Section 32 provides that a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of securities. The same shall be filed with the Registrar at least three day prior to the opening of the subscription list and the offer. It shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlight as variations in the prospectus.

At the time of closing of the offer the prospectus stating the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other detail as are not included in the red herring prospectus shall be filed with the Registrar and the SEBI.

Question: 12 Issue of Securities by a public company

Answer: Section 23(1) provides that a public company may issue securities-

- to public through prospectus by complying with the provisions of Part I of Chapter III of this Act;

- through private placement by complying with the provisions of Part II of Chapter III of this Act;

- through a rights issue or a bonus issue in case of listed company or a company intends to get its securities listed with SEBI and the rules and regulations made there under.

Section 23(2) lays down that a private company may issue securities—

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or
(b) through private placement by complying with the provisions of Part II of this Chapter.

As per explanation to section 23, for the purposes of Chapter III, ―public offer‖ includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus

Question: 12 State the features of Section 8 Companies.

Answer: (i) Section 8 Companies, as per Companies Act, 2013 are companies formed with Charitable objects. Their features are as follows:

- has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits, if any, or other income in promoting its objects; and
- intends to prohibit the payment of any dividend to its members;
- the company registered under this Section shall enjoy all the privileges and be subject to all the obligations of the limited company;
- a firm may be a member of the company registered under this section;
- a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government.
- a company registered under this section may convert itself into a company of any other kind only after complying with such conditions as may be prescribed.

Question: 13 Write a note on 'Small Company'

Answer: "Small company" means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act;

Question: 14 Discuss the procedure for alteration of Memorandum of Association.

Answer: Procedure of alteration of memorandum: Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that –

1. Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution.

2. Name Change of the company: Any change in the name of a company shall be effected only with the approval of Central Government in writing. However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word ―Private‖, on the conversion of any one class of companies to another class. The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

3. Entry in register of companies: On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate

4. Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

5. Disposal of the application of change of place of the registered office: The Central Government shall dispose of the application of change of place of there gistered office within a period of sixty days Before passing of order, Central Government may satisfy itself that –

- The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
- the sufficient provision has been made by the company either for the due discharge of all its
- debts and obligations, or
- adequate security has been provided for such discharge.

6. Filing with Registrar: A company shall, in relation to any alteration of its memorandum, file with the Registrar -

- the special resolution passed by the company under sub-section (1);

- the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

7. Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.

8. Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to, shall issue afresh certificate of incorporation indicating the alteration. 9. Change in the object of the company: A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and—

- The details, in respect to of such resolution shall also be published in the newspapers (one in

- English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;

- The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

10. Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

11. Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

12. Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Question: 15 State the reports that are to be set out in the prospectus

Answer: Reports to be set out in the prospectus

Rule 4 provides that the following reports shall be set out with the prospectus as detailed below:

- The reports by the auditors with respect to profits and losses and assets and liabilities;
- The reports relating to profit and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the issue of the prospectus; The reports made by the auditors in respect of the business of the company.

Question: 16 Conditions of formation of OPC

Answer: Conditions of formation of OPC

One Person Company (_OPC' for short) is defined under Section 2(62) of the Act which has only one person as a member. Section 3 of the Act indicates that OPC is a private limited company.

Conditions

The following are the conditions in formation of a OPC:

- No person shall be eligible to incorporate more than a OPC or become nominee in more than such company;
- Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 182 days;
- No minor shall become member or nominee of OPC or can hold share with beneficial interest;
- Such company cannot be incorporated or converted into Section 8 company;
- Such company cannot carry out Non Banking Financial investment activities including investment activities in securities of anybody corporate;
- No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit of paid up share capital is increased beyond `50 lakh or its average annual turnover during the relevant period exceeds `2 crore rupees.

Question: 17 Mr. Jadav floated an OPC, but he does not want to provide any nominee. Is nomination compulsory under OPC. If so what would be the procedure and regulations

Answer: Nomination of One Person Company

The proviso to Section 3(1) provides that the memorandum of OPC shall indicate the name of the other person as nominee in Form No. INC.2. The prior written consent of the other person shall be obtained in the Form No. INC.3. The other person in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of OPC along with Memorandum and Articles of the Company.

The other person may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company. The sole member shall nominate another person as nominee within 15 days of the notice of the withdrawal. He shall send an intimation of such nomination in writing to the company, along with the written consent of such other person so nominated in Form No. INC.3. The company shall within 30 days of receipt of the notice of the withdrawal of consent file with the Registrar, a notice of such withdrawal of consent and the intimation of the name another person

nominated by the sole member in Form No. INC.4 along with the fee prescribed along with the written consent of such another person so nominated in Form No.INC-3.

The subscriber or member of OPC may change the name of such other person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee. He may nominate another person after obtaining the prior consent of such another person inform No.INC-3. The company shall, on receipt of such intimation, file with the Registrar, a notice of such change in Form No.INC-4 along with the fee and with the written consent of new nominee in Form No.INC-3 within 30 days of such receipt of intimation of change.

Where the shareholder of OPC ceases to be the member in the event of death of incapacity to contract, his nominee becomes the member of such OPC. Such new member shall nominate within 15 days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company. The company shall file with the Registrar an intimation of such cessation and nomination in Form No.INC-4 along with the fee within 30 days of the change in membership with the prior written consent of the person so nominated in INC-3.

Question: 18 What are the requirements for public placement?

Answer: Requirements for private placement

Rule 14(2) (a) of Companies (Prospectus of Securities) Rules, 2014, provides that a company shall make a private placement after-

- getting the approval by the shareholders of the company, by a special resolution for the proposed offer of securities or invitation to subscribe securities;
- the explanatory statement annexed to the notice for the general meeting shall disclose the basis for justification for the price, including premium, if any, at which the offer or invitation is being made;
- in case of offer or invitation for non convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures;
- in case of an offer or invitation for non convertible debentures made within a period of six months from 01.04.2014, the special resolution may be passed within the said period of six months from 01.04.2014.

Question: 19 Jun 2018 Write a note on issue of Preference shares.

Answer: Liability for mis-statement

Rule 9 of Companies (Share Capital and Debentures) Rules, 2014, provides that a company having a share capital may, if so authorized by articles, issue preference shares subject to the following conditions:

- the issue should be authorized by passing a special resolution in the general meeting of the company;
- the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued earlier either before or after the commencement of Companies Act or in payment of dividend due on any preference shares.

In the resolution the company shall set out the following:

- the priority with respect to payment of dividend or repayment of capital vis-à-vis equity shares;
- the participation in surplus fund;
- the participation in surplus assets and profits, on winding up which may remain after the entire capital has been repaid;
- the payment of dividend on cumulative or non cumulative basis;

- the conversion of preference shares into equity shares;
- the voting rights;
- the redemption of preference shares.

The explanatory statement to be annexed to the notice of the general meeting shall provide the complete material facts concerned with and relevant to the issue of such shares, including-

- the size of the issue and number of preference shares to be issued and nominal value of each share;
- the nature of such shares i.e., cumulative or non cumulative, participating or nonparticipating, convertible or non convertible;
- the objectives of the issue;
- the manner of issue of shares;
- the price at which such shares are proposed to be issued;
- the basis on which the price has been arrived at;
- the terms of issue, including terms and rate of dividend on each share, etc.,
- the terms o redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
- the manner and modes of redemption;
- the current shareholding pattern of the company;
- the expected dilution in equity share capital upon conversion of preference shares.

The particulars of the issue of the preference shares shall be noted in the Register of Members. If a company wants to list its preference shares on a recognized stock exchange it shall issue the preference shares in accordance with the regulations made by SEBI.

Question: 20 State the disqualifications for a person to be appointed as a director.

Answer: Disqualifications for appointment of director

Section 164 of the Act details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if-

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence;

(e) if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;

(f) an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force;

(g) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(h) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(i) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications.

The disqualifications in (d), (e), (f) and (h) shall not take effect-

- for 30 days from the date of conviction or order of disqualification;
- where an appeal or petition is preferred within 30 days against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of; or
- where any further appeal or petition is preferred against order or sentence within 7 days until such further appeal or petition is disposed of.

Question: 21 Alteration of share capital

Answer: Section 61 provides that a limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting-

- increase its authorized share capital by such amount as it thinks expedient;
- consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
- convert all or any of is fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination;
- sub division of shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

The cancellation shall not be deemed to reduction of share capital.

Question: 22 List the documents that have to be submitted for incorporation of a company.

Answer: Incorporation of company

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

(a) Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(b) A declaration in the prescribed form by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company;

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

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

(2) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years.

(3) and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

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

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

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

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

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

Question: 23 Discuss about the contents of the Annual Return

Answer: Section 92 of the act requires a company to file Annual Return. This section provides that every company shall prepare a Annual Return in Form No. MGT-7. The Annual Return shall contain the following particulars as they stood at the end of the financial year:

- the register office of the company, its principal business activities, particulars of its holding, subsidiary and associate companies;
- its shares, debentures and other securities and shareholding pattern;
- its indebtedness;
- its members and debenture holders along with changes therein since the close of the previous financial year;
- its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- meetings of members or a class thereof, Board and its various committees along with attendance details;
- remuneration paid to Directors and Key Managerial Personnel;
- penalty and punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- matters relating to certification of companies, disclosures as may be prescribed;
- details in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
- such other matters as may be prescribed.

The return shall be signed by a director and the Company Secretary. Where there is no company secretary, then it shall be signed by a Company Secretary in practice.

The proviso to Section 92(1) provides that the annual return of a OPC and small company, shall be signed by the Company Secretary or where there is no Company Secretary by the director of the Company.

Question: 24 Discuss the procedure of sending notice of meeting by electronic mode as per Companies Act.

Answer: Procedure of sending notice of meeting by electronic mode

Rule 18 provides the procedure for issue of notice through electronic mode. The term 'electronic mode' shall mean any communication sent by a company through its authorized and secured computer program which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

The procedure of sending notice through electronic mode is discussed as detailed below:

- A notice may be sent through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice;
- The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
- The subject shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled;
- The attachment shall in a PDF or in a non editable format together with a link or instructions for recipient for downloading relevant version of the software;
- The company should ensure that it uses a system which produces confirmation of the total number of recipients emailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained or on behalf of the company as 'proof of sending';
- The company is not responsible for the failure in transmission beyond its control;
- If a member fails to provide or update relevant email address to the company or to the depository participant, the company shall not be in default for not delivering notice via email;
- The company may send email through in house facility or its registrar and transfer agent or authorize any third party agency providing bulk email facility;
- The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government.

Question: 25 How is Quorum calculated for conduct of meetings of different classes of companies?

Answer: It is usual to calculate a quorum for a meeting for the validity of the transactions taken place in the meeting. The Articles of the company shall provide the quorum for a meeting. If no quorum is mentioned in the Article, Section 103(1) provides that –

- In case of a public company –
  - 5 members personally present if the number of members as on the date of meeting is not more than 1000;

- ❖ 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
- ❖ 30 members personally present if the number of members as on the date of the meeting exceeds 5000;

- In case of a private company 2 members personally present shall be the quorum for a meeting of the company.

  - ❖ The articles of the company shall indicate the quorum more than this number or otherwise the above will be applicable.

Section 103(2) provides that if the quorum is not there within half an hour from the time appointed for holding a meeting of the company-

- the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine;

- the meeting, if called by requisitionists shall stand cancelled.

In the case of an adjourned meeting, the company shall give not less than 3 days notice to the members either individually or publishing an advertisement in the newspapers, one in English and one in vernacular language, which is in circulation at the place where the registered office of the company is situated. If at the adjourned meeting also, a quorum is not also present within half an hour from the time appointed for holding meeting, the members present shall be the quorum.

Question: 25 Write a note on:
Secured debentures

Answer: Secured Debentures

Section 71(3) provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed. Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014 provides the conditions for the issue of secured debentures. The conditions are as follows:

- The date of redemption of secured debentures shall not exceed ten years;

- The following classes of companies may issue secured debentures for a period exceeding 10 years but not exceeding 30years:

  - ❖ Companies engaged in infrastructure projects;
  - ❖ 'Infrastructure Finance Companies'
  - ❖ Infrastructure Debt Fund Non Banking Financial Companies;

- The issue shall be secured by the creation of charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

- The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of debentures;

- A debenture deed shall be executed to protect the interest of debenture holders; and

- The security for the debentures by way of a charge or mortgage shall be created in favor of the debenture trustee on-

  - ❖ any specific movable property of the company; and

  - ❖ any specific immovable property wherever situate, or any interest therein

In case of a non banking financial company, the charge or mortgage may be created on any movable property.

In case any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement of creation of charge shall not apply

Question: 25 Jun 2017 Write a note on Central Record Keeping Agency as per Section 21 of PFRDA Act, 2013.

Answer: Central Recordkeeping Agency [Section 21]

(1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central recordkeeping agency: Provided that the Authority may, in public interest, appoint more than one central recordkeeping agency.

(2) The central recordkeeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central record-keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central recordkeeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central recordkeeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Question: 26 Write about the rules regarding repayment of deposits accepted before the commencement of Companies Act, 2013

Answer: Repayment of deposits accepted before the commencement of Companies Act, 2013

Section 74 (1) provides that if any deposit is accepted before the commencement of the Companies Act, 2013 the amount of such deposit or part thereof or any interest due thereon remains unpaid the company shall within a period of 3 months from such commencement or from the date on which such payments due at any time thereafter the company shall-

• file a statement of all deposits accepted by the company and the sums remaining unpaid on such amount with interest thereon along with the arrangements made for such repayment with the Registrar within a period of three months from such commencement or from the date on which such payments are due; and

• repay within one year from such commencement or from the date on such payments are due, whichever is earlier.

Section 74(2) provides that the Tribunal may, on an application made by the company, after considering the financial condition of the company, the amount of deposit o part thereof and the interest payable thereon and such other matters allow further time as considered reasonable to the company to repay the deposit.

Question: 27 Condition for conversion of a Sec 8 company into a company of any other kind

Answer: Rule 21 provides conditions for conversion of a company registered under Section 8 into a company of any other kind.

Rule 21(1) provides that a company registered under Section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

Rule 21(2) provides that the explanatory statement annexed to the notice, convening the general meeting shall set out in detail the reasons for opting for such conversion including the following;

• the date of incorporation of the company;

• the principal objects of the company as set out in the memorandum of association;

• the reasons as to why the activities for achieving the objects of the company cannot be carried on the current structure i.e., as a Section 8 company;

• if the principal or main objects are proposed to be altered, then what would be the altered objects and the reasons for the alteration;

• what are the privileges or concessions currently enjoyed by the company, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donation or bequests received by the company with conditions attached to their utilization etc.,

• details of impact of the proposed conversion on the members of the company including the details of any benefits that may accrue to the members as a result of the conversion.

Rule 21 (3) provides that a certified true copy of the special resolution along with a copy of the notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No. MGT-14 along with the fee.

Rule 21(4) requires that the company shall also file an application in Form No. MGT-18 with the Regional Director along with the fee. A certified copy of special resolution and a copy of the notice convening the meeting including the explanatory statement shall be attached, the proof of serving the notice served to all the authorities under Rule 22(2).

Rule 21(5) requires that a copy of the application with annexures as filed with Regional Director shall also be filed with the Registrar.

Question: 27 Dec 2017 State the contents of Memorandum of Association.

Answer: Contents of Memorandum of Association

The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built**.**

As per Section 4(1), the memorandum of a limited company must state the following:

(a) the name of the company with "Limited" as its last word in the case of a public company; and "Private Limited" as its last words in the case of a private company; (Name Clause)

This shall not apply in case of companies registered under section 8.

Similarly, in case of government companies the name of the company shall end with the words "Limited". This is as per the exemptions to Government Companies under Section 462 of Companies Act, 2013 vide notification dated June 5, 2013.

(b) the State in which the registered office of the company is to be situated; (Situation Clause)

(c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;(objects clause) Provided that nothing in this clause shall apply to a company registered under section 8;

(d) the liability of members of the company, whether limited or unlimited, and also state,- (Liability Clause)

(i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and

(ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

(A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

(B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

(e) in the case of a company having a share capital,— (Capital Clause)

(i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share per subscriber; and

(ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

(f) in the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

According to section 4(7), any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Question: 28 What are the requirements for public placement?

Answer: Rule 14(2) (a) of Companies (Prospectus of Securities) Rules, 2014, provides that a company shall make a private placement after –

• getting the approval by the shareholders of the company, by a special resolution for the proposed offer of securities or invitation to subscribe securities;

• the explanatory statement annexed to the notice for the general meeting shall disclose the basis for justification for the price, including premium, if any, at which the offer or invitation is being made;

• in case of offer or invitation for non convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures;

• in case of an offer or invitation for non convertible debentures made within a period of six months from 01.04.2014, the special resolution may be passed within the said period of six months from 01.04.2014.

Question: 29 Mr. X has fraudulently made mis-statements in the prospectus. What liability does arise on behalf of Mr. X in this context?

Answer: Liability for mis-statement

If there is any mis-statement in the prospectus then it would attract the liability on the issuer. The liability may be civil or criminal. Section 34 provides for criminal liability and section 35 provides for civil liability.

Section 34 provides that where a prospectus includes any untrue statement or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorize the issue of such prospectus shall be liable under Section 447. The criminal liability will not arise if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of the issue of prospectus believe, that the statement was true or the inclusion or omission was necessary.

Section 35 provides that where a person has subscribed for securities of a company based on the mis-statement in the prospectus and he has sustained any loss or damage as a consequence thereof, the company and every person who-

• is a director of the company at the time of the issue of the prospectus;

• has authorized himself to be named and is named in the prospectus as a director of the company, or has agreed to become to become such director, either immediately or after an interval of time;

• is a promoter of the company;

• ha authorized the issue of the prospectus; and

• is an expert,

shall be liable to pay compensation to every person who has sustained such loss or damage. This liability is without prejudice to any punishment to which any person may be liable under Section 36.

