Downloaded From www.castudynotes.com

PAPER – 2: BUSINESS LAWS

PART I: AMENDMENTS FOR JANUARY 2027 EXAMINATIONS

CHAPTER 6: THE COMPANIES ACT, 2013

I. Notification G.S.R. 880(E) dated 1st December, 2025

The Central Government has amended the Companies (Specification of definition details) Rules, 2014, through the Companies (Specification of definition details) Amendment Rules, 2025.

Amendment:

In the Companies (Specification of definition details) Rules, 2014, in rule 2, in sub-rule (1), for clause (t), the following clause shall be substituted, namely:-

"(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees ten crores and rupees one hundred crores respectively."

New Law

Page 6.14 of the Study material

Small Company: Small company is given under the Section 2(85) of the Companies Act, 2013 which means a company, other than a public company—

(i) **paid-up share capital** of which **does not exceed rupees ten crores** 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 rupees one hundred crores** or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

Exceptions: This clause 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.

Small Company –significant points

- A private company
- Paid up capital – not more than ` 10 crores

and

Turnover – not more than ₹ 100 crores.

- Should not be – Section 8 company
  – Holding or a Subsidiary company

PART II: QUESTIONS AND ANSWERS



QUESTIONS

Indian Regulatory Framework

1. Write a short note on the following:
   (i) Ministry of Corporate Affairs
   (ii) Ministry of Home Affairs

The Indian Contract Act, 1872

2. Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M, their neighbour, out of pity, started supplying food and other necessaries to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother with some financial assistance for her emergency medical treatment. After supplying

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

necessaries to Mr. Y for four years, Mr. M approached the former asking him to payback ₹ 15 Lakhs inclusive of ₹ 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parents' jewellery to sell to a maximum value of ₹ 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y with a legal suit to be brought against for recovering the money.

Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:

(i) Will Mr. M succeed in filing the suit to recover money?

(ii) What is the maximum amount of money that can be recovered by Mr. M?

(iii) Shall the provisions of the above Act also apply to the medical treatment given to the grandmother?

3. Rakesh intending to sell his used car, approached his friend to suggest the name of a reliable used car broker who can help to sell his car. His friend recommended the name of Vikash, a renowned and reliable broker. Vikash inspected the vehicle and there on the spot Rakesh informed Vikash that he has decided to sell the car for ₹12 Lakhs. He also informed Vikash that anyone who will be interested must give a token advance amount of ₹ 5 Lakhs at the time of the deal and to pay the balance amount of ₹ 7 Lakhs at the time of delivery of the vehicle. Vikash brought a potential customer Ravi for inspection of the vehicle, who inspected the same along with a mechanic brought by him. He was satisfied with the condition of the car.

When Ravi informed Vikash about his interest, he came to know about the price of the car offered by Rakesh. Ravi told Vikash that he was prepared to purchase the car only for a total consideration of ₹ 10 Lakhs and immediately transferred an amount of ₹ 5 lakhs to Vikash's Bank Account through NEFT as advance, which was immediately transferred by Vikash to Rakesh. After a week when the parties met to conclude the sale, Ravi issued another cheque for only ₹ 5 lakhs as the final payment, which Rakesh rejected. Vikash tried to convince Rakesh that the

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

condition of the car is such that it would not fetch more than ₹ 10 Lakhs. But Rakesh did not agree with Vikash.

Analysing the applicable provisions of the Indian Contract Act, 1872, answer the following questions as per the information given above:

(i) Whether there is a legally valid and enforceable contract in this case.

(ii) Briefly discuss the remedies available to Rakesh in this situation.

(iii) What if Vikash (the broker) never actually (though unintentionally) told Ravi about the price of ₹ 12 Lakhs, however received ₹ 5 Lakhs anyway?

4. (i) Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872.

(ii) Mr. S promises Mr. M to paint a family picture for ₹ 20,000 and assures to complete his assignment by 15th March, 2026. Unfortunately, Mr. S died in a road accident on 1st March, 2026 and his assignment remains undone. Can Mr. M bind the legal representative of Mr. S for the promise made by Mr. S? Suppose Mr. S had promised to deliver some photographs to Mr. M on 15th March, 2026 against a payment of ₹ 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

Decide as per the provisions of the Indian Contract Act, 1872.

5. In light of provisions of the Indian Contract Act, 1872 answer the following:

(i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R did not pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

(ii) Mr. Y has given loan to Mr. G of ₹ 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable as per the Indian Contract Act, 1872?

(iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract?

6. Mr. Bhusan is a businessman dealing in retail sale of jewellery made of gold and precious stones. He had approached RCK Bank Ltd. for a loan of ₹ 70 Lakhs for the purpose of expansion of his business. For availing the loan, Mr. Bhusan mortgaged gold bar worth ₹ 5 Lakhs and has arranged personal guarantee from Suresh, Suyash, Sumati and Suman, who have agreed to provide guarantee for ₹ 30 Lakhs, ₹ 20 Lakhs, ₹ 10 Lakhs and ₹ 10 Lakhs respectively in event of repayment failure on part of Mr. Bhusan. Mr. Bhusan invested the loan amount in the business and increased stock of jewellery and set up an additional jewellery showroom in the nearby area.

The gold bars which were mortgaged to the bank by physical transfer were lost due to a burglary committed in connivance with a bank's staff who could not be traced till today. Earlier Mr. Bhusan had also sold a Ganesha Idol made of gold during Diwali to the Bank (on the request of the Bank) to be kept at the Bank's main counter which was worth ₹ 5 Lakhs for which payment has not been made by the Bank so far. Meanwhile, due to a business downturn, Mr. Bhusan could not repay the loan and the Bank had to approach the guarantors for repayment of the unpaid amount. The Bank has asked the guarantors to contribute the deficit amount equally. Analysing the relevant provisions of the Indian Contract Act, 1872, decide:

(i) Whether the Bank's contention as to equal contribution by the persons who have provided guarantee is valid and if not, what amount should be paid by each of the guarantors.

(ii) What would be your answer regarding liability of each guarantor towards contribution in case the Bank makes changes in terms and

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

conditions of the loan with Mr. Bhusan without consent and knowledge of any of the guarantors?

7. (i) Mr. Chetan was travelling to Manali with his wife by bus of Himalayan Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus mid-way in cold night. The driver advised the passengers to get to the shelter in the nearest hotel which was at a distance of only one kilometer from that place. The wife of Mr. Chetan caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Chetan would get compensation for which he filed the suit under the Indian Contract Act, 1872?

(ii) Sahil sells Rohan a horse which Sahil knows to be unsound by auction. The horse appears to be sound, but Sahil knows about the unsoundness of the horse. Is this contract valid in the following circumstances under the Indian Contract Act, 1872:

(A) If Sahil says nothing about the unsoundness of the horse to Rohan.

(B) If Sahil says nothing about it to Rohan who is Sahil's son.

(C) If Rohan says to Sahil "If you do not deny it, I shall assume that the horse is sound." Sahil says nothing.

8. Who is considered as an agent under the Indian Contract Act, 1872, and what are the duties and obligations associated with this role?

The Sale of Goods Act, 1930

9. Explain any six circumstances in detail in which a non-owner can convey better title to the bona fide purchaser of goods for value under the Sale of Goods Act, 1930.

10. Explain the various modes in which a contract of sale may be made under Section 5 of the Sale of Goods Act, 1930.

11. (i) Ashok, a trader, delivered a camera to Mangesh on 'sale or return' basis. Mangesh delivers the camera to Rahul on the terms of 'sale for cash only or return'. Afterward, Rahul delivered it to Vishal on a 'sale

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

or return' basis without paying cash to Mangesh. The camera, which was in possession of Vishal was lost by theft though he exercised due care for its safety. Referring to the provisions of the Sale of Goods Act, 1930, analyse the situation and advise, whether Mangesh, Rahul or Vishal are, jointly or severally, liable to pay the price of the camera to Ashok.

(ii) Ansari of Jaipur sold 100 smart TV set @ ₹ 50,000/- per set to Baburam of Delhi. He delivered the TV sets to Chetan, a transport carrier for transmission to Baburam. Baburam further sold these 100 TV sets to Shayamlal @ ₹ 60,000/- per set. On reaching the goods at the destination, Baburam demanded the delivery but Chetan, wrongfully, refused to deliver the goods to Baburam. That is why; he failed to deliver TV sets to Shayamlal and suffered a huge loss on account of non-delivery. Ansari came to know about this. He directed Chetan to stop the delivery to Baburam and re- deliver the goods to him at Jaipur.

Answer the following questions under the provisions of the Sale of Goods Act, 1930:

(A) Whether Ansari has right to stop the goods in transit?

(B) Whether Baburam can claim loss suffered due to non-delivery from Ansari?

