

Mock Test Paper - Series I: April, 2026

Date of Paper: 16th April, 2026

Time of Paper: 2 P.M. to 5 P.M.

FOUNDATION COURSE

PAPER 2: BUSINESS LAWS

Question No. 1 is compulsory.

*Attempt any **four** questions from the remaining **five** questions.*

(Time allowed: 3 Hours)

(100 Marks)

1. (a) (i) Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2025, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly within a period of 10 days of the contract. Mr. Vikas also paid an amount of ₹ 70,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd July, 2025 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2025 for which Mr. Vikas did not agree. On 1st August, 2025, Mr. Gaurav claimed compensation of ₹ 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of ₹ 70,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Mr. Vikas contention. **(4 Marks)**
- (ii) R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips and the umbrella is badly damaged. Who bear the loss and why under the provisions of the Indian Contract Act, 1872? **(3 Marks)**
- (b) Prasad incorporated an OPC to run his new start-up in May, 2021. OPC borrowed ₹ 50 Lakhs to meet its long term fund requirements and ₹ 25 lakh to meet its working capital requirements on the basis of his project from a non-banking finance company (NBFC) in Oct, 2021. But due to some running hardships and new govt. policies OPC was failed to pay its debts to NBFC. Assets of the

company were insufficient to pay the outstanding debts. According to the provisions of the Companies Act, 2013, Decide whether Prasad would be liable to pay the outstanding debts of NBFC in the following circumstances: -

- (i) If the NBFC proceeded against the personal assets of Prasad only on the ground that he is the only shareholder and hence liable for its debts.
 - (ii) If the NBFC proves that the One Person Company was formed for fraud and cheating. **(7 Marks)**
- (c) Explain with reference to provisions of the Indian Partnership Act, 1932:
- (i) Whether a partner can be introduced without consent of other partners? If yes, describe the procedure. If no, in what manner can a partner transfer his share in partnership? **(2 Marks)**
 - (ii) Describe the rights of transferee: -
 - (1) During the continuance of partnership.
 - (2) On the dissolution of the firm. **(4 Marks)**
2. (a) (i) Rachit arranges an auction to sale an antic wall clock. Deepa, being one of the bidders, gives the highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer brakes and damages the watch. Deepa wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930? **(4 Marks)**
- (ii) X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930? **(3 Marks)**
- (b) (i) Explain listed company and unlisted company as per the provisions of the Companies Act, 2013. **(2 Marks)**
- (ii) Explain the classification of the companies on the basis of control as per the Companies Act, 2013. **(5 Marks)**
- (c) (i) Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? **(3 Marks)**
- (ii) What are the effects of registration of Limited Liability Partnership? **(3 Marks)**

3. (a) 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? **(3 Marks)**
 - (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? Is liable to a paper dealer for paper supplied to X to print Y's book? **(2 Marks)**
 - (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? **(2 Marks)**
- (b) (i) 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 MTK Private Limited company is classified. Explain the definition of the category of the company in detail. **(2 Marks)**
- (ii) The paid-up capital and turnover of Aaradhya Cosmetics Private Ltd. (ACPL) for FY 2024-25 is ₹ 4 crores and ₹ 45 crores respectively. Directors of ACPL decided not to follow some provisions as it is a small company according to section 2(85) of the Companies Act, 2013. Company secretary of Pooja Fashions Private Limited (PFPL) contended that ACPL is not a small company as ACPL is a holding company of (PFPL). Decide whether ACPL Cosmetics Ltd. can avail status of small company according to provisions of the Companies Act, 2013. **(3 Marks)**
 - (iii) The paid-up share capital of Abhinav Natural Gases Ltd. (ANGL) is ₹ 140 crores. The holdings of Central Government and Maharashtra Government are ₹ 40.10 crores and ₹ 30.20 crores respectively. In one tender relating to natural gas, directors of ANGL quoted it as Government Company. Decide According to provisions of the Companies Act, 2013 whether ANGL can be tagged as Government Company? **(2 Marks)**
- (c) "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Also, discuss the effect of anticipatory breach of contracts under the Indian Contract Act, 1872. **(6 Marks)**