No person shall be liable if he proves-

• that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

• that the prospectus was issued without his knowledge or consent and that on becoming aware of this issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Section 35(3) provide that it if it is proved that a prospectus has been issued with intent to defraud the applicant for the securities of a company or any other person or any fraudulent purpose, every person shall be personally responsible without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Question: 30 State the disqualifications for a person to be appointed as a director.

Answer: Section 164 of the Act details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if-

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence;

(e) if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;

(f) an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force;

(g) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(h) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(i) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications.

The disqualifications in (d), (e), (f) and (h) shall not take effect-

• for 30 days from the date of conviction or order of disqualification;

• where an appeal or petition is preferred within 30 days against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of; or

• where any further appeal or petition is preferred against order or sentence within 7 days until such further appeal or petition is disposed of.

Question: 31 Write a note on:
(i) Pension Funds [Section 23 of PFRDA Act, 2013]

(ii) Alteration of share capital

Answer: Pension funds [Section 23]

(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds: Provided that at least one of the pension funds shall be a Government company.

EXPLANATION. — For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in Section 617 of the Companies Act, 1956.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

(ii) Alteration of share capital

Section 61 provides that a limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting-

• increase its authorized share capital by such amount as it thinks expedient;

• consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

• convert all or any of is fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination;

• sub division of shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

• cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

The cancellation shall not be deemed to reduction of share capital.

Question: 32 Jun 2017
(i) State the features of Section 8 Companies.
(ii) Write a note on 'Small Company'.

Answer: (i) Section 8 Companies, as per Companies Act, 2013 are companies formed with Charitable objects. Their features are as follows:

- has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits, if any, or other income in promoting its objects; and
- intends to prohibit the payment of any dividend to its members;
- the company registered under this Section shall enjoy all the privileges and be subject to all the obligations of the limited company;
- a firm may be a member of the company registered under this section;
- a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government.
- a company registered under this section may convert itself into a company of any other kind only after complying with such conditions as may be prescribed.

(ii) Section 2(85) defines Small Company as a company, other than a public company-

(i) paid up share capital of which does not exceed `50 lakh rupees or such higher amount as may be prescribed which shall not be more than `5 crore; and

(ii) turnover which is as per its last profit and loss account does not exceed `2 crores or such higher amount as may be prescribed which shall not be more than `20 crores.

This definition shall not apply to-

- a holding company or a subsidiary company;
- a company registered under Section 8; or
- a company or body corporate governed by any special act.

Question: 33
(i) Discuss briefly about the benefits of a one person company

(ii) What do you understand by the term 'Red-Herring Prospectus'

Answer: (i) The benefits of a one person company may be enumerated as below:

- The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection available to companies.
- Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery. Earlier they were working as artisans and weavers on their own, so they did not have a legal entity of a company. But now the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure.

- Further, the amount of compliance by a one person company is much lesser in terms of filing returns, balance sheets, audit etc. Also, rather than the middlemen usurping profits, the one person company will have direct access to the market and the wholesale retailers. The new concept would also boost the confidence of small entrepreneurs.

(ii) Red herring prospectus

The Explanation to Section 32 defines the term ‗red herring prospectus' as a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Section 32 provides that a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of securities. The same shall be filed with the Registrar at least three day prior to the opening of the subscription list and the offer. It shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlight as variations in the prospectus.

At the time of closing of the offer the prospectus stating the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other detail as are not included in the red herring prospectus shall be filed with the Registrar and the SEBI.

Question: 34 Issue of Securities by a public company

Answer: Issue of Securities by a public company

Section 23(1) provides that a public company may issue securities-

- to public through prospectus by complying with the provisions of Part I of Chapter III of this Act;
- through private placement by complying with the provisions of Part II of Chapter III of this Act;
- through a rights issue or a bonus issue in case of listed company or a company intends to get its securities listed with SEBI and the rules and regulations made there under.

Section 23(2) lays down that a private company may issue securities—

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or

(b) through private placement by complying with the provisions of Part II of this Chapter

As per explanation to section 23, for the purposes of Chapter III, ―public offer‖ includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus

Question: 35
(i) Discuss the procedure for conversion of a One Person Company into a Public Company or a Private Company.

(ii) Can a director be removed? If so, give the procedure in details.

Answer: Conversion of OPC to convert into a Public Company or a private company

Rule 6 provides that where the paid up share capital of an OPC exceeds `50 lakhs and its average annual turnover during the relevant period exceeds `2 crores, it shall cease to be entitled to continue as OPC. Such company is mandatorily to be required to convert within six months into either a public limited company with at least 7 members or a private company with minimum two members.

The OPC has to alter its memorandum and articles by passing a resolution according to Section 122(3) to give effect to the conversion and to make necessary changes incidental thereto.

The OPC shall within a period of 60 days from the date of the applicability give a notice to the Registrar in Form No. INC-5 informing that it has ceased to be a OPC and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover having exceeded the threshold limit laid for OPC.

(ii) Section 169 of Companies Act, 2013 deals with the procedure of removal of directors. A company may remove a director by passing ordinary resolution. A company cannot remove a director appointed by the Tribunal. The following is the procedure to remove a director and to appoint another director in the place of removed director:

- A special notice of any resolution, shall be sent for a meeting in which the director is to be removed to the company;
- On receipt of notice of a resolution to remove a director, the company shall send a copy of it to the director concerned;
- The director, whether he is a member or not, is entitled to be heard on the resolution at the meeting;
- The director concerned may make his representation in writing to the company;
- The director may request the company to send his representation to the members of the company;
- The Company, if the time permits it to do so-
  - in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
  - send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representation of the company.

If a copy of the representation is not sent due to insufficient time or for the company's default, the director may required that the representation shall be read out at the meeting.

The copy of the representation need not be sent out and read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter. The Tribunal may order at company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of the director may be filled by the appointment of another director in his place at the meeting at which he is removed. For this purpose special notice of the intended appointment has been given. The new director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. If the vacancy is not filled it may be filled as casual vacancy in accordance with the provisions of the Act.

The removed director shall not be reappointed as director by the Board of Directors. He shall not be eligible any compensation or damage payable for his removal as director, as per the terms of contract or terms of his appointment as director or of any other appointment terminating with that as director or as derogating from any power to remove a director under other provisions of the Act.

Question: 36
(i) Discuss the procedure for alteration of Memorandum of Association.

(ii) State the reports that are to be set out in the prospectus

Answer: Procedure of alteration of memorandum:

Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that –

1. Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution.

2. Name Change of the company: Any change in the name of a company shall be effected only with the approval of Central Government in writing. However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word ―Private‖, on the conversion of any one class of companies to another class. The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

3. Entry in register of companies: On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate

4. Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed

5. Disposal of the application of change of place of the registered office: The Central Government shall dispose of the application of change of place of there gistered office within a period of sixty days Before passing of order, Central Government may satisfy itself that –

- The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
- the sufficient provision has been made by the company either for the due discharge of all its
- debts and obligations, or
- adequate security has been provided for such discharge.

6. Filing with Registrar: A company shall, in relation to any alteration of its memorandum, file with the Registrar -

- the special resolution passed by the company under sub-section (1);
- the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company. 7

7. Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.

8. Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to, shall issue afresh certificate of incorporation indicating the alteration.

9. Change in the object of the company: A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and—

- The details, in respect to of such resolution shall also be published in the newspapers (one in
- English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;
- The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

10. Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

11. Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

12. Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

(ii) Reports to be set out in the prospectus

Rule 4 provides that the following reports shall be set out with the prospectus as detailed below:

- The reports by the auditors with respect to profits and losses and assets and liabilities;
- The reports relating to profit and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the issue of the prospectus;
- The reports made by the auditors in respect of the business of the company.

Question: 37 Conditions of formation of OPC

Answer: Conditions of formation of OPC

One Person Company (OPC'for short) is defined under Section 2(62) of the Act which has only one person as a member. Section 3 of the Act indicates that OPC is a private limited company.

Conditions

The following are the conditions in formation of a OPC:

- No person shall be eligible to incorporate more than a OPC or become nominee in more than such company;
- Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 182 days;
- No minor shall become member or nominee of OPC or can hold share with beneficial interest;
- Such company cannot be incorporated or converted into Section 8 company;
- Such company cannot carry out Non Banking Financial investment activities including investment activities in securities of anybody corporate;
- No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit of paid up share capital is increased beyond `50 lakh or its average annual turnover during the relevant period exceeds `2 crore rupees.

Revisionary Question:

Question: 38 Dec 2018 In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013.

Answer: Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

(i) is or could reasonably be regarded as defamatory of any person;

(ii) is irrelevant or immaterial to the proceeding; or

(iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non - inclusion of any matter in the Minutes on the grounds specified in sub - section (5) above.

Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

Question: 39 Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

Answer: The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal. Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub - section (4), may, after hearing the parties, either dismiss the appeal, or by order –

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

Question: 40 N Ltd. has a paid up share - capital of 80 crores. M Ltd. holds a total of 50 crores of N Ltd. Now, N Ltd. is making huge profits and wants to expand its business and is aiming at investing in M Ltd. N Ltd. has approached you to analyse whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of M Ltd.

Answer: In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company –

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one - half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Since, M ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of N Ltd., it (M Ltd.) is holding of N Ltd. Further, as per the provisions of section 19 of the Companies Act, 2013, No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub - section shall apply to a case –

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

In the given question, N ltd. cannot acquire the shares of M Ltd. as the acquisition of shares does not fall within the ambit of any of the exceptions provided in section 19.

Question: 41 Infotech Ltd. was incorporated on 1.4.2016. No General Meeting of the company has been held till 30.4.2018. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer: According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. Thus, the first AGM of InfoTech should have been held on or before 31st December, 2017.

Further, the Registrar does not have the power to grant extension to time limit

Question: 42 Discuss the role of Audit Committee of a Company.

Answer: The functions of Audit Committee of companies are:

- recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- reviewing and monitoring the auditor_s independence and performance, and effectiveness of audit process;
- examination of the financial statement and the auditors_ report thereon;
- approval or any subsequent modification of transactions of the company with related parties;
- scrutiny of inter-corporate loans and investments;
- valuation of undertakings or assets of the company, wherever it is necessary;
- evaluation of internal financial controls and risk management systems;
- monitoring the end use of funds raised through public offers and related matters.

The powers of Audit Committee are as follows:

- To call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board.
- To discuss any related issues with the internal and statutory auditors and the management of the company.
- To investigate into any matter in relation to the items or referred to it by the Board.
- To obtain professional advice from external sources.
- To have full access to information contained in the records of the company.

Question: 43 Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

(i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

(ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

Answer:

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:

(a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one - tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid - up; and

(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- The chairman cannot reject the demand for poll subject to provision in the articles of company.
- The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Question: 44 Explain the process of e-voting.

Answer: PROCESS OF E-VOTING:

(i) The notice of the meeting shall be sent to all the members, directors and auditors of the company either –

(a) by registered post or speed post; or
(b) through electronic means, namely, registered e-mail ID of the recipient; or
(c) by courier service;

(ii) The notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;

(iii) The notice of the meeting shall clearly state –

(a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;

(b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;

(c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;

(iv) The notice shall -

(a) indicate the process and manner for voting by electronic means;

(b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;

(c) provide the details about the login ID;

(d) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

(v) The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of subrule (4) but at least twenty-one days before the date of general meeting, at least in one vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least in one English newspaper having country-wide circulation, and specifying in the said advertisement, inter alia, the following matters, namely:-

(a) statement that the business may be transacted through voting by electronic means;

(b) the date and time of commencement of remote e-voting;

(c) the date and time of end of remote e-voting;

(d) cut-off date;

(e) the manner in which persons who have acquired shares and become members of the company after the despatch of notice may obtain the login ID and password;

(f) the statement that –

1. remote e-voting shall not be allowed beyond the said date and time;

2. the manner in which the company shall provide for voting by members present at the meeting; and

3. a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and

4. a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

(g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and

(h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

(vi) The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;

(vii) During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cutoff date, may opt for remote e-voting:

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:

Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

(viii) At the end of the remote e-voting period, the facility shall forthwith be blocked:

Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

44 B Restrictions in alteration of Memorandum. Comment.

Answer:

Section 13(8) provides that a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company. The special resolution shall be published in the newspapers, one in English and one in vernacular language, which is in circulation at the place where the registered office of the company is situated and shall also be placed on the web site of the company, if any, indicating the justification for such change. The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI.

Rule 29 provides that the change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposit or debentures.

An application shall be filed in Form No. INC-24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No. INC-25 shall be issued to the company consequent upon the change.

Question: 45 (a) The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016 - 17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

(i) Mr. A, holding equity shares of face value of `10 lakhs has not paid an amount of ` 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?

Answer: (i) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ` 10 Lakhs and has not paid an amount of ` 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ` 1.20 lakh towards dividend, out of which an amount of ` 1 lakh can be adjusted towards call money due on his shares. ` 20,000 can be paid to him in cash or by cheque or in any electronic mode. According to the above mentioned provision, company can adjust sum of ` 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

(ii) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

Question: 46 Discuss the rules regarding Equity shares with differential rights.

Answer: Equity shares with differential rights:

Rule 4 of Companies (Share Capital and Debentures) Rules, 2014, provides that no company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions:

• the articles of association of the company authorizes the issue of shares with differential rights;

• the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders;

• where the equity shares o a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through the postal ballot;

• the shares with differential rights shall not exceed 26% of the total post issue paid up share capital including equity shares with differential rights issued at any point of time;

• the company having consistent track record of distributable profits of the last three years;

• the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;

• the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

• the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or schedule bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

• the company has not been penalized by Court or Tribunal during the last three years o any offence under the RBI Act, 1934, SEBI Act, 1992, the Securities Contract Regulation Act, 1956, the FEMA, 1999 or any other special act under such companies being regulated by sectoral regulators.

Question: 47 (a) Altar Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and Y under their signatures. Referring to the provisions of the Companies Act, 2013:

(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board"s Report.

(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board‟s Report?

Answer:

In accordance with the provisions of the Companies Act, 2013, as contained under sec 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:

(1) The Chairperson of the company where he is authorized by the Board; or

(2) Two directors out of which one shall be the managing director and other the Chief Executive Officer, if he is a director in the company

(3) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

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. The Board‘s report and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

(i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director Mr. D should be one of the two signatories. Since, the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.

(ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

Question: 48 Prem, a director in a public company, gave in writing to the company that notice for any General Meeting and the Board of Directors‟ Meeting be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, and under certificate of posting. Prem did not receive the said notices and could not attend the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 2013,

(i) whether the contention of Prem is valid?

(ii) Would you answer be still the same in case Prem remained outside India for two months (when such notices were given and meetings held).

Answer:

The problem as asked in the question is based on the provisions of the Companies Act, 2013 as contained in Section 101. Accordingly, the notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him. Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. If, however, a member wants the notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected. Accordingly, the questions as asked may be answered as under:

(i) The contention of Prem shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid.

(ii) In view of the provisions of the Companies Act, 2013, the company is not bound to send notice to Prem at the address outside India. Therefore, answer in the second case shall differ from the first one.

Question: 49 X Ltd. entered into a contract with M and Co. Ltd. for purchase of raw materials of ` 2,50,000 at the prevailing market rate. The director of X Ltd., Mr. B, was holding shares of the value of 1% of the paid up capital of M and Co. Ltd. Another Director of X Ltd. Mr. C was holding shares of the value of 1.5% of the paid up capital of M and Co. Ltd. Mr. B at the beginning of the year, gave a general notice to X Ltd. that he was interested in M and Co. Ltd,

Mr. B claims that he had given notice to X Ltd. as required under the Companies Act, 2013 and that his holding being only 1% is within the limit under the Companies Act, 2013.

Answer: As per section 184(2), every director who is any way, directly or indirectly, interested in a contract or arrangement shall disclose the nature of his interest. However, section 184(2) shall not apply to a contract or arrangement entered into between two companies, where any of the directors of the one company or two or more of them together holds or hold not more than 2% of the paid up share capital of the other company.

If the aggregate shareholding of two or more directors in the other company exceeds 2% of the paid up share capital of the other company, all such directors shall make a disclosure as required under section 184(2), irrespective of the fact that individual shareholding of each of the directors is not more than 2% of the paid up share capital of the other company.

Section 184(1) requires every director to disclose the nature of his concern or interest (along with the shareholding, if applicable) in any company, body corporate, association of individuals or firm. Such disclosure is to be made by the director in the first Board meeting in which he participates as a director, the first Board in every financial year and the first Board meeting held after any change in the interest or concern takes place.

In the present case, the aggregate shareholding of Mr. B and Mr. C is more than 2% of the paid up share capital of M and Co., and so section 184(2) has become applicable. Accordingly, Mr. B and Mr. C, both, are required to disclose the nature of their interest (viz. their shareholding in M and Co. Ltd.) in the Board meeting of X Ltd. in which the contract or arrangement between X Ltd. and M and Co. Ltd. is first discussed.

The requirements specified under section 184(2) is independent of the requirement of section 184(1). In other words, even where a director has disclosed his concern or interest as per section 184(1), he is still required to disclose his concern or interest in each and every contract or arrangement covered under section 184(2), although such contract or arrangement is with a company or body corporate in respect of which disclosure of interest was already given by him in terms of section 184(1).

The general notice given by Mr. B in terms of section 184(1) is not a sufficient compliance of the requirements of section 184(2), and so Mr. B has contravened the provisions of section 184(2). Also, Mr. C has not disclosed his concern or interest in the Board meeting in which the contract or arrangement is first discussed, and so, Mr. C has also contravened the provisions of section 184(2).

Consequences of contravention of section 184(2) shall be as follows:

- Mr. B and Mr. C shall vacate the office of director held by them.
- As per Section 184(4), Mr. B and Mr. C shall be punishable with –

(a) imprisonment up to 1 year; or

(b) fine which may extend to ` 1 lakh; or

(c) both.

- The contract or arrangement entered into by X Limited shall be voidable at the option of X Limited [Section 184(3)].

Question: 50 Provisions for entering into contracts that by One person Company. Comment.