12. PTC Hotels in Bombay decided to sell their furniture by auction sale. For this purpose, they appointed RN & Associates as auctioneer. They invited top ten renowned Architects in Bombay for bidding. A right to bid was not notified by them. Furniture was put up in lots for sale. It was decided that for every lot of furniture there will be a reserve price. On 25th Feb 2024, Auction sale was started at 10 a.m. in the lawn of PTC Hotels Bombay. For a special lot of furniture three parties came for bidding Mr. Neel, Mr. Raj and Mr. Dev on behalf of their respective companies. Bidding was as follows:

Mr. Neel	₹ 5.70 lakh
Mr. Raj	₹ 4.85 lakh
Mr. Dev	₹ 6.10 lakh

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

The sale was completed in favour of Mr. Neel by RN & Associates by fall of hammer. Mr. Dev's Bid was rejected on ground that Right to bid was reserved and company of Mr. Dev was not invited to bid.

For another bid of Italian Furniture was made by two parties as follows:

Mr. Dheer	₹ 15 lakh
Mr. Madhu (on behalf of R N & Associates)	₹ 15.20 lakh

Sale was completed in favour of Mr. Dheer instead of Mr. Madhu.

Mr. Dev and Mr. Madhu argued that auction sale was not lawful. Give your opinion with reference to provisions of the Sale of Goods Act, 1930 whether Auction Sale will be considered lawful or not?

13. Ram Bilas Yadav is a farmer. Anna Chips Company approached him and entered in a contract to supply 100 quintals of potatoes which to be grown in the fields belonging to Ram Bilas Yadav @ ₹ 1000/- per quintal. Anna Chips Company made the payment of price but delivery to be made after six months. Before the time of delivery, the whole crop of potatoes was destroyed due to flood. Anna Chips Company demanded the payment of price which it already made by it. Ram Bilas Yadav denied returning the price by saying that contract of sale was already entered and hence crop belongs to Anna Chips Company. Hence loss of crop must be borne by it. Referring the provisions of the Sale of Goods Act 1930, whether Anna Chips Company recover amount from Ram Bilas Yadav?

14. Priyansh ordered 600 tins of apple juice from an American Company M/s Amjuice Plc. The company informed that tins would be packed in boxes each containing 50 tins. On delivery, it was found that a substantial part was in boxes containing only 30 tins. Priyansh rejected the whole order as the tins were not packed according to the description given in the contract as the packing of tins was an essential part of the contract. M/s Amjuice Plc. sued Priyansh for the recovery of price. State with reason whether Priyansh can avoid the contract under the Sale of Goods Act, 1930?

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

The Indian Partnership Act, 1932

15. (i) Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932.

(ii) State the legal position of a minor partner under the Indian Partnership Act, 1932 after attaining majority:

(A) When he opts to become a partner of the same firm.

(B) When he decides not to become a partner.

16. Suman, having 10% share in the property of ₹ 200 lakh of a firm retires from the firm on 31st March, 2024. The firm continues with the business thereafter without final settlement of accounts between the existing and retired partners and earned profits of ₹ 10 lakh during the financial year ending 31st March, 2025. Suman, in her own interest and in the absence of any provision in the partnership firm on this point, claimed ₹ 3 lakh from the firm toward the use of her share in the property and profit of the firm which was rejected by the partners. There is no contract between the partners contrary to the provisions of the Act in this regard. Examine the validity of the amount claimed by Suman under the provisions of the Indian Partnership Act, 1932.

17. P, Q and R formed a partnership agreement to operate motor buses along specific routes for a duration of 12 years. After operating the business for four years, it was observed that the business incurred losses each year. Despite this, P is determined to continue the business for the remaining Period. Examine with reference to the Indian Partnership Act, 1932, can P insist to continue the business? If so, what options are available to Q and R who are reluctant to continue operating the business?

18. State giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act, 1932.

(i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership?

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

(ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Can paper dealer i.e. third party make Y liable for paper supplied to X?

(iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B?

The Limited Liability Partnership Act, 2008

19. (i) Referring to the provisions of the Limited Liability Partnership Act, 2008 discuss the powers of the Central Government for issuing directions for taking corrective steps against an LLP being registered with a similar name of an existing LLP, company or a registered trademark of a proprietor under the Trade Marks Act, 1999 as is likely to be mistaken for it. Also discuss the power of the Central Government to suo-moto take steps towards redressal of the above issue on persisting non-compliance of such directions.