4. (a) (i) Bhuvika borrowed ₹ 4,75,000/- from her relative Madan on 5th April 2020 on interest @ 1% per month for 5 year for running her Cosmetics store. She was paying continuously instalment and interest every month. But due to sudden introduction of nature care products her products became obsolete. As a result, she was unable to pay monthly instalment and interest from May 2021 onwards. The debt got time barred by limitation Act. However, on account of continuous persuasions of her relatives, Bhuvika promised in writing to pay the outstanding amount shortly within a few months. Whether Madan can legally recover the debts from Bhuvika when the loan has already been time barred? Explain with reference to provisions of the Indian Contract Act, 1872. **(2 Marks)**
- (ii) Chhaya and Abeer are very good friends. On Chhaya's birthday Abeer gifted an I-Phone worth ₹ 1.35 lakh. Whether this gift is valid as per provisions of the Indian Contract Act, 1872? **(2 Marks)**
- (iii) Amol promised to give a gold ring worth ₹ 1 lakh to her friend Chakori on her birthday. Whether the promise made by Amol is enforceable in law as per the provisions of the Indian Contract Act, 1872?
- What would be your answer if the relation between Amol and Chakori is of Husband & Wife? **(3 Marks)**
- (b) What is a Bill of Exchange? Also, explain its essential characteristics under the Negotiable Instruments Act, 1881. **(7 Marks)**
- (c) What is the significance of the Supreme Court and High Court in the Indian judiciary? **(6 Marks)**
5. (a) Mr. G sold some goods to Mr. H for a certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.
- Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different if the dues were not settled in cash and are still pending? **(7 Marks)**

- (b) Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of the Indian Partnership Act, 1932? **(7 Marks)**
- (c) Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid? **(6 Marks)**
- 6. (a) Alok bought some goods from Manish on credit. Later, he issued a cheque for the dues from his bank account and asked Manish to encash the cheque within two days. On the day Alok issued the cheque, there was a sufficient balance to pay Manish's dues. Manish presented the cheque after one month, which was returned due to insufficient funds. Manish made a demand for the payment, but Alok failed to pay. Manish send him notice to pay the outstanding debts. Alok ignored the notice. Manish filed a case for dishonour of the cheque. Alok defended himself on the grounds that Manish failed to encash the cheque within two days as specified by him and that he had no reason to believe at the time of issuance of the cheque that it might be dishonoured. Analyse-
 - (i) Whether Alok's defences are valid under the provisions of the Negotiable Instruments Act, 1881.
 - (ii) Whether Manish can file a suit against Alok for dishonour of cheque and within how many days he can file the complaint after dishonour under the provisions of the Negotiable Instruments Act, 1881? **(7 Marks)**
- (b) Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872. **(6 Marks)**
- (c) (i) What do you mean by suit for specific performance? State any two conditions when court allows this remedy according to provisions of the Sale of Goods Act, 1930? **(3 Marks)**
- (ii) What do you mean by right of resale? State any three conditions when the right of resale goods given to an unpaid sellers under the Sale of Goods Act, 1930. **(4 Marks)**

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ANSWERS

1. (a) (i) **Subsequent or Supervening impossibility (Becomes impossible after entering into contract):** When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.
- Also, according to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.
- In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. Gaurav has to pay back the amount of ₹ 70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Vikas is correct.
- (ii) Section 161 of the Indian Contract Act, 1872 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part. Hence, in the instant case, M shall have to bear the loss since he failed to return the umbrella within the stipulated time.
- (b) According to Section 2(62) of the Companies Act, 2013, a One Person Company (OPC) means a Company which has only one person as a member. A Company is a separate legal entity distinct from its member and enjoys limited liability.

Separate Legal Entity: When a Company is registered, it is clothed with a legal personality. Its existence is distinct and separate from that of its members.

Limited Liability: The liability of the members of the Company is limited to the extent of the nominal value of shares held by them. In no case, the shareholders can be asked to pay anything more than the unpaid value of their shares. The liability of OPC's sole member is limited to the extent of unpaid share capital, if any.

In the instant case, OPC failed to pay its debts to NBFC. Assets of the company were insufficient to pay the outstanding debts.

According to above provisions, we can conclude that:

- (i) **If the NBFC proceeded against the personal assets of Prasad only on the ground that he is the only shareholder and hence liable for its debts:** Prasad will not be personally liable to pay the outstanding debts of the NBFC merely on the ground that he is the only shareholder of the OPC because the debts of the OPC are its own and the OPC enjoys limited liability. Creditors cannot proceed against the personal assets of the member merely because he is the sole shareholder.

Therefore, the NBFC cannot proceed against the personal assets of Prasad only on the ground that he is the sole shareholder.

- (ii) **If the NBFC proves that the One Person Company was formed for fraud and cheating:** Where a Company is incorporated or carried on with intent to defraud Creditors or for any fraudulent purpose, the "Doctrine of Lifting of Corporate Veil" applies and the Corporate Veil can be lifted. In such cases, the protection of limited liability is withdrawn and the member can be held personally responsible for the debts of the company.