Answer: The provisions of section 193 of the Companies Act, 2013 are explained as follows:

1. Applicability of section 193
Section 193 applies where –

(a) the company is a One Person Company;
(b) it enters into a contract with its sole member; and
(c) the sole member is also the director of the company.

2. Legal requirements

(a) The contract entered into between the company and the sole member shall be in writing.

(b) If the contract is not in writing, the company shall ensure that the terms of the contract are contained in a memorandum or are recorded in the minutes of the first Board meeting held next after entering into such contract.

3. Non-applicability of section 193

Section 193 shall not apply where a contract is entered into by the company in the ordinary course of its business**.**

4. Duty of the company to inform the Registrar

(a) Where a contract is entered into by One Person Company and recorded in the minutes of the Board meeting in accordance with the provisions of this section, the company shall inform the Registrar about such contract.

(b) Such information shall be given to the registrar within 15 days of the date of approval by the Board of Directors.

Section 193 shall apply to One Person Company, irrespective of the fact as to whether it is limited by shares or by guarantee

Question: 51 What are the different duties of a director in a company as per the Companies Act, 2013??

Answer: As per Section 166 of the Companies Act, 2013 a director of a company is bound to perform the following duties as mentioned below:

- A director of a company shall act in accordance with the articles of the company.
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment,
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company,
- A director of a company shall not achieve or attempt to achieve any undue gain or advantages either to himself or to his relatives, partners or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company,
- A director of a company shall not assign his office and any assignment so made shall be void,

It a director of a company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Question: 52 State the prescribed qualifications for an Independent Director.

Answer: Rule 5 prescribes the qualification of independent directors. An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines to the company's business.

Section 149, further provides that an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee and the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. He should have no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten percent of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters or directors, during the two immediately preceding financial years or during the current financial year. An independent director shall not hold office for a term of office up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing a special resolution by the company. The Board's report shall disclose the same. No independent director shall hold office for more than two consecutive terms. He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The provisions for retirement of directors shall not be applicable to independent directors.

Independent directors may be selected from a data bank containing the details of persons who are eligible and willing to act as independent directors by any agency as notified by the Central Government. The appointment of independent director shall be approved by the company in general meeting.

Question: 53 "Office of a Director shall become vacant in case". Comment

Answer: Section 167 provides that the office of a Director shall become vacant in case –

(i) he incurs any of the disqualifications specified in Section 164; Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that subsection.

(ii) he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board;

(iii) he acts in contravention of the provisions of Section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested.

(iv) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of Section 184;

(v) he becomes disqualified by an order of a Court or Tribunal;

(vi) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months. The office shall be vacated by the director even if he has filed an appeal against the order of such court; For point no (v) and (vi) it should be noted that the office shall not be vacated by the director in case of orders—

(a) for thirty days from the date of conviction or order of disqualification;

(b) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(c) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

(vii) he is removed in pursuance of the provisions of the Act;

(viii) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to the above.

Where all the directors of a company vacate their offices under any of the disqualifications the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications he shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than `1 lakh but which may extend to `5 lakhs or with both.

Question: 54 Board meetings were held on 24th November, 2014 and 15th December, 2014. Mr. Rameshwar, who was the chairman of these two Board meetings died on 20th December, 2014, without signing the minutes. How should the minutes be signed and by whom?

Answer: As per section 118, the minutes of a Board meeting may be signed by the chairman of the said meeting or the chairman of the next succeeding meeting. The minutes shall be prepared and signed within 30 days of the conclusion of the Board meeting.

In the present case, the minutes of the meeting held on 24.11.2014 could be signed either by the chairman of the meeting held on 24.11.2014 or by the chairman of the next meeting held on 15.12.2014. Incidentally, the chairman of these two meetings is the same, i.e. Mr. Rameshwar, who has died. The result is that the minutes of the two previous Board meetings, held on 24.11.2014 and 15.12.2014, have remained unsigned.

There is no legal provision covering the above situation. Therefore, it is advisable to convene a Board meeting and appoint a chairman who shall be authorised to sign the minutes of both the meetings held on 24.11.2014 and 15.12.2014.

Question: 55 State the duties of a Director as per Section 166 of Companies Act, 2013.

Answer: Section 166 of the Act prescribes the duties of a director under the provisions of this Act as detailed below:

- A director of a company shall act in accordance with the articles of the company;
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment;
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;
- A director of a company shall not assign his office and any assignment so made shall be void;

If a director of the company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Question: 56 A and B were appointed as First Directors on 4th April in Sun limited. Thereafter, C, D and E were appointed as Directors on 6th July and F, G and H were also appointed as Directors on 7th August in the Company. In the AGM of the company held after the above appointments, A and B were proposed to be retired by rotation and re-appointed as Directors. At the AGM, resolution for A"s retirement and re-appointment was

passed. However, before the resolution for „B‟ could be taken up for consideration, the Meeting was adjourned. In the Adjourned Meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B‟s retirement. Comment on the following based on the above situation:

(i) Whether the proposal for retirement by rotation and re-appointment of A and B only were sufficient
(ii) Status of B as a director in the company.

Answer: As per Section 152(6) of Companies Act, 2013

(a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall-

(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and

(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

(c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

(d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Explanation.—For the purposes of this sub-section, ―total number of directors‖ shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

Directors liable to retire by rotation shall be determined in the following manner:

(a) Those who have served the longest as Director would retire first

(b) If two or more Directors were appointed on the same date, Directors liable to retire may be determined:

(i) As per any agreement between them, or
(ii) By draw of lots, in absence of any agreement

Special Consideration should be taken into account would be:

(a) While fractions in the calculation of minimum number of Rotational Directors were rounded off to one, fractions in determining the number of Retiring Directors shall be rounded off to nearest 1/3rd.

(b) A Director appointed to fill a casual vacancy holds office till the end of the term of the Original Director, he does not retire at the end of the period. Therefore, such a person is not considered as a Retiring Director.

Section 152(7) of Companies Act, 2013 states that:

(a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless –

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) Section 162 is applicable to the case.

As per the given problem:

(i) Retiring Director will be deemed re-appointed, if exceptions like unwillingness, disqualification, reason u/s 152(7) are not attracted.

(ii) B will continue as Director, by way of deemed re-appointment.

Question: 57 Payment of commission to any person in connection with the subscription to its securities

Answer: Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

- the payment of such commission shall be authorized in the company‘s articles of association;
- the commission may be paid out of proceeds of the issue or the profit of the company or both;
- the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company‘s articles, whichever is less;
- the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;
- commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;
- a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Question: 57 Qualification of independent directors

Answer:
Rule 5 prescribes the qualification of independent directors. An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines to the company‘s business.

Section 149, further provides that an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee and the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. An independent director shall not hold office for a term of office up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on

passing a special resolution by the company. The Board's report shall disclose the same. No independent director shall hold office for more than two consecutive terms. He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The provisions for retirement of directors shall not be applicable to independent directors.

Independent directors may be selected from a data bank containing the details of persons who are eligible and willing to act as independent directors by any agency as notified by the Central Government. The appointment of independent director shall be approved by the company in general meeting.

Question: 58 June 2018 What is Shelf Prospectus? Explain it with relevant provisions.

Answer: Shelf Prospectus [Section 31]

(1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(3) Where an information memorandum is filed, every time an offer of securities is made under sub - section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation: — For the purposes of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Question: 59 Can company registered under the Companies Act, 2013 commence business of banking in India? Comment.

Answer: No, "company registered" under the Companies Act, 2013 or any act prior to it cannot commence business of banking in India. As per the RBI Act, it is mandatory for a bank to get itself registered with the RBI This registration authorizes it to conduct its business as a bank .For the registration with the RBI, a company incorporated under the Companies Act, 2013 or any act prior to it and desirous of commencing business of banking, should have an initial minimum paid -up capital of ` 200 crore which is to be raised to ` 300 crore within three years of commencement of business. The promoters' contribution shall be a minimum of 40% of the paid up capital of the bank at any point of time. This promoters' contribution of 40% of the initial capital shall be locked in for a period of five years from the date of licensing of the bank.

Question: 60 Ayush Company limited at a general meeting of members of the company passes an ordinary resolution to buy-back 30% of its equity share capital. The articles of the company empower the company for buy-back of shares. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. With reference to the provisions of Companies Act, 2013 comment on the following:

(i) Whether the company's proposal is in order?
(ii) Would there be any difference if the company decides to buy-back 20% of equity share capital, in place of 30%?

Answer: As per section 68, where the buy-back is authorized by passing a Special Resolution, the following limits would be applicable:

1. The buy-back shall not exceed 25% of aggregate of paid-up capital and free reserves

2. The buy-back of equity shares in any FY shall not exceed 25% of its total paid-up equity capital in that FY.

Again, where the buy-back is authorized by passing a resolution in a Board Meeting only, the buy back shall not exceed 10% of the aggregate of paid-up equity capital and free reserves.

In the given case,

(i) The proposal of the company to buy-back its shares is not valid, since the company has passed an Ordinary Resolution in place of a Special Resolution. It also proposed to buyback 30% of the equity share capital which exceeds the statutory ceiling of 25% of total paid up equity capital. Again the company proposes to buy-back out of the proceeds of an earlier issue of same kind of shares, which is prohibited.

(ii) The decision to buy back 20% of equity share capital shall also not be valid, since buy-back passing an Ordinary Resolution is violative of Sec 68 and the company proposes to buyback out of the proceeds of an earlier issue of same kind of shares, which is prohibited.

Question: 61 What is the 'doctrine of constructive notice'? Explain with case law.

Answer: A company being an artificial person acts through the instrumentality of its agents/authorized representatives. The sphere or gamut of permissible activities of a company is specified by its Memorandum of Association. The memorandum and articles of association of a company, when registered, become public documents and can be inspected by anyone on payment of nominal fee to the Registrar of Companies. Therefore, every person who intends to entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers could be delegated to the directors, and of any limitations placed upon the exercise of these powers. In other words, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles. In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning [Griffith v. Paget, (1877) Ch. D.517]. For example, if the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it so signed; otherwise he cannot claim under it. Consequently, if a person enters into a contract which is beyond the powers of the company, as defined in the memorandum or outside the limits set on the authority of the directors, he cannot as a general rule acquire any right under the contract against the company [Mohony v. East Holyfrod Mining Co. (1875) L.R7HL. 869]. The concept of constructive notice was established in Kotla Venkataswami v. Ram Murti AIR (1932) All 141.

Question: 62 Ruby Company Limited is in the process of issuance of prospectus. Kindly enlist the items that are to be disclosed in their prospectus.

Answer: The items that are to be stated in prospectus are as follows:

1. Details of the company, officers, bankers, trustees, underwriters and such other persons as may be prescribed;

2. Date of opening and closing of the issue;

3. Declaration about the issue of allotment letters and returns within the prescribed time;

4. Details of bank account and details of all money is utilized and unutilized monies out of the previous issue;

5. Details about underwriting of the issue;

6. Consent of the directors, auditors, bankers to the issue, expert‘s opinion etc.,

7. Authority for the issue and the details of the resolution passed;

8. Procedure and time schedule for allotment and issue of securities;

9. Capital structure of the company;

10. Main objects of the public offer, terms of the present issue and such other particulars as may be prescribed;

11. Main objects and present business of the company, the location of company, schedule of implementation of the project;

12. Details of litigation or legal action pending or taken by Ministry or Department of the Government or a statutory authority against ht promoter during last five years immediately preceding the year of the issue of prospectus;

13. Details of default and non-payment of statutory dues etc.,

14. Details of directors including their appointment and remuneration; their details such name, designation, DIN, the nature of interest;

15. Source of promoters‘ contribution shall be disclosed;

Question: 63 What may be the sources of funds for buy-back of shares?

Answer: Sources of funds for buy-back of shares:

Under section 68 (1) of the Companies Act, 2013 a company can purchase its own shares or other specified securities. The purchase should be out of:

(i) its free reserves: or
(ii) the securities premium account: or
(iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

'Specified securities' includes employees' stock option or other securities as may be notified by the Central Government from time to time. [Explanation (1) under Section, 68].

Question: 64 Can a non-profit organisation be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?

Answer: Registration of a non-profit organisation as a company:

According to section 8 (1) of the Companies Act, 2013, the Central Government may allow a person or an association of persons to be registered as a Company under the Companies Act if it has been set up for promoting commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other useful object and intends to apply its profits or other income in promotion of its objects. However, such company has to prohibit payment of any dividend to its members.

Procedure: An association of persons intending to carry any or all or some of the activities mentioned in section 8(1) as mentioned above, has to apply to the Central Government seeking its permission for being set up as a company under the Act. The Central Government if satisfied on the above may by the issue of a licence in such manner as may be prescribed and on such conditions as it may deem fit, allow such association to be registered as a limited company under section 8(1) without the addition of word ―Limited‖ or words "Private Limited" as the case may be, to its name.

After the issue of the licence by the Central Government, an application must be made to the Registrar in the prescribe form after which the Registrar will register the association of persons as a company under section 8(1). Under section 8(2) a company registered under section 8(1) as above, shall enjoy all the privileges and be subject to all the obligations of a limited company.

This licence issued by the Central Government is revocable, and on revocation the Registrar shall put the words 'Limited' or 'Private Limited' against the company's name in the Register. But before such revocation, the Central Government must give the company a written notice of its intention to revoke the licence and provide an opportunity lo it to be represented and heard in the matter.

Question: 65 Restrictions in alteration of Memorandum. Comment.

Answer: Section 13(8) provides that a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company. The special resolution shall be published in the newspapers, one in English and one in vernacular language, which is in circulation at the place where the registered office of the company is situated and shall also be placed on the web site of the company, if any, indicating the justification for such change. The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI.

Rule 29 provides that the change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposit or debentures.

An application shall be filed in Form No. INC-24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No. INC-25 shall be issued to the company consequent upon the change.

Question: 66 What are the procedures that have to be followed for signing of Memorandum and Articles?

Answer: Rule 13 provides for signing of memorandum and articles. The Memorandum and articles shall be signed in the following manner:

- The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum. The name, address, description and occupation, if any, are to be added. One witness shall attest the signature of the subscriber. The witness also is to sign and furnish his full details.

- The witness shall state that ––I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity details for their identification and satisfied myself of his/her/their identification particulars filled in‖.

- Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him;

- Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of the association;

- Where the subscriber is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate.

- Where the subscriber is an LLP, it shall be signed by a partner of the LLP, duly authorized by a resolution approved by all the partners of the LLP. In either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of association;

- Where the subscriber is a foreign national residing outside India-

  - in a country in any part of the Commonwealth , his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary Public in that part of the Commonwealth;

- in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary Public of the Country and be duly apostillised in accordance with the Hague Convention;

- in a country outside the commonwealth and not a party to the Hague Apostille Convention, 1961, his signatures and address shall be notarized before the Notary Public of that country and the certificate of the Notary Public shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf .

- visited in India and intended to incorporate a company, in such cases the incorporation shall be allowed if, he/she is having a valid Business Visa.

Question: 67 Define the term 'Small Company' as contained in the Companies Act, 2013.

Answer: SMALL COMPANY:

Under Section 2(85) of the Companies Act, 2013, "small company means a company, other than a public company:-

(i) having PAID-UP SHARE CAPITAL not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) having TURNOVER as per its last profit and loss account not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

EXCEPTIONS: This section shall not apply to:

(A) a holding company or a subsidiary company;
(B) a company registered under section 8, or
(C) a company or body corporate governed by any special Act.

Question: 68 Discuss the code of professional conduct that needs to be followed by Independent Directors with respect to the following:

(i) Guidelines of Professional Conduct
(ii) Role and Functions
(iii) Duties

Answer: Adherence to Code by Independent Directors and fulfilment of their responsibilities in a professional and faith" manner will promote confidence of the investment community, particularly Minority Shareholders, Regulators and Company in the institution of Independent Directors.

The Company and Independent Directors shall abide by the provisions specified in Schedule IV, which are as under:

(i) Guidelines of Professional Conduct: An Independent Director shall –

1. uphold **ethical standards** of integrity and probity,

2. act **objectively** and constructively while exercising his duties,

3. exercise his responsibilities in a **bonafide** manner in the interest of the Company,

4. devote sufficient **time and attention** to his professional obligations for informed and balanced decision-making,

5. **not allow any extraneous considerations** that will vitiate his exercise of objective independent judgment in thfj paramount interest of the Company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision-making,

6. **not abuse his position** to the detriment of the Company or its Shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person,

7. **refrain** from any action that would lead to loss of his independence,

8. where circumstances arise which make an Independent Director **lose his independence,** the Independent Director must immediately **inform** the Board accordingly,

9. assist the Company in implementing the best **Corporate Governance** Practices.

(ii) Role and Functions: The Independent Directors shall -

1. help in bringing an **independent judgment** to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct,

2. bring an **objective view** in the evaluation of the performance of Board and Management,

3. **scrutinise** the performance of Management in meeting agreed goals and objectives and monitor the reporting of performance,

4. satisfy themselves on the integrity of **financial information** and that financial controls and the systems of risk management are robust and defensible,

5. safeguard the **interests** of all Stakeholders, particularly the Minority Shareholders,

6. **balance** the conflicting interest of the Stakeholders,

7. determine appropriate levels of **remuneration** of Executive Directors, KMP and Senior Management and have a prime role in appointing and where necessary recommend removal of Executive Directors, KMP and Senior Management,

8. moderate and **arbitrate** in the interest of the Company as a whole, in situations of **conflict** between Management and Shareholder's interest.

