

Mock Test Paper - Series II: April, 2026

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FOUNDATION COURSE

PAPER 2: BUSINESS LAWS

ANSWERS

1. (a) (i) According to Section 69 of the Indian Contract Act, 1872, a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.
- In the instant case, Mr. M paid the electricity bill to avoid the disconnection that was pending due to Mr. L's failure to fulfil his contractual obligation. Hence, Mr. M is entitled to be reimbursed ₹ 50,000 from Mr. L.
- (ii) In terms of Section 5 of the Indian Contract Act, 1872, a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer.
- Accordingly, an offer may be revoked by the offeror before its acceptance, even though he had originally agreed to hold it open for a definite period of time. So long as it is a mere offer, it can be withdrawn whenever the offeror desires.
- In the instant case, B cannot claim damages from A because the offer made by A is a mere offer and it can be withdrawn whenever A desires.
- (iii) The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872).
- However, in the following case, the agreement though made without consideration, will be valid and enforceable.
- Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.
- In the instant case, Mr. A can claim 1.5 lakh from Mr. S.

- (b) (i) According to Section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

In the instant case, XYZ Ltd. has made a significant accounting transaction (down payment of ₹ 1 crore for plant and machinery), it does not meet the criteria of a dormant company under Section 455 of the Companies Act, 2013.

Therefore, XYZ Ltd. cannot acquire the status of dormant company.

- (ii) **Foreign Company [Section 2(42) of the Companies Act, 2013]:** It means any company or body corporate incorporated outside India which—

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

As Mike LLC is incorporated in Singapore and having a place of business in Pune, India, it is a foreign Company.

- (c) **Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 40 - 44)

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b) by the business of the firm becoming unlawful (i.e., compulsory dissolution);

- (c) subject to agreement between the parties, on the happening of certain contingencies, such as: (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.
- (d) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- (e) by intervention of court in case of: (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) willful or persistent breach of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) business being carried on at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

2. (a) Ascertainment of price (Section 9 of the Sale of Goods Act, 1930):

By virtue of Section 9, the price in a contract of sale may be-

- (1) fixed by the contract, or
- (2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or
- (3) determined by the course of dealing between the parties.

Agreement to sell at valuation (Section 10):

Section 10 provides for the determination of price by a third party.

- 1. Where there is an agreement to sell goods on the terms that price is to be fixed by the valuation of a third party and that third party either does not or cannot make such valuation, the agreement is thereby avoided.

However, a buyer who has received and appropriated the goods, must pay a reasonable price for them.
- 2. In case the third party is prevented from making the valuation by the default of either party, the party not at fault may maintain a suit for damages against the party in fault.

- (i) In the instant case, Priya handed over the keys of her two-wheeler to Sony and it was decided between them that price of the vehicle will be fixed by Priya's father. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. As the keys have already been handed over to Sony, Priya cannot take back the keys from Sony and Sony shall pay reasonable price to Priya for the two-wheeler.
- (ii) If Priya had not handed over the vehicle to Sony, the contract could have been avoided as Priya's father refused to fix the price of the vehicle.

(b) (i) "Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions."

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- (1) **To determine the character of the company i.e. to find out whether co-enemy or friend:** It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
- (2) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.
 - (i) Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity.
 - (ii) Where the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company.
- (3) **To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the

Supreme Court upheld the piercing of the veil to look at the real transaction (*The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another*).

- (4) **Formation of subsidiaries to act as agents:** A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.
- (5) **Company formed for fraud/improper conduct or to defeat law:** Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.
- (ii) **Effect of Memorandum and Articles:** As per Section 10 of the Companies Act, 2013, where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles.

All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

- (c) **Body corporate:** Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

Section 3 of LLP Act, 2008, provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

Mutual Agency: No partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

Foreign LLPs: Section 2(1)(m) defines foreign limited liability partnership “as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India”. Foreign LLP can become a partner in an Indian LLP.

Artificial Legal Person: A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

3. (a) (i) **Partner by holding out (Section 28 of the Indian Partnership Act, 1932):** Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

In the instant case, since Gopal allowed himself to be represented as a partner to the RS & Co. and third parties acted based on this belief and therefore, Gopal is held liable to Sundar as he represented himself by his act to be a partner to the RS & Co.

However, Gopal is not liable to Madhav for the liabilities incurred by the firm. Information of Gopal being a partner to the firm was shared by the Sundar (Supplier to the firm) which is not falling within the ambit of doctrine of holding out.

Hence Gopal is liable to Sundar and not to Madhav for the liability of the Firm.

- (ii) **Rights and liabilities of new partner:** The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. Novation is the technical term in a contract for substituted liability, of course, not confined only to case of partnership.

But a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In the instant case, Amar will not be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm.

(iii) According to section 37 of the Indian Partnership Act, 1932,

- Where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners,
- carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary,
- the outgoing partner or his estate is entitled at the option of himself or his representatives
- to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or
- to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the instant case, Suman is entitled to claim either interest on her share in the property i.e. ₹ 1,20,000 (6% of ₹ 20 Lakh) or a share of the profits i.e. ₹ 1 Lakh (10% of ₹ 10 Lakh) from the firm for the use of her share in the property.

Therefore, claim of Suman of ₹ 3 Lakh is not valid.