(ii) "Out of the designated partners atleast one should be a resident in India". Elaborate upon the provision relating to designated partners as laid down, further defining a resident partner as provided in the Limited Liability Partnership Act, 2008.

The Companies Act, 2013

20. (i) ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 Crores during the Financial Year 2023-24. After that the total Paid-up Equity Share Capital of ABC Limited is ₹ 100 Crores.

Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

(ii) MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January 2022. The company did not start its business till 31st July 2024. Identify under which category

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

MTK Private Limited company is classified. Explain the definition of the category of the company in detail.

21. (i) The Object clause of Memorandum of Association of ABC Pvt. Ltd. authorized the company to carry on the business of trading in property in Gurgaon. Since the company was not doing well, the Directors of the company in a recent board meeting planned to diversify the business and enter into Construction business. For this purpose, they borrowed a sum of ₹ 5 crores from Magnum Finance Ltd. But the members of the company did not approve the decision of the board hence, company refused to repay the loan. According to provisions of the Companies Act, 2013 what is the recourse available to Magnum Finance Ltd. for recovery of the loan?

(ii) SNM Ltd. was registered in 2021 with a share capital of ₹ 50 Lakh divided into 5 lakhs equity share of ₹ 10 each under Section 8 of the Companies Act, 2013 for promotion of art in Jaipur. Company earned huge profits during the financial year ending on 31st March 2025 due to boom in the market. On 10th May 2025, 75% members of the company demanded to distribute 10% dividend to the equity shareholders. For this purpose, they passed special resolution in EGM.

With reference to provisions of the Companies Act, 2013 decide whether SNM Ltd. can declare dividend @ 10% to equity shareholders for the year ending 31st March 2025.

22. Do you agree that a company is an artificial person? Elucidate. Also explain how the authorization by M/s Beeta Limited, a company incorporated under the Companies Act, 2013 can be made in case it does not have a common seal.

The Negotiable Instruments Act, 1881

23. (i) M owes money to N. Therefore, he makes a promissory note for the amount in favor of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how rights of the parties are to be adjusted.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

(ii) Rama executes a promissory note in the following form, 'I promise to pay a sum of ₹10,000 after three months'. Decide whether the promissory note is a valid promissory note.

24. Mr. Y issued a cheque for ₹ 10,000 to Mr. Z which was dishonoured by the Bank because Y did not have enough funds in his account and has no authority to overdraw. Examine as per the provisions of the Negotiable Instruments Act, 1881 whether-

(i) Mr. Y is liable for dishonour of cheque, if yes, what are the consequences for such an offence?

(ii) What would be your answer if Y issued a cheque as a donation to Mr. Z?

SUGGESTED ANSWERS/HINTS

1. (i) Ministry of Corporate Affairs: MCA is an Indian Government Ministry which primarily concerned with administration of the Companies Act, 2013, the Companies Act, 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016. It is responsible mainly for the regulation of Indian enterprises in the industrial and services sector.

The Ministry is mostly run by civil servants of the ICLS cadre. These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.

The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

(ii) Ministry of Home Affairs: It is a ministry of the Government of India. As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy. The Home Ministry is headed by Union Minister of Home Affairs.

2. (i) Claim for necessaries supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872): If a person, incapable of entering into a contract, or anyone whom he

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

is legally bound to support, is supplied by 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.

In the instant case, Mr. M supplied the food and other necessaries to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.

(ii) Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is ₹ 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to ₹ 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

(iii) Necessaries will include emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.

3. (i) Whether there is a legally valid and enforceable contract?

When a person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal when accepted, becomes a promise [Section 2(b) of the Indian Contract Act, 1872].

For a contract to be valid, acceptance must be absolute and unqualified. If the offeree accepts the offer but modifies, alters, or adds new conditions, it is not an acceptance, but a counter-offer (Section 7).

A counter-offer has the effect of rejecting and extinguishing the original offer *(Hyde Vs. Wrench)*.

Two or more persons are said to consent when they agree upon the same thing in the same sense (Section 13).

In the present case, Rakesh offered to sell the car for ₹ 12 lakhs. However, Ravi informed Vikash (the broker) that he was willing to

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

purchase the car only for ₹ 10 lakhs before remitting the advance amount. Ravi's response was not an acceptance of Rakesh's offer; rather, it was a counter-offer. Consequently, Rakesh's original offer to sell the car for ₹ 12 lakhs came to an end the moment Ravi proposed to buy it for ₹ 10 lakhs. Thus, a counter-offer results in rejection of the original offer.