(iii) Duties: The Independent Directors shall -

1. undertake appropriate induction and regularly **update** and refresh their skills, knowledge and familiarity with the Company,

2. seek appropriate **clarification** or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the Company,

3. strive to attend **all Meetings** of the Board of Directors and of the Board Committees of which he is a Member,

4. participate **constructively and actively** in the Committees of the Board in which they are Chairpersons or Members,

5. strive to attend the **General Meetings** of the Company,

6. where they have **concerns** about the running of the Company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the Minutes of the Board Meeting,

7. keep themselves well **informed** about the Company and the external environment in which it operates,

8. **not to unfairly obstruct** the functioning of an otherwise proper Board or Committee of the Board,

9. pay sufficient attention and ensure that adequate deliberations are held before approving **Related Party Transactions** and assure themselves that the same are in the interest of the Company,

10. ascertain and ensure that the Company has an adequate and functional **Vigil Mechanism** and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use,

11. report concerns about **unethical behaviour,** actual or suspected fraud or violation of the Company's code of conduct or ethics policy,

12. acting within his authority, assist in **protecting** the legitimate interests of the Company, Shareholders and its employees,

13. **not disclose confidential information**, including Commercial Secrets, Technologies, Advertising and Sales Promotion Plans, Unpublished Price Sensitive Information, unless such disclosure is expressly approved by the Board or required by law.

Question: 69 Directors are agents of the company. Comment.

Answer: The Company can act only through Directors, and so the relationship between the Company and the Director is that of Principal and Agent. Contract entered into by a person as a Director of a Company, will be binding on the Company. However, Directors are not Agents of Members of the Company.

Directors have personal liability. They would be personally liable under the following circumstances:

- Director acts in his own name,
- Director enters into an agreement / contract which does not state clearly as to whether the Director signing in his personal capacity or in his representative capacity as an Agent of the Company.

Rights of the Company:

- Contract executed by the Director in excess of his authority, is binding on the Company. However, the Company may claim damages from the Director for breach of implied warranty of authority.
- When Directors act properly on behalf of the Company, they do not incur personal liability, they do not exceed their powers

Question: 70 X Ltd. entered into a contract with M and Co. Ltd. for purchase of raw materials of ` 2,50,000 at the prevailing market rate. The director of X Ltd., Mr. B, was holding shares of the value of 1% of the paid up capital of M and Co. Ltd. Another Director of X Ltd. Mr. C was holding shares of the value of 1.5% of the paid up capital of M and Co. Ltd. Mr. B at the beginning of the year, gave a general notice to X Ltd. that he was interested in M and Co. Ltd,

Mr. B claims that he had given notice to X Ltd. as required under the Companies Act, 2013 and that his holding being only 1% is within the limit under the Companies Act, 2013.

Answer: As per section 184(2), every director who is any way, directly or indirectly, interested in a contract or arrangement shall disclose the nature of his interest. However, section 184(2) shall not apply to a contract or arrangement entered into between two companies, where any of the directors of the one company or two or more of them together holds or hold not more than 2% of the paid up share capital of the other company.

If the aggregate shareholding of two or more directors in the other company exceeds 2% of the paid up share capital of the other company, all such directors shall make a disclosure as required under section 184(2), irrespective of the fact that individual shareholding of each of the directors is not more than 2% of the paid up share capital of the other company.

Section 184(1) requires every director to disclose the nature of his concern or interest (along with the shareholding, if applicable) in any company, body corporate, association of individuals or firm. Such disclosure is to be made by the director in the first Board meeting in which he participates as a director, the first Board in every financial year and the first Board meeting held after any change in the interest or concern takes place.

In the present case, the aggregate shareholding of Mr. B and Mr. C is more than 2% of the paid up share capital of M and Co., and so section 184(2) has become applicable. Accordingly, Mr. B and Mr. C, both, are required to disclose the nature of their interest (viz. their shareholding in M and Co. Ltd.) in the Board meeting of X Ltd. in which the contract or arrangement between X Ltd. and M and Co. Ltd. is first discussed.

The requirements specified under section 184(2) is independent of the requirement of section 184(1). In other words, even where a director has disclosed his concern or interest as per section 184(1), he is still required to disclose his concern or interest in each and every contract or arrangement covered under section 184(2), although such contract or arrangement is with a company or body corporate in respect of which disclosure of interest was already given by him in terms of section 184(1).

The general notice given by Mr. B in terms of section 184(1) is not a sufficient compliance of the requirements of section 184(2), and so Mr. B has contravened the provisions of section 184(2). Also, Mr. C has not disclosed his concern or interest in the Board meeting in which the contract or arrangement is first discussed, and so, Mr. C has also contravened the provisions of section 184(2).

Consequences of contravention of section 184(2) shall be as follows:

- Mr. B and Mr. C shall vacate the office of director held by them (Section 167).
- As per Section 184(4), Mr. B and Mr. C shall be punishable with –

(a) imprisonment upto 1 year; or
(b) fine which shall not be less than `50,000 but which may extend to ` 1 lakh; or
(c) both. .

- The contract or arrangement entered into by X Limited shall be voidable at the option of X Limited [Section 184(3)].

Question: 71 Provisions for entering into contracts that by One person Company. Comment.

Answer: The provisions of section 193 of the Companies Act, 2013 are explained as follows:

1. Applicability of section 193
Section 193 applies where-

(a) the company is a One Person Company;

(b) it enters into a contract with its sole member; and

(c) the sole member is also the director of the company.

2. Legal requirements

(a) The contract entered into between the company and the sole member shall be in writing.

(b) If the contract is not in writing, the company shall ensure that the terms of the contract are contained in a memorandum or are recorded in the minutes of the first Board meeting held next after entering into such contract.

3. Non-applicability of section 193

Section 193 shall not apply where a contract is entered into by the company in the ordinary course of its business.

4. Duty of the company to inform the Registrar

(a) Where a contract is entered into by One Person Company and recorded in the minutes of the Board meeting in accordance with the provisions of this section, the company shall inform the Registrar about such contract.

(b) Such information shall be given to the registrar within 15 days of the date of approval by the Board of Directors.

Section 193 shall apply to One Person Company, irrespective of the fact as to whether it is limited by shares or by guarantee.

Question: 72 A company sold one of its flats to one of the directors and received 50% of the price in cash and agreed to receive the balance in installments. Would u consider this as a loan granted to director?

Answer: As per section 185 of the Companies Act, 2013, no company shall, directly or indirectly, give any loan to a director.

In the given case, the debt arose not out of an advance but out of a transaction of sale of a flat by the company to its director.

The company gave time to the director to pay a part of the purchase price.

The essential requirement of a 'loan' is the advance of money upon the understanding that it shall be returned back and it may or may not carry interest. Where a company sells a flat to one of its directors and receives half the price in cash and agrees to receive the balance in installments, the transaction amounts to a credit sale; it does not amount to even an 'indirect loan'.

The word 'indirectly' used in section 185 of the Companies Act, 2013 only means that company shall not give a loan to a director through the agency of one or more intermediaries. The word 'indirectly' cannot be read as converting 'what is not a loan' into 'a loan'.

Therefore, in the given case, there is no contravention of Section 185 of the Companies Act, 2013.

Question: 73 Decide in the light of the provisions of the Companies Act, 2013, the validity and extent of powers of Board of Directors and the procedure to be complied with in the following matters: Donation of ` 5 lakhs to a political party registered with the appropriate authority.

Answer: As per section 182 of the Companies Act, 2013, a company shall not make a political contribution unless all the following conditions are satisfied:

(a) The company is not a Government company.

(b) The company has been in existence for 3 or more financial years.

(c) The aggregate amount of political contribution in a financial year shall not exceed 7.5% of average net profits during immediately preceding 3 financial years.

(d) The Board shall make a political contribution only by passing a resolution at a Board meeting.

(e) The company shall disclose in its profit and loss account the amount of political contribution and the name of the political party or the person to whom such amount has been contributed.

In the given case, the Board shall be entitled to make the political contribution of Rs. 5 lakh only if –

(a) the company has been in existence for 3 financial years;

(b) the average net profits of the company during immediately preceding 3 financial years is equal to or more than ` 66,66,667 (i.e. 5,00,000 × 100/7.5); and

(c) the resolution approving the political contribution is passed at a Board meeting;

The Board shall ensure that adequate disclosures are made in the profit and loss account.

Question: 74 Z was appointed as director of the company in an annual general meeting. He took over the office and carried on his functions as director. Subsequently, it was found that there were some irregularities in voting and hence the appointment was declared invalid. Would the act done by Z, while in office as director, be binding upon the company?

Answer: The provisions relating to validity of acts of directors are contained in section 176. The provisions of section 176 are discussed below in detail:

Section 176 seeks to give protection to the company and third parties where certain acts are done by a director in good faith and without notice that these are done wrongly or illegally. Thus, section 176 validates the bona fide acts of de facto directors. These provisions may be explained as follows:

1. Acts of a director - Validated
No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that –

(a) his appointment was invalid by reason of any defect or disqualification; or

(b) his appointment was terminated by virtue of any provision contained in the Act or in the articles.

2. Acts of managing director - Not validated
Acts done by a director in his capacity as managing director are not validated under section 176. Accordingly, where a managing director ceased to hold his office, all his subsequent acts were held to be invalid. It was not an irregular exercise of power, but exercise of power by a person who had no authority at all [Varkey Souriar v Keraleeya Banking Co. Ltd. AIR 1957 Ker97].

3. Acts of a director - Not validated in certain cases
In the following cases, the acts of a director shall not be valid:

(a) where his appointment is illegal or there is no appointment at all;

(b) where his appointment has been shown to the company as invalid or terminated, i.e. where such defect comes into the knowledge of the company, all subsequent acts done by such a director shall be invalid;

(c) where the acts of a director are ultra vires the Companies Act, 2013.

4. Acts of a chairman - Not validated
The provision of validity of acts is not applicable to chairman. Therefore, the resolutions passed by casting vote of chairman are not valid, if his appointment is invalid.

5. Action by third parties - When permissible?
Persons who deal with the directors after having notice of the defect or disqualification of the directors are not protected by section 176. A person cannot take advantage of the protection given by the section if he is aware of some defect or disqualification.

Where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, no prior act done by him shall be deemed to be invalid [Section 196(5)].

Question: 75 Board meetings were held on 24th November, 2014 and 15th December, 2014. Mr. Rameshwar, who was the chairman of these two Board meetings died on 20th December, 2014, without signing the minutes. How should the minutes be signed and by whom?

Answer: As per section 118, the minutes of a Board meeting may be signed by the chairman of the said meeting or the chairman of the next succeeding meeting. The minutes shall be prepared and signed within 30 days of the conclusion of the Board meeting.

In the present case, the minutes of the meeting held on 24.11.2014 could be signed either by the chairman of the meeting held on 24.11.2014 or by the chairman of the next meeting held on 15.12.2014. Incidentally, the chairman of these two

meetings is the same, i.e. Mr. Rameshwar, who has died. The result is that the minutes of the two previous Board meetings, held on 24.11.2014 and 15.12.2014, have remained unsigned.

There is no legal provision covering the above situation. Therefore, it is advisable to convene a Board meeting and appoint a chairman who shall be authorised to sign the minutes of both the meetings held on 24.11.2014 and 15.12.2014.

Question: 76 A Board meeting of PQR Limited was called to be held on 19.01.2015 at 3 pm at Shah Auditorium, Delhi. However, due to lack of quorum, the meeting could not be held. Discuss the consequences.

Answer: As per section 174(4), if a Board meeting could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned –

(a) to the same day in the next week, or if that day is a national holiday, till the next succeeding day, which is not a national holiday;

(b) at the same time;

(c) at the same place.

In the instant case, the Board meeting could not be held for want of quorum, and so the provisions of section 174(4) shall become applicable. In the next week, same day happens to be a national holiday (viz. 26.01.2015), and so, the adjourned Board meeting cannot be held on 26.01.2015. The next succeeding day which is not a public holiday is 27.01.2015. Therefore, the adjourned Board meeting shall be held on 27.01.2015 at 3 pm at Shah Auditorium.

For absence of information in the question, it has been assumed that the articles of the company do not contain any provision with respect to the consequences where a Board meeting is not held for want of quorum.

Question: 77 Referring to the provisions of the Companies Act, 2013, examine the validity of the following: On the request of bank providing financial assistance the Board of directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the company do not confer upon the Board of Directors any such power. Further, there is no agreement between the company and the bank for any such nomination.

Answer: As per section 161(3) of the Companies Act, 2013, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement. The provisions of section 161(3) are subject to any provision contained in the articles of the Company.

In the given case, no agreement has been entered into between PQR Limited and the bank providing the financial assistance with respect to appointment of nominee director. Also, no provision contained in any law for the time being in force authorises the appointment of nominee director. Further, the articles of the company do not confer any power on the Board to appoint the nominee directors. Thus, the appointment of Mr. Peter as nominee director is not valid.

Question: 78 Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1st October, 2014 in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March, 2015, but the same was not held due to delay in the finalisation of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31st March, 2015. Advise the company on the complaints made by the shareholders.

Answer: The given problem relates to sections 161(1) and 161(4) of the Companies Act, 2013.

The Legal Position
Additional Directors [Section 161(1) of the Companies Act, 2013]:

- The Board may appoint the additional directors in pursuance of the provisions of section 161(1).
- The Board may, in its discretion, appoint the additional directors whenever it deems fit.

- The appointment of additional directors may be made by the Board either by passing a resolution at a Board meeting or by passing a resolution by circulation.

- An additional director holds office upto the date of next annual general meeting. However, if AGM is not held upto the last date for holding ASM as per the provisions of section 96, the additional director shall vacate his office on the last day on which the AGM should have been held.

Director filling a casual vacancy [Section 161(4) of the Companies Act, 2013]

- The Board is authorised to fill a casual vacancy arising in the office of a director appointed in general meeting.

- The director filling a casual vacancy shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

- A casual vacancy cannot be filled by passing a resolution by circulation under section 175.

The given case

- The Board has appointed Mr. Sachin as an additional director in a casual vacancy.

- The appointment of Mr. Sachin has been made by passing a circular resolution.

- The last date for holding the annual general meeting was 31st March, 2015. The annual general meeting has not been held till 31st March, 2015.

- So it is to be decided, whether appointment of Mr. Sachin is valid or not?; and if he can continue after 31st March, 2015?

Analysis of the case

1. Neither section 161(1) nor section 161(4) authorises the Board to appoint an additional director to fill the casual vacancy.

- If appointment of fAr. Sachin is made as an additional director, then, the provisions of section 161(1) apply, and so such appointment cannot amount to filling a casual vacancy.

- If Mr. Sachin is appointed to fill a casual vacancy, then, the provisions of section 161(4) apply to him, and so Mr. Sachin shall not be an additional director.

- Thus, a combined reading of sections 161(1) and 161(4) makes it clear that the appointment of Mr. Sachin as an additional director to fill the casual vacancy is not possible at all.

2. Mr. Sachin has been appointed to fill the casual vacancy by passing a circular resolution. Since, the appointment of a director filling a casual vacancy requires passing of a resolution in a board meeting only, therefore, the appointment of Mr. Sachin is in contravention of section 161(4), and is therefore, invalid.

Conclusion

- The complaint made by the shareholders is valid.

- The appointment of Mr. Sachin is not valid since it is in contravention of sections 161(1) and 161(4). Mr. Sachin cannot continue as a director after the date of annual general meeting, since his very appointment is void ab initio.

Question: 79 Payment of commission to any person in connection with the subscription to its securities

Answer: Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

- the payment of such commission shall be authorized in the company's articles of association;
- the commission may be paid out of proceeds of the issue or the profit of the company or both;
- the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company's articles, whichever is less;
- the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;
- commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;
- a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Question: 80 Qualification of independent directors

Answer: Rule 5 prescribes the qualification of independent directors. An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines to the company's business.

Section 149, further provides that an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee and the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. An independent director shall not hold office for a term of office up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing a special resolution by the company. The Board's report shall disclose the same. No independent director shall hold office for more than two consecutive terms. He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The provisions for retirement of directors shall not be applicable to independent directors.

Independent directors may be selected from a data bank containing the details of persons who are eligible and willing to act as independent directors by any agency as notified by the Central Government. The appointment of independent director shall be approved by the company in general meeting.

Suggested Question:

Question: 81 Dec 2018 What are the features of companies registered under section 8 of the Companies Act, 2013?

Answer: Section 8 of companies Act 2013 These companies intend to promote art, commerce, sports, safety, science, research, healthcare, social welfare, religion, protection of the environment etc.

The following are the features of companies registered under Section 8 of the Companies Act, 2013;

1. has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

2. intends to apply its profit, if any, or other income in promoting its objects; and

3. intends to prohibit the payment of any dividend to its members;

4. the company registered under this Section shall enjoy all the privileges and be subject to all the obligations of the limited company;

5. a firm may be a member of the company registered under this section ;

6. a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government.

7. a company registered under this section may convert itself into a company of any other kind only after complying with such conditions as may be prescribed.

Question: 82 Discuss the provisions of the Companies Act, 2013 regarding issue of bonus shares.

Answer: Section 63 of the Companies Act, 2013 provides for the issue of bonus shares. Section 63(1) provides that a company issue fully paid up bonus shares to its members out of its

- free reserves ;
- the securities premium account ; or
- the capital redemption reserve account

No bonus shares shall be made by capitalizing reserves created by revaluation of assets. Section 63(2) provides that no company shall capitalize its profits or reserves for the purpose of issuing fully paid up shares unless –

- it is authorized by its articles ;
- it has, on the recommendation of the Board, been authorized in the general meeting of the company ;
- it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus ;
- the partly paid up shares, if any outstanding on the date of allotment are made fully paid up ;
- it complies with such conditions as may be prescribed ;

Section 63(3) provides that the bonus shares shall not be issued in lieu of dividend. Rule 14 provides that the company which once announced the decision of the Board recommending a Bonus issue shall not subsequently withdraw the same.

Question: 83 Discuss the powers of the Board of Directors of a company as per the Companies Act, 2013.

Answer: Section 179 of the Companies Act, 2013 deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting. The following section 179(3) read with Rule 8 of Companies (Management & Administration) Rules, 2014 powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely : -

(1) to make calls on shareholders in respect of money unpaid on their shares ;

(2) to authorise buy-back of securities under section 68 ;

(3) to issue securities, including debentures, whether in or outside India ;

(4) to borrow monies ;

(5) to invest the funds of the company ;

(6) to grant loans or give guarantee or provide security in respect of loans ;

(7) to approve financial statement and the Board's report ;

(8) to diversify the business of the company ;

(9) to approve amalgamation, merger or reconstruction ;

(10) to take over a company or acquire a controlling or substantial stake in another company;
(11) to make political contributions ;

(12) to appoint or remove key managerial personnel (KMP) ;

(13) to appoint internal auditors and secretarial auditor ;

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify.