(b) According to Section 2(45) of the Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up share capital is held by-

- (i) the Central Government, or
- (ii) by any State Government or Governments, or

- (iii) partly by the Central Government and partly by one or more State Governments,

and the section includes a company which is a subsidiary company of such a Government company.

As per Section 2(87) of the Companies Act, 2013, “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.

Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited.

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.

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

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

- (1) To either treat the contract as rescinded and sue the other party for damages for breach of contract immediately without waiting until the due date of performance; or
- (2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep

the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

4. (a) (i) **When termination of agent's authority takes effect as to agent, and as to third persons [Section 208 of the Indian Contract Act, 1872]:** The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

In the instant case,

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

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

- (ii) According to section 17 of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case,
 - (A) This contract is valid since as per section 17, mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.
 - (B) This contract is not valid since as per section 17, it becomes Sahil's duty to tell Rohan about the unsoundness of the horse because a

fiduciary relationship exists between Sahil and his son Rohan. Here, Sahil's silence is equivalent to speech and hence amounts to fraud.

- (C) This contract is not valid since as per section 17, Sahil's silence is equivalent to speech and hence amounts to fraud.

- (b) **Inchoate Instrument:** It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. Such an instrument is called an inchoate instrument and this gives the power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it. The principle of this rule of an inchoate instrument is based on the principle of estoppel.

Ambiguous Instrument: According to Section 17 of the Negotiable Instruments Act, 1881, where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as a promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly.

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

The Process of Making a Law

- When a law is proposed in parliament it is called a Bill.
- After discussion and debate, the law is passed in Lok Sabha.
- Thereafter, it has to be passed in Rajya Sabha.
- It then has to obtain the assent of the President of India.
- Finally, the law will be notified by the Government in the publication called the Official Gazette of India.

- The law will become applicable from the date mentioned in the notification as the effective date.
- Once it is notified and effective, it is called an Act of Parliament.

5. (a) According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. In case the goods do not correspond to a sample or description, the buyer has the right to repudiate the contract.

Further under Sale of Goods Act, 1930, when the buyer makes known to the seller, the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.

In the given case, Mr. Vivek informed Mr. Manoj that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. Manoj was unfit for the purpose for which Mr. Vivek wanted the machine.

Based on the above provision and facts of case, there is breach of implied condition as to sample as well as description, therefore Mr. Vivek can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. Manoj to replace the washing machine with desired one.

- (b) (i) **Partnership Vs. Co-Ownership or joint ownership** i.e. the relation which subsists between persons who own property jointly or in common.

Basis of difference	Partnership	Co-ownership
1. Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
2. Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
3. Nature of interest	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.

4. Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.
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(ii) Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

According to section 16, subject to contract between the partners:

- (a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
- (b) If a partner carries on any business of the same nature and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

(c) Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is 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 essential elements of the contract of the bailment are:

- (i) *Contract:* Bailment is based upon a contract. The contract may be express or implied. No consideration is necessary to create a valid contract of bailment.
- (ii) *Delivery of goods:* It involves the delivery of goods from one person to another for some purposes. Bailment is only for moveable goods and never for immovable goods or money.
- (iii) *Purpose:* The goods are delivered for some purpose. The purpose may be express or implied.
- (iv) *Possession:* In bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee. The change of possession does not lead to change of ownership. In bailment, bailor continues to be the owner of goods.

- (v) *Return of goods:* Bailee is obliged to return the goods physically to the bailor. The goods should be returned in the same form as given or may be altered as per bailor's direction.

- 6. (a) (i) According to Section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Further, delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

In the instant case, 'Sahdev' received a promissory note from 'Nakul' and indorsed the promissory note in favour of 'Arjun' and delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note.

An order negotiable instrument can be transferred by endorsement and delivery. As delivery to Arjun's agent is sufficient delivery of promissory note to Arjun. Therefore, 'Arjun' is eligible to claim the payment of promissory note.

- (ii) According to Section 61 of the Negotiable Instruments Act, 1881, a bill of exchange must be presented to the drawee thereof for acceptance by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. Further, section 63 provides that the holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

In the instant case, Saksham drawn a bill of exchange on Utkarsh and on request of Utkarsh, he allowed 48 hours to accept the bill. The bill was sent at 3:00 pm on 14th August. Bill was not accepted till 3:00 pm of 16th August. Saksham treated the bill as dishonoured for non-acceptance.

Here, As 15th August is a public holiday, his 48 hours would end on 17th August not on 16th August. Hence, bill could not be treated as dishonoured on 16th August.

(b) (i) Distinction between a Contract of Indemnity and a Contract of Guarantee

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of party/ parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee]	There are three parties - creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt.
Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor
Competency to contract	All parties must be competent to contract.	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

(ii) Whether the threat to commit suicide is coercion?

Suicide though forbidden by Indian Penal Code is not punishable, as a dead man cannot be punished. But Section 15 of the Indian Contract Act, 1872 declares that committing or threatening to commit any act forbidden by Indian Penal Code is coercion. Hence, a threat to commit suicide will be regarded as coercion.

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

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

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

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

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

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

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the

whole of the goods so delivered, he shall pay for them at the contract rate.
[Sub-section (2)]

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

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