The parties never agreed on the same price and there was no meeting of minds on the essential term of price as required under Section 13 of the Act.

Therefore, since there was no valid acceptance of any offer, no legally binding contract was formed. The transaction is void for want of agreement on essential terms.

(ii) **Remedies available to Rakesh:** Even though no valid contract is formed, Rakesh has the following remedies:

1. **Right to Refuse Delivery:** As no valid contract exists, Rakesh is not bound to deliver the car for ₹ 10 Lakhs.
2. **Refund of Advance Amount:** Since the contract was not valid, Rakesh should refund the advance amount of ₹ 5 Lakhs to Ravi.
3. **Remedy Against Vikash (Broker):** An agent is bound to conduct the business of his principal according to the direction given by the principal (Section 211). Also, 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 (Section 228).

   Here, Vikash has exceeded his authority, Rakesh may hold him liable for negligence or breach of duty.
4. **Right to Sell to Another Buyer:** As ownership never transferred to Ravi, Rakesh continues to remain the lawful owner and may sell the car to another buyer.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

5. **Sue for Specific Performance or Damages:** Since no contract existed, specific performance is not applicable. However, if Ravi's counter-offer had been accepted and he then breached it, Rakesh could have sued for damages under Section 73 of the Indian Contract Act, 1872.

(iii) If Vikash unintentionally failed to inform Ravi about the actual price fixed by Rakesh, then Ravi believed the car price was ₹ 10 Lakhs, whereas Rakesh intended to sell only for ₹ 12 Lakhs.

Being an agent/broker, Vikash had a duty to correctly communicate the principal's terms. Failure to do so, even unintentionally, constitutes misrepresentation under Section 18 of the Act. His negligence may make him liable to Rakesh, but Rakesh still cannot be compelled to sell the car for ₹ 10 Lakhs.

Ravi can rescind the contract on the ground of misrepresentation, since he was induced to pay ₹5 Lakhs without full knowledge of the asking price.

Ravi is entitled to recover the ₹5 Lakhs paid since the transaction was based on incomplete information. He is not bound by any contract he entered into without knowing the true selling price.

Vikash would be liable to both Rakesh (for breach of agency duty) and Ravi (for misrepresentation). Ravi can demand back the ₹5 Lakhs, and Rakesh can seek compensation from Vikash for any loss.

4. (i) According to section 16 of the Indian Contract Act, 1872, 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 he uses that position to obtain an unfair advantage over the other.

When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

Hence, the contract between Mr. A and Mr. B is voidable at the option of Mr. B as it was induced by undue influence by Mr. A and therefore Mr. B can sue Mr. A.

(ii) The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises to bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

In terms of the provisions of Section 40 stated above, in case where Mr. S has to paint a family picture for Mr. M, Mr. M cannot ask the legal representative of Mr. S to complete the painting work on Mr. S's death, since painting involves the use of personal skill.

In terms of the provisions of Section 37 stated above, in case where Mr. S had promised to deliver some photographs to Mr. M, the legal representatives of Mr. S shall be bound to deliver the photographs in this situation.

5. (i) As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods.

(ii) **Promise to pay time-barred debts - Section 25 (3):** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].

In the given case, the loan given by Mr. Y to Mr. G has become time barred. Thereafter, Mr. G agreed to make payment of full amount to Mr. Y.

Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties post time barred debt is valid so, Mr. G is bound to pay the agreed amount to Mr. Y provided the above mentioned conditions of section 25 (3) are fulfilled.

(iii) Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.

6. **(i)** **Co-sureties liable to contribute equally (Section 146 of the Indian Contract Act, 1872):**

Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

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

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

Surety's right to benefit of creditor's securities [Section 141]: A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship 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.

Right to set off: If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor.

In the instant case, the RCK Bank granted a loan of ₹ 70 Lakhs to Mr. Bhusan. The Bank also possessed following securities:

- Gold bars worth ₹ 5 Lakhs mortgaged by Mr. Bhusan, were lost due to negligence/connivance of bank staff discharges the sureties to the extent of ₹ 5 Lakhs.
- Ganesha Idol worth ₹ 5 Lakhs sold to the Bank, for which payment was not made, that amount is also adjustable against the liability.

Hence, effective unpaid liability = ₹ 70 Lakhs – ₹ 10 Lakhs = ₹ 60 Lakhs.

As per the rule relating to co-sureties bound in different sums, contribution shall first be equal as far as possible, but not beyond individual limits.