The banking company is not covered under the purview of this section. The company may impose restriction and conditions on the powers of the Board. However, unless specifically restricted under the act or Article of Association, Board has all the powers to manage the affairs of the company

Question: 83 Enumerate the provisions of the Companies Act, 2013 relating to women director in a company.

Answer: Second proviso to Section 149(1) of the Companies Act, 2013 read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following classes of companies shall appoint at least one woman director

- every listed company ;
- every other public company having
  - paid up share capital ` 100 crores or more; or
  - turnover of ` 300 crores or more.

For this purpose the paid capital or turnover as on the last date of latest audited financial statements shall be taken into account. A company incorporated under the Companies Act shall comply with such appointment of woman director within a period of six months from the date of its incorporation. Any intermittent vacancy of a woman director shall be filed up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Question: 84 Write short notes
Small Companies

Answer: Small Companies:

Section 2(85) of the Companies Act, 2013 defines 'small company' as a company, other than a public company –

(i) paid up share capital of which does not exceed ` 50 lakh or such higher amount as may be prescribed which shall not be more than ` 10 crore; and

(ii) turnover which is as per its last profit and loss account does not exceed ` 2 crores or such higher amount as may be prescribed which shall not be more than ` 100 crores.

This definition shall not apply to the following companies –

- A holding company or subsidiary company;
- A company registered under Section 8; or
- A company or a body corporate governed by any special act.

Question: 85 June 2018 Discuss the procedure for conversion of private company into One Person Company.

Answer: Conversion of private company into a OPC
Rule 7 provides the procedure for conversion of private company into OPC. Rule 7(1) provides that a private company other than Section 8 company, having paid up share capital of ` 50 lakh or less and average annual turnover during the relevant period is ` 2 crores or less may convert itself into OPC by passing a special resolution in the general meeting. Before passing such resolution the company shall obtain 'No Objection Certificate' in writing from the members and creditors. The OPC shall file copy of the resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT-14.

The company shall file an application in Form No. INC-6 for its conversion into OPC along with fees. The following documents are to be attached:

- the directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital of the company is ` 50 lakhs or less or average annual turnover is less than ` 2 crores, as the case may be;
- the list of members and creditors;
- the latest Audited Balance sheet arid the Profit and Loss Account;
- the copy of No objection letter of secured creditors.

On being satisfied and complied with the requirements the Registrar shall issue the certificate.

Question: 86 June 2018 What are the procedures of sending notice through electronic mode under the Companies Act, 2013?

Answer: The procedure of sending notice through electronic mode under the Companies Act, 2013 is discussed as detailed below:

- A notice may be sent through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice;
- The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
- The subject shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled;
- The attachment shall in a PDF or in a non editable format together with a link or instructions for recipient for downloading relevant version of the software;
- The company should ensure that it uses a system which produces confirmation of the total number of recipients emailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained or on behalf of the company as 'proof of sending';
- The company is not responsible for the failure in transmission beyond its control;
- If a member fails to provide or update relevant email address to the company or to the depository participant, the company shall not be in default for not delivering notice via email;
- The company may send email through in house facility or its registrar and transfer agent or authorize any third party agency providing bulk email facility;
- The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government.

Question: 87 Discuss the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director.

Answer: Section 164 of the Companies Act, 2013 details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if –

(i) he is of unsound mind and stands so declared by a competent court;

(ii) he is an undischarged insolvent;

(iii) he has applied to be adjudicated as an insolvent and his application is pending;

(iv) he has been convicted by a Court of any offence, whether involving moral
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turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the Sentence;

(v) if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;

(vi) an order disqualifying him for appointment as a director has been passed by the Court Or Tribunal and the Order is in force;

(vii) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(viii) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(ix) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications.

The disqualifications in (iv), (v), (vi) and (viii) shall not take effect –

- for 30 days from the date of conviction or order of disqualification;
- where an appeal or petition is preferred within 30 days against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of;
- where any further appeal or petition is preferred against order or sentence within 7 days until such further appeal of petition is disposed of.

Question: 88 "Directors are agents of the company." — Discuss

Answer: The company can act only through Directors, and so the relationship between the company and the Director is that of Principal and Agent. Contract entered into by a person as a Director of a company, will be binding on the Company. However, Directors are not Agents of Members of the company.

Directors have personal liability. They would be personally liable under the following circumstances:

- Director acts in his own name,
- Director enters into an agreement/ contract which does not state clearly as to whether the Director signing in his personal capacity or in his representative capacity as an Agent of the Company

Rights of the Company:

- Contract executed by the Director in excess of his authority, is binding on the Company. However, the Company may claim damages from the Director for breach of implied warranty of authority.

- When Directors act properly on behalf of the Company, they do not incur personal liability; they do not exceed their powers

Question: 89 Write short notes
Undue Influence

Answer: Under Section 16 of the Indian Contract Act defines undue influence as under:

(i) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(ii) In particular and without prejudice to the generality of the forgoing principle, a person is deemed to be in a position to dominate the will of another—
(a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
(b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(iii) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Question: 90 Dec 2017 Discuss the procedure for conducting a poll in a meeting of a company.

Answer: As per the provisions of the Companies Act, 2013 where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll to report thereon to him. The Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

Rule 21 provides that the Chairman of a meeting shall, in the poll process, ensure that-

• The Scrutinizes are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies;

• The Scrutinizers are provided with all the documents received by the Company

• The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting;.

• In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio;

• The Polling shall be in Form No. MGT-12;

• The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies:

• The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over;

• In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman;

• The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded;

• The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman;

• The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same;

• The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing. The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in form No. MGT-13. The report shall be signed by the scrutinizer(s) and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.

Question: 91 Elucidate the circumstances in which a company cannot buy-back its own shares as per the provisions of the Companies Act, 2013.

Answer: Circumstances in which a company cannot buy back its own shares As per Section 70 of the company act 2013, a company cannot buy back shares or other specified securities directly or indirectly

(a) Through any subsidiary company including its own subsidiaries; or

(b) Through investment or group of investment companies; or

(c) When the company has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank. The problem does not apply if the default has been remedied and a period of three years has elapsed after such default ceased to subsist.

(d) Company has defaulted in filing of Annual Return (section 92), declaration of dividend (section 123) or punishment for failure to distributed dividend (section 127) and financial statement (section 129)

Question: 92 What are the different duties of a director in a company as per the Companies Act, 2013?

Answer: As per Section 166 of the Companies Act, 2013 a director of a company is bound to perform the following duties as mentioned below:

• A director of a company shall act in accordance with the articles of the company.

• A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

• A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment,

• A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company,

• A director of a company shall not achieve or attempt to achieve any undue gain or advantages either to himself or to his relatives, partners or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company,

• A director of a company shall not assign his office and any assignment so made shall be void,

It a director of a company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Question: 93 Enumerate the provisions relating to Restrictions on powers of Board.

Answer: Section 180 of the Companies Act 2013: Restrictions on powers of Board The board can exercise the following powers only with the consent of the company by special resolution, namely –

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business;

(d) to remit, or give time for the repayment of, any debt due from a director.

The special resolution relating to borrowing money exceeding paid up capital and free reserves specify the total amount up to which the money may be borrowed by Board. The title of buyer or the person 'who takes on lease any property, investment or undertaking on good faith cannot be affected and also in case if such sale or lease covered in the ordinary business of such company. The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except the provisions contained in this Act. The debt incurred by the company exceeding the paid capital and free reserves is not. Valid and effectual, unless the lender proves that the loan was advanced on good faith and also having no knowledge of limit imposed had been exceeded.

Question: 94 Write short notes on
Director Identification Number (DIN)

Answer: Director Identification Number

Every individual, who is to be appointed as director of a company shall make an application electronically in Form No. DIR-3 to the Central Government for allotment of DIN along with the prescribed fees.The applicant can download the said from the website of Ministry of Corporate Affairs ('MCA' for short) duly filled in all respects along with photograph and signed digitally. The form shall be verified by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

On application, the system shall generate an application number. The Central Government shall process the application and decide the approval or rejection and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode within 30 days from the receipt of such application.

If any defect is found in the application the Central Government shall give intimation of such defect or incompletion to the applicant by placing it on its web site and by email to the applicant to rectify such defects within 15 days from the date of intimation. If the same has not been rectified the Government shall reject the application directing to file a fresh application. In case of rejection or invalidation of application the fee so paid with the application shall neither be refunded nor adjusted with any other application.

The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the present Act. The DIN allotted shall be valid up to the life time of the Director. The said number shall not be allotted to any other person. Similarly a person shall be allotted only one DIN. The director, on allotment of DIN, is to intimate the company in Form No.DIR-3C within 15 days from the intimation, given to him. Every company shall, within 15 days of the receipt of intimation, furnish the same with the Registrar. If a company fails to furnish DIN the company shall be punishable with fine which shall not be less than ` 25,000/- but which may extend to ` 1/- lakh. Every officer of the company who is default shall be punishable with tine which shall not be less than ` 25,000/- but which may extend to ` 1/- lakh.

Question: 95 Jun 2017 What are the conditions stipulated in the Companies Act, 2013 in formation of One Person Company?

Answer: The following are the conditions in formation of a OPC: No person shall be eligible to incorporate more than a OPC or become nominee in more than such company;

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

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

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

- Such company cannot carry out Non Banking Financial investment activities including investment activities in securities of any body corporate;

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

Question: 96 Discuss the procedure of alteration of memorandum of association as per the companies Act, 2013.

Answer: As per the provision of section 13 of the Companies Act, 2013 the alteration of the memorandum may be taken place in the following manner**:**

(i) Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution

(ii) Name change of the company: Any change in the name of a company shall be effected only with the approval of Central Government in writing. However no such approval is necessary where the change in the name of the company is only the deletion there from, or addition thereto of the word 'private', on the conversion of any one class of companies to another class.

(iii) Entry in register of companies: On any change in the name of the company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(iv) Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(v) Disposal of the application of change of place of the registered office: The Central Government shall dispose of the application of change of place of the registered office within a period of sixty days before passing of order. The central government may satisfy itself that-

(a) The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
(b) The sufficient provision has been made by the company either for the due discharge of all its debt and obligations, or
(c) Adequate security has been provided for such discharge.

(vi) Filing with Registrar: A company shall in relation to any alteration of its memorandum file with the Registrar –

(a) The special resolution passed by the company under sub-section (1),
(b) The approval of the central government under sub-section (2), if the alteration involves any change in the name of the company.

(vii) Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one state to another, a certified copy of the order of the central government approving the alteration shall be filed by the company with the Registrar of each of the State within such time and in such manner as may be prescribed, who shall register the same.

(viii) Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to shall issue afresh certificate of incorporation including the alteration.

(ix) Change in the object of the company: A company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and -

(a) The details in respect of such resolution shall also be published in the newspaper

(b) The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the SEBI

(x) Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

(xi) Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(xii) Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum in the case of a company limited by guarantee and not having a share capital intending to give any person right to participate in the divisible profits of the company otherwise than as a member shall be void.

Question: 97 Describe the Procedure for the resignation of Director.

Answer: Section 168 provides the procedure for the resignation of a director as detailed below:

- A director may resign from his office by giving a notice in writing to the company;
- He shall within 30 days from the date of resignation, forward to the Registrar a copy of his resignation along with the reasons for the resignation, in Form No. DIR - 11 along with the fee;
- A foreign director may authorize in writing a practicing Chartered Accountant or Cost Accountant in practice or Company Secretary in practice or any other resident director of the company to sign the Form No. DIR - 11 and file the same on his behalf intimating the reasons for the resignation;
- The Board shall on receipt of such notice take notice of the same;
- The company shall intimate the Registrar in Form No. DIR-12 within one month from the date of receipt of such notice;
- The said information is to be posted on the website of the company;
- The fact of the resignation shall be laid in the report of directors immediately following the general meeting by the company;
- The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later;
- The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure;

Where all directors of a company resign from their offices the promoter or, in his absence, the Central Government shall appoint the required number of directors, who shall hold the office till the directors are appointed by the company in general meeting.

Question: 98 Describe the term 'independent director' as per the Companies Act, 2013.

Answer: 'Independent director' is defined under Section 149(6) of the Companies Act as a other than a managing director or a whole time director or a nominee director –

(a) Who in the opinion of the board is a person of integrity and possesses relevant expertise and experience,

(b) He shall not be a promoter of the company or its holding, subsidiary or associate company,

(c) He shall not relate to the promoters or directors in the company, its holding, subsidiary or associate company,

(d) He shall not any pecuniary relationship with the company or their promoters or directors during two immediately preceding financial years or during the current financial year,

(e) His relative shall not have any pecuniary relationship with the company or their promoters or directors amounting to 2 % or more or more of its gross turnover or total income or ` 50 lakhs or such higher amounts as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year,

(f) he or his relatives-

- holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company, in any of the three financial years immediately preceding the financial year;
- is or has been an employee or proprietor or partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of-
  - a firm of auditors or company secretaries in practice or cost auditors of the company; or
  - any legal or a consulting firm that has or had any transaction with the company, amounting to 10% or more of the gross turnover of such firm.
- holds together with his relatives 2% or more of the total voting power of the company; or
- is a Chief Executive or Director of any nonprofit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or
- who possess such other qualifications as may be prescribed.

Question: 99 Write short notes on
Revocation of licence

Answer: Revocation of licence: Section 8(6) of Companies Act, 2013 provides that the Central Government, by order, revoke the licence granted to the company registered under this section-

- if the company contravenes any of the requirements of this section; or
- any of the conditions subject to which a licence is issued; or
- the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company.

The Central Government shall direct the company to convert its status and change its name to add the words 'limited' or 'private limited' to its name. No such order will not be passed without giving opportunity to the company of being heard. A copy of such order shall be given to the Registrar. The Registrar shall, without prejudice to any action taken, on application, in the prescribed form register the company accordingly.

Workbook Question:

Question: 100 1. Sambhav Media Limited, an Unlisted Public Company, has the following figures at the end of the Financial Year 2016-17: Paid-up Share Capital = ` 130 Crore Turnover = ` 320 Crore Average Profit of last 3 years = ` 7.5 Crore Borrowings = ` 75 Crore

(i) Is the Company required to appoint Independent Director and further are they required to appoint Women Director? Explain the composition of Board.

(ii) Explain the Code of independent directors as per schedule IV of the Companies Act 2013.

Answer: (i) Yes the company is required to appoint an Independent Director as per the provisions of Section 149(4) & Rule 4 of Companies (Appointment and Qualification of Directors) Rule, 2014 every Listed Company shall have at least one-third of the total number of directors as Independent Director and every Unlisted public Company are required to appoint atleast 2 Independent Directors having any one of the following features:

- Public Company having Paid Up Share Capital of ` 10Crore or more; or
- Public Company having Turnover of ` 100 Crore or more; or
- Public Company having aggregate outstanding loans, debentures and deposit, exceeding `50 Crore.

So as we see in the case study Shambhav Media Limited, an Unlisted Public Company, has Paid-Up Share Capital of `130 Crore, Turnover of ` 320 Crore, and Borrowings of ` 75 Crore which is more than the criteria mentioned in sec 149(4), so therefore the Company is required to appoint atleast 2 Independent Directors.

Yes, the Company is required to appoint a Women Director as per second Proviso to Section 149(1) read with Rule 3 of The Companies (Appointment and Qualification of directors) Rules, 2014. The following classes of companies are required to appoint at least one Woman Director-

(i) Every Listed Company;
(ii) Every Unlisted Public Company having –
- Paid–up share capital of `100 Crore or more; or
- Turnover of `300 Crore or more.

So as we see in the case study Shambhav Media Limited, an Unlisted Public Company, it has PaidUp Share Capital of ` 130 Crore, Turnover of ` 320 Crore, which is more than the criteria mentioned in Section 149(1), so therefore the Company is required to haveatleast1Women Director in the composition of Board of Director of the Company.

Therefore the Company should have at least 1 women director in composition of the Board of the Company and at least 2 Directors should be Independent Directors.

(ii) <u>Schedule IV (Code of conduct of Independent Directors)</u>

Guidelines of professional conduct:

An independent director shall:

(1) uphold ethical standards of integrity and probity;

(2) act objectively and constructively while exercising his duties;

(3) exercise his responsibilities in a bona fide manner in the interest of the company;

(4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;

(5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;

(6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;

(7) refrain from any action that would lead to loss of his independence;

(8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;

(9) assist the company in implementing the best corporate governance practices.

Role and functions:
The independent directors shall:

(1) help in bringing an independent judgment to bear on the Board‘s deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;

(2) bring an objective view in the evaluation of the performance of board and management;

(3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;

(4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;

(5) safeguard the interests of all stakeholders, particularly the minority shareholders;

(6) balance the conflicting interest of the stakeholders;

(7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;

(8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder‘s interest.

Duties:

The independent directors shall—

1. undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;

2. seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;

3. strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;

4. participate constructively and actively in the committees of the Board in which they are chairpersons or members;

5. strive to attend the general meetings of the company;

6. where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;

7. keep themselves well informed about the company and the external environment in which it operates;

8. not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;

9. pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;

10. ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;

11. report concerns about unethical behaviour, actual or suspected fraud or violation of the company‘s code of conduct or ethics policy;

12. 1["act within their authority"], assist in protecting the legitimate interests of the company, shareholders and its employees;

13. not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

Question: 101 Mr. Rajiv Singh is a director in 22 Companies as given below:

- **12 Public Companies**
- **1 Section 8 Company**
- **9 Private Companies**

Now out of the 22 Companies, he is Alternate Director in 4 Companies.

(i) Which Section of Companies Act, 2013 specifies the maximum number of Directorship an individual can hold?

(ii) Is Mr. Rajiv in contravention with the provisions of Companies Act, 2013? Explain with reason.

(iii) What would have been your answer if Mr. Rajiv would have been director in 10 Public Companies, 6 Section 8 Companies and 10 Private Companies?

(iv) What is the penalty for contravention of this provision?

Answer: (i) Section 165 of the Companies Act, 2013 specifies that a person can hold office as a director, including any alternate directorship, in maximum twenty companies at the same time.

(ii) Yes, Mr. Rajiv Singh is in contravention of Section 165 of the Companies Act, 2013. As per the Act, a person cannot be appointed in more than 20 companies at the same time, provided that a person shall not hold office in more than 10 Public Companies out of the limit of 20 Companies. Since Mr. Rajiv Singh is Director in more than 10 Public Companies i.e. 12. Therefore, it is advised to Mr. Rajiv Singh to resign from any of the 2 Public Companies out of the 12 Public Companies in which he is currently appointed to avoid contravention of Section 165 of the Companies Act, 2013.

(iii) As per the provisions of the Section 165 of the Companies Act, 2013 the limit is 20 companies out of which a person cannot be appointed as a director in more than 10 Public Companies and further the limit of 20 companies shall not include Section 8 Companies.

Therefore, as per the case study Mr. Rajiv is Director in 10 Public Companies, 6 Section 8 Companies and 10 Private Companies where those 6 Section 8 companies shall not be counted in the limit of 20 Companies. So in this situation Mr. Rajiv is complying with the provisions of section 165 of the Companies Act, 2013.

(iv) If a person accepts an appointment as a director in contravention of sub-section (1) of Section 165, he shall be punishable with fine which shall not be less than ` 5,000 (five thousand) but which may extend to `25,000 (twenty-five thousand) for every day after the first year during which the contravention continues.

Question: 102 Specify the power of board as per section 179 of the Companies Act, 2013.

Answer: Section 179 of the Act deals with the powers of the board. The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether under

this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

The following (section 179(3) read with Rule 8 of Companies (Meetings of Board and its Power) Rules, 2014 powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely:

(1) to make calls on shareholders in respect of money unpaid on their shares;

(2) to authorize buy-back of securities under section 68;

(3) to issue securities, including debentures, whether in or outside India;

(4) to borrow monies;

(5) to invest the funds of the company;

(6) to grant loans or give guarantee or provide security in respect of loans;

(7) to approve financial statement and the Board‘s report;

(8) to diversify the business of the company;

(9) to approve amalgamation, merger or reconstruction;

(10) to take over a company or acquire a controlling or substantial stake in another company;

(11) to make political contributions;

(12) to appoint or remove key managerial personnel (KMP);

(13) to appoint internal auditors and secretarial auditor;

Question: 103 What are the restrictions on powers of Board?

Answer: The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify.

The Board can exercise the following powers only with the consent of the company by special resolution, namely –

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings;

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company‘s bankers in the ordinary course of business;

(d) to remit, or give time for the repayment of, any debt due from a director.

The special resolution relating to borrowing money exceeding paid up capital, free reserves and securities premium share specify the total amount up to which the money may be borrowed by Board.

The title of buyer or other person who buys or takes on lease any property, investment or undertaking in good faith cannot be affected and also in case if in the ordinary business of the company comprises such selling or leasing.

The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except in accordance with the provisions contained in this Act.

The debt incurred by the company exceeding the paid up capital, free reserves and securities premium is not valid and effectual, unless the lender proves that the loan was advanced in good faith and also having no knowledge that limit imposed had been exceeded.

Question: 104 (a) Which classes of Companies are specified to conduct meeting through electronic means and under which section of the Act?
(b) Explain the process of e-voting.
(c) What is the role of Scrutinizer in voting through electronic means and through poll?

Answer: (a) Section 108 of the Companies Act, 2013 prescribes that Every Company which is Listed on a Recognized Stock Exchange and every other Company having 1000 or more members shall provide to its members the facility to exercise their right to vote on resolution proposed to be considered at a general meeting by electric means (i.e. E-voting)

(b) PROCESS OF E-VOTING:

(i) The notice of the meeting shall be sent to all the members, directors and auditors of the company either –
(a) by registered post or speed post; or
(b) through electronic means, namely, registered e-mail ID of the recipient; or
(c) by courier service;

(ii) THE notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;

(iii) THE notice of the meeting shall clearly state –(a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;(b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;(c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;

(iv) THE notice shall—(a) indicate the process and manner for voting by electronic means;(b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;(c) provide the details about the login ID;(d) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

(v) The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty-one days before the date of general meeting, at least in one vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least in one English newspaper having country-wide circulation, and specifying in the said advertisement, inter alia, the following matters, namely:-
(a) statement that the business may be transacted through voting by electronic means;

(b) the date and time of commencement of remote e-voting;

(c) the date and time of end of remote e-voting;

(d) cut-off date;

(e) the manner in which persons who have acquired shares and become members of the company after the despatch of notice may obtain the login ID and password;

(f) the statement that—
(A) remote e-voting shall not be allowed beyond the said date and time;

(B) the manner in which the company shall provide for voting by members present at the meeting; and

(C) a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and

(D) a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

(g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and

(h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

(vi) The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;

(vii) During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cutoff date, may opt for remote e-voting:

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:

Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

(viii)At the end of the remote e-voting period, the facility shall forthwith be blocked:

Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

(c) ROLE OF SCRUTINIZER

(i) The Board of Directors shall appoint one or more scrutinizers, who may be Chartered Accountant in practice. Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner: Provided that the scrutinizers so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system;

(ii) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

(iii) The Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, as provided in clauses (a) to (h) of sub-rule (1) of rule 21, as applicable, with the assistance of scrutinizers, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.

(iv) The scrutinizer shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company and make, not later than three days of conclusion of the meeting, a consolidated scrutinizer‘s report of the total votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same: Provided that the Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;

(v) For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutinizer shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutinizers may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes:

(vi) The scrutinizers shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.

Question: 104 Write short notes on
(i) Section 42
(ii) Independent Director u/s 149(6)
(iii) Disqualification of Director u/s 164 (iv) Entrenchment Clause

Answer: (i) **Section 42:** Section 42 deals with the provision of PRIVATE PLACEMENT under Companies Act, 2013. A private placement offer cannot be made to more than 200 people in aggregate in a financial year excluding Qualified Institutional Buyers‖ and employees of the company being offered securities under a Scheme of Employee‘s Stock Option as per provisions of clause (b) of sub-section (1) of Section 62.

The value of such offer or invitation shall be with an investment size of not less than ` 20,000/- per person.

The number of such offers or invitations shall not exceed 4 in a financial year and not more than once in a calendar quarter with a minimum gap of 60 days between any 2 such offers or invitations.

<u>Procedure</u>

1. Check Provision in the Articles of Association regarding Private Placement

2. Call Board Meeting:
- To Prepare Offer Letter
- Make Proposal for Private Placement
- Prepare list of persons to whom option will be given
- Call Extra Ordinary General Meeting

3. Pass Special Resolution in Extra Ordinary General Meeting which will be valid for 12 months
- If Private Placement is not completed in 12 Months then pass another Special Resolution
- Approve Draft Offer Letter by Special Resolution

4. File MGT-14 with ROC with following Attachments:
– Notice of EGM – Certified True Copy of Special Resolution
– Minutes of Extra Ordinary General Meeting

5. Issue offer letter in PAS-4 within 30 days of record of name of persons:

6. Prepare complete record of Private Placement in PAS-5

7. File PAS-4 + PAS-5 with ROC within 30 days of issue of offer letter in e-form GNL-2

8. Make Allotment of shares within 60 days of receipt of money from the persons to whom the right was given.

9. Called Board Meeting for allotment of shares

10. File PAS-3 (Return of Allotment) with ROC within 30 days of Allotment with following Attachments:

– List of Allottees
– Board Resolution for allotment of shares

(ii) Independent Director u/s 149(6):

An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—
(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten percent or more of the gross turnover of such firm;

(iii) holds together with his relatives two percent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five percent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two percent or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

(iii) Disqualification of Director u/s 164:

(1) A person shall not be eligible for appointment as a director of a company, if —
(a) he is of unsound mind and stands so declared by a competent court;
(b) he is an undischarged insolvent;
(c) he has applied to be adjudicated as an insolvent and his application is pending;
(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence: Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
(h) he has not complied with sub-section (3) of section 152.

(2) No person who is or has been a director of a company which—
(a) has not filed financial statements or annual returns for any continuous period of three financial years; or
(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be reappointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

(iv) Entrenchment Clause:

The Article may contain entrenchment provision. This is new concept under Indian Companies Act, as there was no such concept under the old Act.

The word Entrench is not defined under Companies Act, 2013. As per Oxford Dictionary the word entrench means to establish (an attitude habit or belief) so firmly that change is very difficult or unlikely. It may require form of super majority or referendum submitted to the people, or the consent of another party.

If such entrenchment provisions are intended to be incorporated in its Articles after Incorporation then consent of members is mandatory in the prescribed manner. In case of a _Private Company‘, consent of all the members of the company is required and in case of Public Company‘ consent of its members by way of special resolution is required.

According to Rule 10 of Companies (Incorporation) Rules, 2014 where the Article contain provisions for entrenchment, the Company shall give notice to the Registrar within 30 days from the date of formation or amendment of Articles of such provision in Form INC-2 or Form INC-7 as the case may be at the time of incorporation of the Company.

Where the Articles of an existing company has been altered to include entrenchment, the notice of entrenchment shall be filed in Form MGT -14 within 30days from the date of entrenchment of the Articles as the case may be along with the fees as provided in the Company‘s Rules, 2014.

Question: 105 A Limited, a Company situated in Kolkata (West Bengal) wants to shift its registered office from West Bengal to Maharashtra.

Advice the Company with complete procedure along with names of e-forms required with their respective attachments.

Answer: A Limited, a Company of West Bengal, which wants to shift its registered office to Maharashtra, has to comply with the following formalities as mentioned below:

1. The Company has to call an Extra Ordinary General Meeting.
2. Pass Special Resolution seeking members‘ approval for shifting of registered office and file e-Form MGT-14 to Registrar of Companies (ROC) within 30 days of passing Special Resolution.
3. At least one month before filing application with Regional Director(RD) –

- Publish a notice, at least in one daily newspaper published in English and in one principal language of that district in which the registered office of the company is situated and serve individual notice on each debenture holder, depositor and creditor of the Company. The newspaper advertisement/notice to creditors should state that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the Company within 21 days of the date of publication of that notice.

4. Draw up the application and file e-form INC 23, with following attachments:-
- Copy of minutes of meeting in which special resolution has been passed
- Copy of Memorandum of Association
- Notice convening the general meeting along with explanatory statement
- Extract of special resolution passed by members approving the change of registered office
- Copies of advertisement published
- Copies of notice sent to creditors, debenture holder, depositor along with dispatch proof
- Particulars of objections received;

- Any attachment to support the details of prosecution filed against the company and its officers in default, if any

5. File a copy of the application to ROC and Chief Secretary through Speed/ Registered Post.

6. Once the order is passed by the RD, approving shifting of the registered office, File e-form INC-28 along with the Order passed by RD within 30 days from the date of passing order by RD and then file e-form INC 22 with both the ROCs, supported by the following documents:

- The registered document of the title of the premises of the registered office in the name of the company; or
- The notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
- The authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
- The proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

Question: 105 Advice:

(1) C Limited sent the notice of EGM on 30thSeptember, 2017 for a meeting to be held on 24th October, 2017 through courier. Explain whether the notice was sent as per Section 101 of the Act.

(2) B Limited has 4000 members. The Company conducted an EGM and at the EGM 20 members were present. Explain whether the quorum was sufficient as per Section 103 of the Act.

(3) Some members of AB Limited want Mr. C's name to be proposed for the candidate of director in the Company. Explain the procedure with applicable provision. What would have been your answer if the company would have been a Private Limited Company?

Answer: (a) As per section 101 of the Companies Act, 2013 a company has to give atleast 21 Clear Days notice to the members to call a General meeting. Over here Clear days means it will not include the date of giving of notice and the day of meeting and further if the notice is sent by post then it will be deemed to be delivered after 2 days from the dispatch of notice. Further those 21 Clear Days does not include a National Holiday i.e. Gandhi Jayanti (2nd October), Independence Day (15th August) and Republic Day (26th January).

So as we can see in the given case study C Limited sends notice on 30th September, 2017 for a meeting to be held on 24th October so the Day of sending notice and the day of meeting is excluded and further there is a National Holiday on 2nd October so that will also be excluded and the speed post is sent by post so it will be deemed to be received after 2 days of sending the notice. Therefore, total number of days excluded are (1+1+2+1=5) so days remaining (25-5=20) Days. Hence Section 101 is not complied over here by the company.

(b) As per section 103 of the Companies Act, 2013, unless the Articles of the company provide for a larger number,—

(a) In case of a Public Company,—

(i) 5 (five) members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) 15 (fifteen) members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) 30 (thirty) members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, 2 (two) members personally present, shall be the quorum for a meeting of the company.

As per the given case study B Limited, a Public Company, has 4000 members so therefore the Company needs to have a quorum of 30 (Thirty) people in a general meeting but B Limited has only 20 members present in the EGM so the Quorum is not sufficient as per Section 103 of the Act and therefore the meeting shall be adjourned till next week same day same place at same time.

(c) As per Section 160 of the Companies Act 2013 a person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than 14 (fourteen) days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of ` 1,00,000/- [one lakh rupees] shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25 % (twenty-five percent) of total valid votes cast either on show of hands or on poll on such resolution.

So as per the given case study the members of AB Limited who want Mr. C as the candidate for the Directorship of the company has to give a notice in written to the company about the candidate standing for the position of Directorship at its registered office atleast 14 days before the meeting and deposit ` 1,00,000/- with the company as a security deposit which shall be refunded once Mr. C becomes the director of gets atleast 25% votes otherwise the deposit shall be forfeited by the company.

If the Company would have been a private co then this section would have not been applicable on the Company as per the Notification dated 5th June 2015 of the Companies Act, 2013 which granted exemption to private companies from Section 160.

BUSINESS ETHICS

DEFINITION OF ETHICS ❖ **DEC-17** **5 MARKS** ❖ **Model Question**	➢ According to Andrew Crane—Business ethics is the study of business situations, activities and decisions where issues of right and wrong are addressed. ➢ Raymond C. Baumhart contend ―The ethics of business is the ethics of responsibility. ➢ The businessman must promise that he will not harm knowingly‖. ➢ Business ethics concerns itself with adhering to the social principles of the situations in which business takes place. ➢ The analysis of this definition leads us to the following discussion. ➢ Thus, Business Ethics (also called Corporate Ethics) is a form of applied ethics or professional ethics that examines ethical principles and moral or ethical problems that arise in a business environment. ➢ It applies to all aspects of business conduct, and is relevant to the conduct of individuals and the entire organizations. ➢ It deals with morality in business environment. ➢ It involves moral judgment based on understanding of the society. ➢ It extends beyond the legal questions and involves moral judgment based on understanding of the society. ➢ It extends beyond the legal questions and involves goodness and badness of an act. (1) Business ethics refers to the application of everyday moral or ethical norms to business. It requires an awareness of how the products and services of an organizations and the action of its employees, can affect its stakeholders and society as a whole, either positively or negatively. (2) Ethics in business organization relates to a corporate culture of values, leadership program and enforcement. It is that set of principles or reasons which governs the conduct of business at the individual or collective level by the application of ethical reasoning to specific business situations and activities.
ETHICS	➢ Business is an extension of the society and no business can sustain in the long run ignoring social values. ➢ Individual values percolate into society and turn into social values, which is turn are adopted by corporates and become corporate values. ➢ Corporate ethics, therefore, is choosing, adopting and practicing good thing and avoid bad things. ➢ And wrong varies from company to company but there some virtues and values which are universally accepted.

- Ethics is a set of rules that define right and wrong conduct. The term 'ethics' derived from Latin word 'ethos' which means character. Ethics is a social science which deals with concepts such as right and wrong, moral and immoral, good and bad behavior of dealing with one another.
- Ethics is the basic concepts and fundamental principles of decent human conduct.
- It includes the study of universal values of such as the essential quality of all men and women, human or natural rights, obedience to the law of land, concern for health and safety and increasingly, also for the natural environment.
- Ethics are the set of moral principles that guide a person's behavior.
- These morals are shaped by social norms, cultural practices, and religious influences.
- Ethics reflect beliefs about what is right, what is wrong, what is just, what is unjust, what is good, and what is bad in terms of human behavior.
- They serve as a compass to direct how people should behave toward each other, understand and fulfill their obligations to society, and live their lives.
- While ethical beliefs are held by individuals, they can also be reflected in the values, practices, and policies that shape the choices made by decision makers on behalf of their organizations.
- The phrases 'business ethics and corporate ethics' are often used to describe the application of ethical values to business activities.
- Ethics applies to all aspects of conduct and is relevant to the actions of individuals, groups, and organizations.
- In addition to individual ethics and corporate ethics there are professional ethics.
- Professionals such as managers, lawyers, and accountants are individuals who exercise specialized knowledge and skills when providing services to customers or to the public.
- By virtue of their profession, they have obligations to those they serve.
- For example, lawyers must hold client conversations confidential and accountants must display the highest levels of honest and integrity in their record keeping and financial analysis.
- Professional organizations, such as the American Medical Association, and licensing authorities, such as state governments, set and enforce ethical standards.