Therefore, equal contribution among four sureties towards ₹ 60 Lakhs would be ₹ 15 Lakhs each. However, Sumati and Suman can each be made liable only up to ₹ 10 Lakhs.

Hence, the liabilities are

Sumati = ₹ 10 Lakhs

Suman = ₹ 10 Lakhs

Remaining liability = ₹ 40 Lakhs

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

This remaining amount will be equally shared between Suresh and Suyash:

Suresh = ₹ 20 Lakhs

Suyash = ₹ 20 Lakhs

Accordingly, the Bank's contention that all guarantors should contribute equally is not fully valid because liability cannot exceed the amount guaranteed by each surety.

(ii) **By variance in terms of contract (Section 133):** Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

The discharge is absolute: The Guarantors cannot be held liable for any default occurring after the variation in terms.

A surety undertakes liability for a specific risk, if the terms of the contract are changed, the nature of the risk itself changes, and the surety cannot be held for a risk he did not agree to guarantee.

Therefore, if the Bank changes the terms and conditions of the loan with Mr. Bhusan without the consent and knowledge of the guarantors, all the guarantors shall be discharged from their liability in respect of transactions subsequent to such change.

7. **(i)** Section 73 of the Indian Contract Act, 1872 provides that 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. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In the instant case, Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

On the basis of above provisions and facts of the case, it can be said that Mr. Chetan can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.

(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.

8. The Indian Contract Act, 1872 does not define the word 'Agency'. However, section 182 of the Indian Contract Act, 1872 defines Agent and Principal as:

Agent means a person employed to do any act for another or to represent another in dealing with the third persons and

The principal means a person for whom such act is done or who is so represented.

Duties and obligations of an Agent

(i) **Duty to follow instructions or customs**: According to Section 211, an agent is bound to conduct the business of his principal according to the direction given by the principal, or, in

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

the absence of any such directions, according to the customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise and any loss is sustained by the Principal, he must indemnify him, and, if any profit accrues, he must account for it.

(ii) **Duty of reasonable care and skill:** According to section 212, an agent is bound to conduct the business of the principal 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 of damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

(iii) **Duty to render proper accounts [Section 213]:** An agent is bound to render proper accounts to his principal on demand. Rendering accounts does not mean showing the accounts but the accounts supported by vouchers. (*Anandprasad vs. Dwarkanath*)

(iv) **Agent's duty to communicate with principal [Section 214]:** 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.

(v) **Duty not to deal on his own account**: Agent should not deal on his own account without first obtaining the consent of the principal, otherwise the principal may—

(a) repudiate the transaction, (Section 215)

(b) claim from the agent any benefit which may have resulted to him from the transaction. (Section 216)

(vi) **Duty not to make secret profits**: It is the duty of an agent not to make any secret profit in the business of agency. His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

Secret Profit means any advantage obtained by the agent over and above his agreed remuneration and which he would not have been able to make but for his position as agent.

(vii) Duty not to delegate: According to section 190, an agent cannot lawfully employ to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub- agent, must be employed.

(viii) Agent's duty to pay sums received for principal [Section 218]: Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

(ix) Duty not to use any confidential information received in the course of agency against the principal.

9. In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value:

(1) Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

(a) If he was in possession of the goods or documents with the consent of the owner;

(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and

(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell.

Mercantile Agent means an agent having in the customary course of business as such agent has 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.

(2) Sale by one of the joint owners (Section 28): If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

transferred to any person who buys them from 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.

(3) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale **(Section 29).**

(4) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid **[Section 30(1)].**

(5) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them **[Section 30(2)].**

However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

(6) **Effect of Estoppel:** Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

(7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer **[Section 54 (3)].**

(8) **Sale under the provisions of other Acts:**

(i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.

(ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872].

(iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872].

10. According to Section 5(1) of the Sale of Goods Act, 1930, a contract of sale may be made in any of the following modes:

(i) Contract of sale is made by an offer to buy or sell goods for a price and acceptance of such offer.

(ii) There may be immediate delivery of the goods; or

(iii) There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date; or

(iv) There may be immediate delivery of the goods and an immediate payment of price; or

(v) It may be agreed that the delivery or payment or both are to be made in instalments; or

(vi) It may be agreed that the delivery or payment or both are to be made at some future date.

11. **(i)** As per the provisions of section 24 of the Sale of Goods Act, 1930, 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 when he does something to the good which is equivalent to

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question.