TYPE OF ETHICS ❖ **WORKBOOK**	Ethics may be divided into three types as follows: • Meta ethics; • Normative ethics; • Applied ethics. ➢ **Meta ethics** deal with the nature of moral judgment. It looks at the origins and meanings of ethical principles. ➢ **Normative ethics** is concerned with the content of moral judgments and the criteria for what is right or wrong. ➢ **Applied ethics** looks at controversial topics like war, animal rights and capital punishment. Importance of
IMPORTANCE OF ETHICS ❖ **DEC-17** 10 MARKS ❖ **JUNE-19** 5 MARKS ❖ **MTP** J-17 SET 1 D-17 SET 2 J-18 SET 1 D-18 SET 2 D-19 SET 2	➢ Ethics is a requirement for human life. ➢ It is our means of deciding a course of action. ➢ Without it, our actions would be random and aimless. ➢ There would be no way to work towards a goal because there would be no way to pick between a limitless numbers of goals. ➢ Even with an ethical standard, we may be unable to pursue our goals with the possibility of success. ➢ To the degree which a rational ethical standard is taken, we are able to correctly organize our goals and actions to accomplish our most important values. ➢ Any flaw in our ethics will reduce our ability to be successful in our endeavors. ➢ A proper foundation of ethics requires a standard of value to which all goals and actions can be compared to. ➢ This standard is our own lives, and the happiness which makes them livable. ➢ This is our ultimate standard of value, the goal in which an ethical man must always aim. ➢ It is arrived at by an examination of man's nature, and recognizing his peculiar needs. ➢ A system of ethics must further consist of not only emergency situations, but the day to day choices we make constantly. ➢ It must include our relations to others, and recognize their importance not only to our physical survival, but to our wellbeing and happiness. ➢ It must recognize that our lives are an end in themselves, and that sacrifice is not only not necessary, but destructive.
ETHICS – NATURE AND RELEVANCE TO THE BUSINESS ❖ **DEC-18** 10 MARKS ❖ **RTP D-18** ❖ **RTP J-18**	➢ Several factors play a role in the success of a company that is beyond the scope of financial statements alone. ➢ Organizational culture, management philosophy and ethics in business each have an impact on how well a business performs in the long term. ➢ No matter the size, industry or level of profitability of an organization, business ethics are one of the most important aspects of long-term success. ➢ The management team sets the tone for how the entire company runs on a day-to-day basis. ➢ When the prevailing management philosophy is based on ethical practices and behavior, leaders within an organization can direct employees by example and guide them in making decisions that are not only beneficial to them as individuals, but also to the organization as a whole. ➢ Building on a foundation of ethical behavior helps create long lasting positive effects for a company, including the ability to attract and retain highly talented

	individuals and building and maintaining a positive reputation within the community. ➢ Running a business in an ethical manner from the top down builds a stronger bond between individuals on the management team, further creating stability within the company. ➢ When management is leading an organization in an ethical manner, employees follow in those footsteps. ➢ Employees make better decisions in less time with business ethics as a guiding principle; this increases productivity and overall employee morale. ➢ When employees complete work in a way that is based on honesty and integrity, the whole organization benefits. ➢ Employees who work for a corporation that demands a high standard of business ethics in all facets of operations are more likely to perform their job duties at a higher level and are also more inclined to stay loyal to that organization. ➢ The importance of business ethics reaches far beyond employee loyalty and morale or the strength of a management team bond. ➢ As with all business initiatives, the ethical operation of a company is directly related to profitability in both the short and long term. ➢ The reputation of a business from the surrounding community, other businesses and individual investors is paramount in determining whether a company is a worthwhile investment. ➢ If a company's reputation is less than perfect based on the perception that it does not operate ethically, investors are less inclined to buy stock or otherwise support its operations. ➢ With consistent ethical behavior comes increasingly positive public image, and there are few other considerations as important to potential investors and current shareholders. ➢ To retain a positive image, businesses must be committed to operating on an ethical foundation as it relates to treatment of employees, respect to the surrounding environment and fair market practices in terms of price and consumer treatment.
VALUES AND ATTITUDES OF PROFESSIONAL ACCOUNTANTS ❖ **Model Question** ❖ **MTP** D-17 SET 1 J-18 SET 2	➢ The roles, professional accountants take on a vast array of other roles in businesses of all sorts including in the public sector, not-for-profit sector, regulatory or professional bodies, and academia. ➢ Their wide ranging work and experience find commonality in one aspect – their knowledge of accounting. ➢ As such, professional accountants in businesses therefore have the task of defending the quality of financial reporting right at the source where the numbers and figures are produced besides the cost accounting. ➢ Like their counterparts in taxation or auditing, professional accountants in business play important roles that contribute to the overall stability and progress of society. ➢ Without public understanding of all these diverging roles and responsibilities of different accounting specialists working in business, public perceptions of their value may be misinformed. ➢ A competent professional accountant in business is an invaluable asset to the company. ➢ These individuals employ an inquiring mind to their work founded on the basis of their knowledge of the company's financials. ➢ Using their skills and intimate understanding of the company and the environment in which it operates, professional accountants in business ask

	challenging questions. ➢ Their training in accounting enables them to adopt a pragmatic and objective approach to solving issues. ➢ This is a valuable asset to management, particularly in small and medium enterprises where the professional accountants are often the only professionally qualified members of staff. ➢ Cost management is an activity of managers related to planning and control of costs. ➢ Managers have to take decisions regarding use of materials, processes, product designs and have to plan costs or expenses to support the operating plan for their department or section. ➢ All these activities come under cost management. ➢ Information from accounting systems help managers in cost management activities. ➢ But the cost accounting system and the reports it generates is not the cost management system. ➢ Accounting system can be interpreted as a part of cost management system of an organization. ➢ Cost management is not cost reduction alone. ➢ It is much broader. ➢ Organization increase advertising expenditure to increase sales, increase research and development expenditures to promote new products. ➢ Here the concerned managers are deliberately incurring additional costs in a period (compared to the previous period) as they expect profits from such decisions or expenditures. ➢ Cost management system has to ensure that a cost is incurred with the expectation of profit. ➢ The role of management accounting is also described as problem solving, score keeping and attention directing. • **Problem solving:** The role of accounting in problem solving is to provide information useful in evaluating alternatives. • **Scorekeeping:** Scorekeeping records the results of various actions of the managers and helps in assessing whether the results expected from the various actions are realized or not. • **Attention directing:** The scorekeeping function in combination with expected results, and comparative analysis of scores of various companies, divisions and departments, comparative analysis of present period scores or results with previous periods show opportunities of focusing attention of managers to improve things.
VALUE CHAIN	➢ Value chain is a visualization of complete business as a sequence of activities in which usefulness is added to the products or services produced and sold by an organization. ➢ Management accountants provide decision support for managers in each activity of value chain. ➢ The design of management accounting system has to take into consideration the decision needs of the managers. ➢ Also it has to take into consideration the new themes and challenges that managers face currently.

	• **Customer focus:** The challenge for managers it invest sufficient resources to enhance customer satisfaction. But every action of the organization has to result enhanced profitability or maintained profitability for the organization. • **Key Success Factors:** These are nonfinancial factors which have an effect on the economic viability of the organization. Cost, quality, time and innovation are important key success factors. Management accounting systems need to have provisions for tracking the performance of the organization and its divisions as well as competitors on these success factors. • **Continuous improvement:** Continuous improvement or kaizen is a popular theme. Innovation related to this area in costing is kaizen costing. • **Value Chain and Supply Chain Analysis:** Value chain as a strategic framework for analysis of competitive advantage was promoted by Michael Porter. Management accountants have to become familiar with the framework and provide information to implement the framework by strategic planners.
PROFESSIONAL ETHICS	➢ Like other professionals, accountants also face ethical dilemmas. They need ethical guidelines. ➢ Competence, confidentiality, integrity and objectivity shall be the important themes of the guidance note.
MISSION STATEMENT OF ICAI ❖ **Model Question** ❖ **Workbook** ❖ **June 17** 10 Marks ❖ **MTP** J-19 SET 2	➢ The Cost and Management Accountant professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting. ➢ The Institute has promulgated the following standards of ethical conduct for practitioners- • maintain at all times independence of thought and action; • not to express an opinion on cost / financial reports or statements without first assessing her or his relationship with her or his client to determine whether such Member might expect her or his opinion to be considered independent, objective and unbiased by one who has knowledge of all the facts; and • when preparing cost / financial reports or statements or expressing an opinion on cost / financial reports or statements, disclose all material facts known to such Member in order not to make such cost / financial reports or statements misleading, acquire sufficient information to warrant an expression of opinion and report all material misstatements or departures from generally accepted accounting principles. • not to disclose or use any confidential information concerning the affairs of such Member's employer or client unless acting in the course of his or her duties or except when such information is required to be disclosed in the course of any defense of himself or herself or any associate or employee in any lawsuit or other legal proceeding or against alleged professional misconduct by order of lawful authority or any committee of the Society in the proper exercise of their duties but only to the extent necessary for such purpose; • inform his or her employer or client of any business connections or interests of which such Member's employer or client would reasonably expect to be informed;

	• not, in the course of exercising his or her duties on behalf of such Member's employer or client, hold, receive, bargain for or acquire any fee, remuneration or benefit without such employer's or client's knowledge and consent; and • take all reasonable steps, in arranging any engagement as a consultant, to establish a clear understanding of the scope and objectives of the work before it is commenced and will furnish the client with an estimate of cost, preferably before the engagement is commenced, but in any event as soon as possible thereafter. • conduct himself or herself toward other Members with courtesy and good faith; • not to accept any engagement to review the work of another Member for the same employer except with the knowledge of that Member, or except where the connection of that Member with the work has been terminated, unless the Member reviews the work of others as a normal part of his or her responsibilities; • not to attempt to gain an advantage over other Members by paying or accepting a commission in securing management accounting work; • not to act maliciously or in any other way which may adversely reflect on the public or professional reputation or business of another Member; • at all times maintain the standards of competence expressed by the Institute from time to time; • undertake only such work as he or she is competent to perform by virtue of his or her training and experience and will, where it would be in the best interests of an employer or client, engage, or advise the employer or client to engage, other specialists;

SEVEN PRINCIPLES OF PUBLIC LIFE ❖ **Model Question** ❖ **Workbook** ❖ **June 17** 5 MARKS ❖ **MTP** **J-17 SET 2** **D-17 SET 2** **J-18 SET 1** **D-18 SET 1** **J-19 SET 1** **D-19 SET 2**	➢ The Seven Principles of Public Life were set out by Lord Nolan for the first time in the year 1995. ➢ These principles of public life will apply to any one who works as a public office holder, including elected and appointed to public office either locally or nationally. ➢ These principles apply to civil service, local government, the police, the Courts and probation of services, non departmental public bodies, health, education, social are care services. ➢ These principles also apply to other sector that delivers public services. ➢ The British Government appointed a committee called as Committee on Standards in Public Life to advise the Prime Minister on ethical standards of public life. ➢ The Committee was established in October 1994. The term of reference to the committee is – • to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities; and • to make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life. ➢ The Committee submitted its first report in the year 1995 containing the seven principles of public life. ➢ The said principles have been amended over year. ➢ The seven principles of public life as amended up to and as on 2015 are as follows- • **Selflessness** – Holders of public office should act solely in terms of the public interest. • **Integrity -** Holders of public office must avoid placing themselves under any obligation to people or organizations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships. • **Objectivity -** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias. • **Accountability -** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this. • **Openness -** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing. • **Honesty -** Holders of public office should be truthful • **Leadership** - Holders of public office should exhibit these principles in their own behavior. They should actively promote and robustly support the principles and be willing to challenge poor behavior wherever it occurs.

ETHICS IN BUSINESS MEANING	➢ Business ethics deals with morality in the business. ➢ It is a system of moral principles and values applied to business activities. ➢ This means the business activities should be conducted according to ethics or moral standard.
DEFINITION	➢ Business ethics is an art or science of maintaining harmonious relationship with society, its various groups and institution as well as reorganizing for right or wrong of business conduct.
FEATURES OF BUSINESS ETHICS ❖ **WORKBOOK**	• Code of conduct; • Provide protection to social group; • Provide basic frame work; • Need willing acceptance; • Education and guidance; • Not against for profit making.
PRINCIPLES	• Avoid exploitation of consumers; • Avoid unfair trade practices; • Fair treatment to employees
IMPORTANCE	• Improving consumer confidence • Business become conscious of social responsibilities; • Create good image of business; • Goodwill; • Profitability; • Survival of heated competition • Safety from legal perspectives Business ethics is defined as written unwritten codes of principles and values that govern decisions and actions within a company. Seven principles in business ethics are- • Be trustful; • Be keep open mind; • Meet obligations; • Have clear documents; • Become community involved;

	• Maintain accounting control; • Be respectful. ➢ Wrong doing by businesses has focused public attention and government involvement to encourage more acceptable business conduct. ➢ Any business decision may be judged as right or wrong, ethical or unethical, legal or illegal. ➢ Business ethics is the principles and standards that determine acceptable conduct in business organizations. ➢ The acceptability of behavior in business is determined by customers, competitors, government regulators, interest groups, and the public, as well as each individual's personal moral principles and values. ➢ Also consider the social implications of their activities. ➢ define social responsibility as a business's obligation to maximize its positive impact and minimize its negative impact on society. ➢ Although many people use the terms social responsibility and ethics interchangeably, they do not mean the same thing. ➢ Business ethics relates to an individual's or a work group's decisions that society evaluates as right or wrong, whereas social responsibility is a broader concept that concerns the impact of the entire business's activities on society. ➢ From an ethical perspective, for example, we may be concerned about a health care organization or practitioner overcharging the provincial government for medical services. ➢ From a social responsibility perspective, we might be concerned about the impact that this overcharging will have on the ability of the health care system to provide adequate services for all citizens.
AREAS IN BUSINESS ETHICS ❖ **Model Question** ❖ **Workbook** ❖ **JUNE 18** 10 marks ❖ **MTP** D-19 SET 1	• Corporate Social Responsibility; • Fiduciary responsibility to stake holders; • Industrial espionage. Ethical behavior and corporate social responsibility can bring significant benefits to a business. For example, they may: • attract customers to the firm's products, which means boosting sales and profits • make employees want to stay with the business, reduce labour turnover and therefore increase productivity • attract more employees wanting to work for the business, reduce recruitment costs and enable the company to get the most talented employees • attract investors and keep the company's share price high, thereby protecting the business from takeover. ➢ Knowing that the company, they deal with, has stated their morals and made a promise to work in an ethical and responsible manner allows investors' peace of mind that their money is being used in a way that arranges with their own

	moral standing. ➢ When working for a company with strong business ethics, employees are comfortable in the knowledge that they are not by their own action allowing unethical practices to continue. ➢ Customers are at ease buying products or services from a company they know to source their materials and labor in an ethical and responsible way. ➢ A company which sets out to work within its own ethical guidelines is also less at risk of being fined for poor behavior, and less likely to find themselves in breach of one of a large number of laws concerning required behavior. ➢ Reputation is one of a company's most important assets, and one of the most difficult to rebuild should it be lost. ➢ Maintaining the promises it has made is crucial to maintaining that reputation. ➢ Businesses not following any kind of ethical code or carrying out their social responsibility leads to wider consequences. ➢ Unethical behavior may damage a firm's reputation and make it less appealing to stakeholders. ➢ This means that profits could fall as a result. ➢ The natural world can be affected by a lack of business ethics. ➢ For example, a business which does not show care for where it disposes its waste products, or fails to take a long-term view when buying up land for development, is damaging the world in which every human being lives, and damaging the future prospects of all companies.
ISSUES IN BUSINESS ETHICS	➢ The business is suffering and troubles by lack of proper directions and is struck on issues like logic, reasons etc., ➢ The issues like fairness, justice and honesty are the main issues that are posing complex dilemma to the businesses. ➢ A wrong or biased decision can have a profound impact on the goodwill of the company as well as its market position.
GENERAL BUSINESS ETHICS	• Ethics of human resource management; • Ethics of sales and marketing; • Ethics of production; • Ethics of Intellectual property, knowledge and skills; Common unethical practices by executives of a corporate (i) Corruption - financial/non-financial (ii) Greed for profit/turnover (iii) Accommodating a group, may be employees, vendors, customers. (iv) Leak of knowledge (v) Leak of professionalism (vi) External pressure (vii) Ego and dominance of top management ignoring right things

IMPORTANCE OF ETHICS	• Public expects business to exhibit high levels of ethical performance and social responsibility; • Encouraging business firms and their employees to behave ethically is to prevent harm to society; • Promoting ethical behavior is to protect business from abuse by unethical employees or unethical competitors; • High ethical performance also protects the individuals who work in business
NEED FOR BUSINESS ETHICS ❖ **WORKBOOK** ❖ **Model Question**	The following points discuss the need and importance of business ethics- • to stop business malpractice; • to improve customers' confidence; • for the survival of business; • to safeguard consumers' rights; • to protect employees and shareholders; • to develop good relations; • to create good image; • for smooth functioning; • consumer movement; • consumer satisfaction; • importance of labor; • healthy competition
TO STOP BUSINESS MALPRACTICE	➢ Some unscrupulous businessmen do business malpractices by indulging in unfair trade practices like black-marketing, artificial high pricing, adulteration, cheating in weights and measures, selling of duplicate and harmful products, hoarding, false claims of representations about their products etc., ➢ These business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.
TO IMPROVE CUSTOMERS' CONFIDENCE	➢ Business ethics are needed to improve the customers' confidence about the quality, quantity, price etc., of the products. ➢ The customs have more trust and confidence in the businessmen who follow ethical rules. ➢ They feel that such businessmen will not cheat them.
FOR THE SURVIVAL OF THE	➢ Business ethics are mandatory for the survival of business. ➢ The businessmen who do not follow it will have short term success, but they

BUSINESS	will fail in the long run. ➢ This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman. ➢ He will also tell others not to buy from that businessman. ➢ So this will defame his image and provoke a negative publicity. ➢ This will result in failure of the business. ➢ Therefore, if the businessmen do not follow ethical rules, he will fail in the market. ➢ So, it is always better to follow appropriate code of conduct to survive in the market.
TO SAFEGUARD CONSUMERS' RIGHT	➢ Consumer sovereignty cannot be either ruled out or denied. Business can survive so long it enjoys the patronage of consumer. ➢ The consumer has many rights such as right to health and safety, right to be informed, right to choose, right to be heard, right to redress, etc., ➢ But many businessmen do not respect and protect these rights. Business ethics must safeguard these rights of the consumers.
TO PROTECT EMPLOYEES AND SHAREHOLDERS	➢ Business ethics are required to protect the interest of employees, shareholders, competitors, dealers, suppliers etc., ➢ It protects them from exploitation through unfair trade practices.
TO DEVELOP GOOD RELATIONS	➢ Business ethics are important to develop good and friendly relations between business and society. ➢ This will result in a regular supply of good quality goods and services at low prices to the society. ➢ It will also result in profits for the businesses thereby resulting in growth of economy
FOR SMOOTH FUNCTIONING	➢ If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will all be happy. ➢ So they will give full cooperation to the business. ➢ This will result in smooth functioning of the business. ➢ So, the business will grow, expand and diversify easily and quickly. ➢ It will have more sales and more profits.
CONSUMER MOVEMENT ❖ **JUNE 2018 5 MARKS**	➢ Business ethics are gaining importance because of the growth of the consumer movement. ➢ Gone are the days when the consumer can be taken for ride by the unscrupulous business by their false propaganda and false claims, unfair trade practices. ➢ Today, the consumers are aware of their rights and well informed as well as well organized. ➢ Now they are more organized and hence cannot be cheated easily. ➢ They take actions against those businessmen who indulge in bad business practices. ➢ They boycott poor quality, harmful, high priced and counterfeit goods. ➢ Therefore, the only way to survive in business is to be honest and fair. ➢ Consumer forum and consumer associations are more active and vocal now.
CONSUMER SATISFACTION	➢ Today the consumer is the king of the market. Any business simply cannot survive without the consumers. ➢ Therefore, the main aim or objective of business is consumer satisfaction.

	➢ If the consumer is not satisfied, then there will be no sales and thus no profits too. ➢ Consumers will be satisfied only if the business follows all the business ethics and hence are highly needed.
IMPORTANCE OF LABOR	➢ Labor, i.e., employees or workers play a very crucial role in the success of a business. ➢ Therefore, business must use business ethics while dealing with the employees. ➢ The business must give them proper wages and salaries and provide them with better working conditions. ➢ There must be good relations between employer and employees. ➢ The employees must also be given proper welfare facilities.
HEALTHY COMPETITION	➢ The business must use business ethics while dealing with the competitors. ➢ They must have healthy competition with the competitors. ➢ Healthy competition brings about efficiency, breaks complacency and leads to optical utilization of scarce resources, hence is always welcome. ➢ They must not do cutthroat competition. ➢ Similarly, they must give equal opportunities to small scale business. They must avoid monopoly. ➢ This is because a monopoly is harmful to the consumers.
ADVANTAGES OF BUSINESS ETHICS ❖ **Model Question** ❖ **MTP** **J-19 SET 2** **D-19 SET 1**	The following are the advances for following the principles of business ethics- • It offers a company a competitive advantage; • Goodwill of the firm hikes depending on its responds towards its ethical issues; • Productivity through rigid, firm and sincere workers as well as other business chain members; • Through increasing morale and trust business can increase their market share; • Publicity due to well and ethical performance; • Acceptance of products of the company by the public; • Overall growth of the society; • Makes change management easy; • Value integration with quality, strategy and pende;
DISADVANTAGE OF BUSINESS ETHICS ❖ **Model Question**	• It negativates the object of the business concerns in maximizing the profits; • Diversity in achievements; • The company has to incur extra expenditure.

RECOGNITION OF ETHICAL ISSUES IN BUSINESS ❖ **WORKBOOK** ❖ **MTP** **J-17 SET 2** **D-18 SET 2**	➢ Learning to recognize ethical issues is the most important step in understanding business ethics. ➢ An **ethical issue** is an identifiable problem, situation, or opportunity that requires person to choose from among several actions that may be evaluated as right or wrong, ethical or unethical. ➢ In business, such a choice often involves weighing monetary profit against what a person considers appropriate conduct. ➢ The best way to judge the ethics of a decision is to look at a situation from a customer's or competitor's viewpoint. ➢ Many business issues may seem straightforward and easy to resolve, but in reality, a person often needs several years of experience in business to understand what is acceptable or ethical. ➢ Ethics are also related to the culture in which a business operates.
BUSINESS RELATIONSHIP	➢ The behavior of business persons toward customers, suppliers, and others in their workplace may also generate ethical concerns. ➢ Ethical behavior within a business involves keeping company secrets, meeting obligations and responsibilities, and avoiding undue pressure that may force others to act unethically.
IMPROVING ETHICAL BEHAVIOR IN BUSINESS ❖ **DEC-2018** 5 MARKS ❖ **WORKBOOK** ❖ **MTP** **J-17 SET 1** **D-18 SET 1**	➢ Understanding how people make ethical choices and what prompts a person to act unethically may reverse the current trend toward unethical behavior in business. ➢ Ethical decisions in an organization are influenced by three key factors: individual moral standards, the influence of managers and coworkers, and the opportunity to engage in misconduct. ➢ It is difficult for employees to determine what conduct is acceptable within a company if the firm does not have ethics policies and standards. ➢ And without such policies and standards, employees may base decisions on how their peers and superiors behave. ➢ Professional codes of ethics are formalized rules and standards that describe what a company expects of its employees. ➢ Codes of ethics, policies on ethics, and ethics training programs advance ethical behavior because they prescribe which activities are acceptable and which are not, and they limit the opportunity for misconduct by providing punishments for violations of the rules and standards. ➢ The enforcement of such codes and policies through rewards and punishments increases the acceptance of ethical standards by employees.
TYPES OF JUSTICE ❖ **WORKBOOK**	In the literature of ethics in general and business ethics in particular three types of Justice can be observed- (i) Distributive Justice (ii) Retributive Justice (iii) Compensatory Justice (a) Distributive Justice- Sharing society's benefits and burden fairly (b) Retributive Justice- Blaming or punishing persons fairly for doing wrong (c) Compensatory Justice- Restoring to a person what the person lost when he or

	she was wronged by someone
CIRCUMSTANCES LEADING TO ACTUAL HAPPENING OF THREATS FOR AN ACCOUNTING PROFESSIONALS WORKING AS CONSULTANTS OR AUDITORS ❖ **RTP D-18** ❖ **RTP J-18**	

Sl. No.	Types of threats	Accounting professional working as Consultants or Auditors
1.	Self interest threat	(i) A financial interest in a client. (ii) Undue dependence on fees from a client. (iii) Close business relationship with a client. (iv) Fear of losing a client. (v) Potential employment with a client. (vi) Contingent fees relating to an assurance engagement.
2.	Self review threat	(i) Discovery of a significant error of the work of the professional. (ii) Reporting on the operation of the designed financial systems. (iii) Being a Director or Officer of the client. (iv) Being employed by the client in a position to exert influence over the subject-matter of the engagement.
3.	Advocacy threat	(i) Promoting shares in a Listed Entity of a client. (ii) Acting as an advocate on behalf of client in litigation or disputes with third parties
4.	Familiarity threat	(i) Close relationship with a Director or Officer of the client (ii) Accepting gifts or preferential treatment from a client
5.	Intimidation threat	(i) Being threatened with litigation. (ii) Fear of losing work from client. (iii) Being threatened with replacement.

TWO BROAD CATEGORIES OF SAFEGUARDS CREATED BY BUSINESS ENTERPRISE TO ELIMINATE THREATS

➢ It is important to have safeguards created by the Finance and Accounting profession, to identify or deter unethical behavior. Such safeguards to eliminate or reduce threats may classified in two broad categories:

 Safeguards created by the Finance and Accounting profession, Legislation or Regulation.
 Safeguards in the work environment.

(A) Safeguards created by the Finance and Accounting profession, Legislation or Regulation:

 Educational, training and experience requirements for entry into the profession.
 Continuing professional development requirements.
 Corporate Governance Regulations.
 Professional standards.
 Professional or regulatory monitoring and disciplinary procedures.
 External review of reports by a legally empowered third party.

(B) Safeguards in the work environment:

 The employing organization‘s ethics and conduct programs.
 Employing competent staff.
 Strong internal controls.
 Appropriate disciplinary processes.
 Leadership or cultivating ethical behavior to encourage employees to act in ethical manner.
 Policies and procedures to implement and monitor the quality of employee

	performance. Timely communication of organisation's policies and procedures. Employee training and education on policies and procedures. Encourage employees to communicate ethical issues without fear of retribution, organisation's system of corporate overview.
ELEMENTS OF MORAL RESPONSIBILITY ❖ **WORKBOOK**	➢ The term moral responsibility is sometimes used to mean moral duty or obligation. ➢ For example, when we say "Mr. X had a moral responsibility not to lie." ➢ It means this is the moral obligation of Mr. X not to tell lie. However, people are not always morally responsible for their deed. ➢ For example, a person who injures someone by accident is excused from any blame if he unwillingly commits such a foul. ➢ However, a person is morally responsible for an injury when that person caused the injury and did so knowingly and freely. ➢ Hence a person is morally responsible for an injury if- (i) the person caused or helped cause it , or failed to prevent it when he could and should have, and (ii) the person did so knowing what he or she was doing and (iii) the person did so of his own free will. In the light of the above statement basic elements of moral responsibility can be the following- (i) Individual must cause or fail to prevent an avoidable injury or wrong, and (ii) Individual must know what he is doing and (iii) Individual must act of his own free will.
EVOLUTION OF ETHICS ❖ **RTP D-18** ❖ **RTP J-18**	➢ Social conduct has evolved along with the evolution of society. ➢ When our elders tell us _Do not cheat', they are referring to a social code of conduct. ➢ Social conduct has developed in society over hundreds of years. ➢ The codes of conduct have been passed down from generation to generation, and there is a pattern to the evolution of such codes. ➢ Acceptable behaviour is promoted and elevated as a social value, and unacceptable behaviour is rejected and condemned. ➢ The laws of country are based on the customs or moral codes of its society. ➢ Penalties are prescribed for bad actions, actions that contradict the established laws. ➢ The laws are a measure against those people who cross the limits of the code of social conduct, and ensure that good citizens are protected from the negative consequences of the law-breakers. ➢ The object of the social codes of conduct is to maintain, promote and elevate harmonious relationships.
CONFLICT RESOLUTION PROCESS	➢ A finance and accounting professional should determine the appropriate course of action and weigh the consequences of each possible course of action. ➢ If the matter remains unresolved, the professional should consult with other appropriate persons within the firm and if required, with persons responsible for governance of the organisation (e.g. Board of Directors). The following steps are suggested to resolve the issues**:**

	(a) Documentation: He should document the substance of the issue and details of any discussions held or decisions taken, concerning that issue**.** **(b) Legal Advice:** If a significant conflict cannot be resolved, a professional may obtain advice from the relevant professional body or legal advisors without breach of confidentiality. **(c) Withdrawal:** If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional should, where possible, refuse to remain associated with the matter creating the conflict, withdraw from the engagement team or specific assignment or resign from the employing organization**.**
HEALTHY COMPETITION AND PROTECTING CONSUMER INTEREST ARE A PART OF BUSINESS ETHICS ❖ **RTP D-18** ❖ **RTP J-18**	➢ Competition means rivalry in the marketplace, which is regulated by a set of policies and laws to achieve the goals of economic efficiency and consumer welfare, and to check on the concentration of economic power. ➢ All these goals have an interactive relationship and, when in harmony, deliver total welfare. ➢ Indeed, it is the consumers who are supposedly the biggest beneficiaries of competition. ➢ At the macro level, the design and implementation of a competition policy promotes the advancement and increased welfare of the poor. ➢ At the micro level, an effective competition regime or consumer law (covering competition distortions) can prevent consumer abuses, both at industry level as well as in a village or locality where one shopkeeper can cheat the whole community. ➢ An appropriate and dynamic competition policy and law are imperative to support the economic development, control the corruption, reduce wastage and arbitrariness, improve competitiveness and provide relief to the poor. ➢ An efficient implementation of Business ethics would promote both Healthy competition and protect consumer interests
CORPORATE GOVERNANCE AND CORPORATE FAIRNESS ARE INTER-RELATED. ❖ **RTP D-18** ❖ **RTP J-18**	➢ Corporate governance is about promoting corporate fairness, transparency and accountability‖. ➢ It is concerned with structures and processes for decision- making, accountability, control and behavior at the top level of organizations. ➢ It influences how the objectives of an organisation are set and achieved, how risk is monitored and assessed and how performance is optimized. ➢ The term governance relates to a process of decision making and implementing the decisions in the interest of all stakeholders. ➢ It basically relates to enhancement of corporate performance and ensures proper accountability for management in the interest of all stakeholders. ➢ It is a system through which an organisation is guided and directed **Benefits of goods Corporate Governance:** 1. Protection of investor interests and strong capital markets 2. Good governance is rewarded with a higher market valuation. 3. Ensure commitment of the board in managing the company in a transparent manner ➢ Thus corporate Governance can also be defined as the formal system of accountability and control for ethical and socially responsible organizational decisions and use of resources.

	➢ Corporate governance arrangements are key determinants of an or ganization's relationship with the world
FAIRNESS AND HONESTY ARE THE PILLARS OF SUCCESS IN BUSINESS. ❖ **RTP D-18** ❖ **RTP J-18**	➢ The success of the business depends very much on fairness and honesty in the business. ➢ Fairness and honesty are at the heart of the business ethics and relate to the general values of decision makers. ➢ At a minimum, business professionals and persons are expected to follow all applicable laws and regulation. ➢ Even then, they are expected not to harm customers, employees, clients or competitors knowingly through deception, misrepresentation, coercion or discrimination. ➢ One aspect of fairness and honesty is related to disclosure of potential harm caused by product use. ➢ Another aspect of fairness relates to competition. ➢ Although numerous laws have been passed to foster competition and make monopolistic practices illegal, companies sometimes gain control over markets by using questionable practices that harm competition. ➢ Rivals of Microsoft, for example, accused the software giants of using unfair and monopolistic practices to maintain market dominance with its Internet explorer browser. ➢ These aforesaid examples show that fairness and honesty pay in the long run; they secure the stability of the business and overall reputation in the business world. ➢ Therefore we may say that fairness and honesty are the pillars of success in the business.
Consequences of Unethical Behaviour ❖ **MTP** **D-17 SET 1** **J-18 SET 2**	Unethical behavior has adverse effects on business. Moreover, working for an unethical, deceptive, unfair or dishonest organization requires one to take unethical or compromised decisions which also take a toll on physical, mental and emotional health of individuals. Unethical behavior has a few consequences, as follows: Firstly, if a company is unethical, the word spreads fast, and the reputation and goodwill of the company is at stake. Such impact can be of a permanent nature destroying the company's reputation possibly forever. Secondly, unethical behaviour can also have a detrimental impact on the productivity of a company due to mistrust and lack of faith among the employees. Thirdly, unethical behavior can, not only cause a company to lose good and valuable employees, but also it can be quite difficult to find new employees. Moreover, indulgence in unethical behavior shall not only be instrumental in expediting the cost of training of new employees in terms of money, but also loss of valuable time which could be spent in production. Such disruptions or slowing down of production will result in greater customer dissatisfaction and fewer new customers. It is proved that good ethics carries many benefits, and its violations – penalties, and therefore refraining from unethical behavior should be the sine-qua-non consideration for an organization.

CONCLUSION	➢ Business ethics is important to practice good ethical behavior. ➢ One of the most formidable challenges is avoiding immoral management, and transitioning from an amoral to a moral management mode of leadership, behavior, decision making, policies and practices. ➢ Moral management requires ethical leadership. It entails more than just 'not doing wrong'. ➢ Moral management requires that managers search out of those vulnerable situations in which amorality may reign if carful, thoughtful reflection is not given by management. ➢ Moral management requires that managers understand, and be sensitive to, all the stakeholders of the organization and their stakes. ➢ If the moral management model is to be achieved, managers need to integrate ethical wisdom with their managerial wisdom and take steps to create and sustain an ethical climate in their organizations.
"ETHICS IS THE FIRST LINE OF DEFENCE AGAINST CORRUPTION, WHILE LAW ENFORCEMENT IS REMEDIAL AND REACTIVE. HOWEVER, BOTH FAIL TO ACHIEVE THE DESIRED AIM IN THE INDIANSET-UP." **JUNE 19 10 MARKS**	➢ It is, absolutely correct to say that ethics is the first line of defense against corruption. What prevents corruption in the first place is ethics. The enforcement of law is a reaction to the occurrence of the corruption. ➢ While the law can only lay down the do's and don'ts and the consequences of doing or not doing something. ➢ The compliance to law in letter and spirit can be achieved only through ethical practices being followed. ➢ An act may be perfectly legal but totally unethical. Therefore, the statement law enforcement is remedial and reactive is also true. ➢ However, ethics is not absolute and is open to the influence of time, place and situation. ➢ Certain unethical practice on account of the fact that is widely prevalent is apparently justified. ➢ The following are some of the factors that have contributed to the prevalence of corruption in India: (i) Cultural ethos: Putting a premium on materialism, profiteering, power play and casual attitude for ethical values …. Myopic concern overriding long-term considerations and values. (ii) Institutional failures: Procedural formalities in-built obstacles, bureaucratic red-tapism etc. (iii) Poor enforcement of law: delay in justice. (iv) Erosion of values in politicians, entrepreneurs political lobbying etc.

STUDY MATERIAL QUESTIONS

Fill in the blanks

1. The term ethics is derived from latin word _____.
2. Ethics of a three types viz., _____, _____ and _____.

3. The ethical operation of a company is directly related to _____ in both short and long term.
4. Meta ethics deal with the nature of _____.
5. Continuous improvement or _____ is a popular theme.

Model Questions

1. What is the role of management accounting in ethics?
2. What are the standards of ethical conduct for practitioners fixed by the ICAI?
3. Describe the seven principles of public life.
4. What are the needs for business ethics?
5. What are the advantages and disadvantages of the principles of business ethics.
6. Define 'Business ethics'.
7. What are the areas in business ethics and write note of the same.
8. A competent professional accountant in business is an invaluable asset to the company – Discuss.

Answers:

Fill in the blanks

1. Ethos;
2. Meta ethics, normative ethics and applied ethics.
3. Profitability;
4. Moral judgment;
5. Kaizen.