Since, Mangesh, who had taken delivery of the camera on Sale or Return basis and delivers the same to Rahul on sale for cash only or return, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Camera) passes to Mangesh.

Now, Rahul delivered it to Vishal on a sale or return without paying cash to Mangesh.

Since Rahul did not pay cash and had not exercised the option to purchase, ownership of the camera did not pass to Rahul. Therefore, Rahul is not liable to pay the price of the camera either.

Since Vishal did not accept the goods and the camera was lost by theft (despite his due care), Vishal is not liable for the price of the camera as ownership had not passed to him.

Therefore, Mangesh is solely liable to pay the price of the camera to Ashok, as he accepted the camera on a "sale or return" basis and did not return it within a reasonable time.

(ii) According to Section 51 of the Sale of Goods Act, 1930, when the carrier wrongfully refuses to deliver the goods to buyer, the right of stoppage in transit is lost and transit comes to an end.

On the other hand, according to section 57 of the Sale of Goods Act, 1930, where buyer suffers losses due to non-delivery, he can sue seller for damages on account of non-delivery.

In the instant case, the transit came to an end when Chetan wrongfully refused to deliver the goods to Baburam, and he suffered a huge loss due to non- delivery. Hence, Ansari cannot exercise the right of stoppage of goods in transit as the transit has already come to an end.

Baburam can claim loss suffered due to non-delivery from Ansari.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

12. An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. Section 64 of the Sale of Goods Act, 1930 regulates the legal requirements for the sale by auction.

In terms of the provisions of the above Section, following are some of the requirements, which inter alia are required to be complied with for conduct of a valid auction sale-

(i) **Where the goods are sold in lots:** Where the goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.

(ii) **Right to bid may be reserved:** 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.

(iii) **Where the sale is not notified by the seller:** 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.

(iv) **Reserved price:** The sale may be notified to be subject to a reserve or upset price;

In the first Auction sale, the rejection of Mr. Dev's bidding was not justified since the information as to the right to bid was not expressly given. Therefore, this auction sale was unlawful.

In auction sale of lot 2, since right to bid was not notified, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale. Therefore, auction made in favour of Mr. Dheer will be considered lawful.

13. As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but 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

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

agreement to sell. As per Section 4(4), 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.

Further Section 2(6) defines "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

In the instant case, it can be said that there was an agreement to sell between Ram Bilas Yadav and Anna Chips Company and not a sale because the goods under agreement were future goods. Even if the payment was made by Anna Chips Company, the property in goods can be transferred only after the goods are ascertained. As the goods were not ascertained, property is not passed to buyer.

Hence, Ram Bilas Yadav must return the price to Anna Chips Company.

14. By virtue of provisions of Section 15 of the Sale of Goods Act, 1930, where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods. Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition, entitling the buyer to reject the goods.

In the instant case, the sale of apple juice tins was based on sale by description, but actual delivery was not as per the description given by seller at the time of contract.

Hence, Priyansh is correct in rejection of the goods.

15. **(i)** **Mode of Settlement of partnership accounts:** As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

(i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

partners individually in the proportions in which they were entitled to share profits;

(ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:

(a) in paying the debts of the firm to third parties;

(b) in paying to each partner rateably what is due to him from capital;

(c) in paying to each partner rateably what is due to him on account of capital; and

(d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

(ii) (A) When he becomes partner: If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows:

(a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(B) When he elects not to become a partner:

(a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.

(b) His share shall not be liable for any acts of the firm done after the date of the notice.

(c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

16. 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.

17. Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also).

In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are reluctant to continue operating the business due to continuous losses.

Here, P can insist on continuing the business if the partnership agreement does not specifically provide such a right to one or more partner/ partners since Section 40 specifies that with the consent of all

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

the partners or in accordance with a contract between the partners the firm can be dissolved.

Options available to Q and R

Mutual Agreement to Dissolve the Partnership: Q and R can propose to P that the partnership be dissolved by mutual agreement. If P agrees, the partnership can be dissolved amicably.

Dissolution by the Court: If P does not agree to dissolve the partnership mutually, Q and R can approach the court for an order under Section 44.

18. As per Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

(i) Yes, it is a case of partnership.

Reason: The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential requirement. It is open to one or more partners to agree to share all the losses.

(ii) No, it is not a case of partnership

Reason: Sharing of profit, which is a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.

(iii) No, it is not a case of partnership

Reason: Persons who share amongst themselves the rent derived from a piece of land are not partners, rather they are co-owners. Because, neither there is existence of business, nor mutual agency is there.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

19. (i) Powers of Central Government for corrective steps against LLP with similar names [LLP Act, 2008]

Change of name of LLP (Section 17 of the LLP Act, 2008): Notwithstanding anything contained in Sections 15 and 16 of the LLP Act, 2008, if through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to —

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it, then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

Suo-motu Powers on Non-Compliance: If an LLP fails to comply with a direction given under sub-section (1), the Central Government shall have the power to allot a new name to such LLP and the Registrar shall enter the new name in the register of LLPs in place of the old name and issue a fresh certificate of incorporation with the new name, and the LLP shall carry on its business under the new name so allotted from the date of such certificate and the Registrar shall enter the new name in the Register of LLPs in place of the old name and issue a fresh certificate of incorporation. The old name shall be deemed to be altered to the new name assigned by the Central Government.

(ii) Designated Partner [Section 2(j)]: "Designated partner" means any partner designated as such pursuant to Section 7 of the LLP Act, 2008.

Every LLP shall have at least two designated partners who are individuals, and at least one of them shall be a resident of India.

A resident in India means a person who stayed in India for a period of not less than 120 days during the financial year.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

All partners of an LLP may be designated partners if they consent to act as such. Their details and changes must be intimated to the Registrar.

Further, if in an LLP, 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 LLP or nominees of such bodies corporate shall act as designated partners.

20. **(i)** As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

In the given case, ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ₹ 15 crore, which is less than requisite control of 20% of total share capital (i.e. ₹ 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013.

(ii) **"Inactive company"** means a company which has not been carrying on any business or operation or has not made any **significant accounting transaction** during the last two financial years or has not filed financial statements and annual returns during the last two financial years. [Explanation (i) to Section 455 of the Companies Act, 2013]

"Significant accounting transaction" means any transaction other than—

(a) payment of fees by a company to the Registrar;

(b) payments made by it to fulfil the requirements of this Act or any other law;

(c) allotment of shares to fulfil the requirements of this Act; and

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

(d) payments for maintenance of its office and records.

In the instant case, MTK Private Limited was registered on 5th January 2022 and did not start its business till 31st July 2024. Since the Company has not started its business and a period of more than two years has already elapsed, it will be treated as an inactive company.

21. (i) It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.

Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, ABC Pvt. Ltd. was authorised to trade in property only, so taking loan for construction business was ultra virus the power of the company.

Therefore, Magnum Finance Ltd. cannot enforce against ABC Pvt. Ltd. for recovery of the loan. But,

(a) It can recover the money to the extent it has been utilised in meeting lawful debt of the company, then it steps into shoes of the debtor paid off and consequently it would be entitled to recover the loan to that extent from the company.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

(b) if the money is not spent, it may stop ABC Pvt. Ltd. from spending by means of injunction and recover the unspent amount.

(ii) Formation of companies with charitable objects etc. (Section 8 company): Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company intends to apply its profit in promoting its objects and
- prohibiting the payment of any dividend to its members.

In the instant case, SNM Ltd. cannot declare dividend @10% to equity shareholders for the year ending 31st March, 2025 as it is a Section 8 company which are specifically prohibited from paying dividend. The profits of a section 8 company must be applied towards promoting its objects. Therefore, the special resolution passed in the EGM to declare a dividend is invalid.

22. Yes, I agree that a company is an Artificial Person: A Company incorporated under the provisions of the Companies Act, 2013 is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law.

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

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

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

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

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

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

Thus, a company is an artificial legal person.

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

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

23. (i) The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a Promissory Note (P/N) is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of N to have the other half of the P/N sent to him is not maintainable. M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

(ii) The promissory note is an unconditional promise in writing. In the above question, the amount is certain but the date and name of the payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.

Join Us on Telegram http://t.me/canotes_foundation

Downloaded From www.castudynotes.com

24. **Dishonour of Cheque for Insufficiency, Etc., of funds in the accounts [Section 138 of the Negotiable Instruments Act, 1881]:** Where any cheque drawn by a person on an account maintained by him with a banker-

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the—
    - o amount of money standing to the credit of that account is insufficient to honour the cheque, or
    - o 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, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

In the instant case,

(i) Since Y's cheque was dishonoured by the Bank due to insufficiency of funds in his account, he shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to ₹ 20,000, or with both.

(ii) A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section. Hence, if Y issued a cheque as a donation to Mr. Z, he shall not be liable under section 138 of the Act.

Join Us on Telegram http://t.me/canotes_foundation