Accordingly, if the NBFC proves that the OPC was incorporated for fraudulent purposes, the protection of limited liability can be withdrawn and Prasad would be liable to pay the outstanding debts of NBFC and his personal assets can be used to settle the outstanding liabilities.

- (c) (i) **Whether a Partner can be introduced without the consent of other Partners?**

No. By virtue of provisions of Section 31 of the Indian Partnership Act, 1932, no person can be introduced as a partner in a firm without the consent of all the existing partners.

In what manner a Partner can transfer his share in Partnership?

As per Section 31 of the Indian Partnership Act, 1932, no person can be introduced as a partner in a firm without the consent of all the existing partners unless specified as per the partnership agreement. A partner cannot, by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner.

However, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

- (ii) (1) **Rights of a Transferee during the continuance of Partnership:**
During the continuance of partnership, such transferee is not entitled:

- (a) to interfere with the conduct of the business,
- (b) to require accounts, or
- (c) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

- (2) **The rights of such a transferee on the dissolution of the firm are as follows: [Section 29(2)].**

On the dissolution of the firm, the transferee will be entitled, against the remaining partners:

- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

2. (a) (i) By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

In the instant case, Deepa gives the highest bid in the auction for the sale of an antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.

On the basis of the above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Deepa will not be liable for loss and can avoid the contract.

- (ii) Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it will not become an uncertain and invalid agreement. It will rather be a valid contract and the buyer shall pay a reasonable price. (Section 9 and section 10 of the Sale of Goods Act, 1930)

In the given case, X and Y have entered into a contract for sale of car but they did not fix the price of the car. X refused to sell the car to Y on this ground. Y can legally demand the car from X and X can recover a reasonable price of the car from Y.

- (b) (i) **Listed company:** As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

Whereas the word securities as per section 2(81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Unlisted company means company other than listed company.

- (ii) **In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control:**

- (A) **Holding and subsidiary companies:** 'Holding and subsidiary' companies are relative terms.

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)]

For the purposes of this clause, the expression "company" includes any body corporate.

Whereas section 2(87) defines "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:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

- (B) Associate company [Section 2(6)]:** 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.

Explanation. — For the purpose of this clause —

- (i) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;
- (ii) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

- (c) (i) Partners (Section 5 of Limited Liability Partnership Act, 2008):** Any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

- (b) he is an undischarged insolvent; or
 - (c) he has applied to be adjudicated as an insolvent and his application is pending.
 - (ii) **Effect of registration (Section 14 of Limited Liability Partnership Act, 2008):** On registration, a LLP shall, by its name, be capable of—
 - (a) suing and being sued;
 - (b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
 - (c) having a common seal, if it decides to have one; and
 - (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.
3. (a) 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.
- (b) (i) **"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
- (d) payments for maintenance of its office and records.

[Explanation (ii) to Section 455 of the Companies Act, 2013]

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.

(ii) **Small Company:** Small company 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 4 crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) **turnover** of which as per profit and loss account for the immediately preceding financial year does not exceed 40 crores rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

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.

In the given case, although the paid-up capital and turnover of Aaradhya Cosmetics Private Ltd. is within the terms of small company but, Aaradhya

Cosmetics Private Limited (ACPL) is the holding company of Pooja Fashions Private Limited (PFPL) and as per the proviso (A) to Section 2(85), holding company shall not be treated a small company. Hence ACPL Cosmetics Private Ltd. cannot avail the status of a small company. Contention of directors of ACPL is incorrect.

(iii) **Government Company [Section 2(45)]:** Government Company means any company in which not less than 51% of the paid-up share capital is held by-

- the Central Government, or
- by any State Government or Governments, or
- 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.

In the instant case, Abhinav Natural Gases Ltd. (ANGL) cannot be tagged as a Government Company as the total holding of Central Government and State Government is ₹ 70.30 crores (₹ 40.10 crores + Rs. 30.20 crores) which is less than 51% of the paid-up share capital of ANGL i.e. ₹ 71.40 crores (51% of ₹ 140 crores).

Hence ANGL shall not be tagged as Government company. Directors of ANGL cannot quote it as 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) **Promise to pay Time Barred Debt:** Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation, it is valid without consideration [Section 25(3) of the Indian Contract Act, 1872].

Thus, in terms of the provisions of Section 25(3) of the Act, Madan can legally recover the debts with interest from Bhuvika since she had promised in writing to pay the outstanding amount shortly within a few months even though the loan has already been time barred.

- (ii) **Completed gift:** According to Section 25 of the Indian Contract Act, 1872 an agreement made without consideration is void. Further explanation 1 to Section 25 states that nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made. In case of completed gifts, the rule of no consideration no gift does not apply.

Thus, gifts do not require any consideration.

In the instant case, the gift of i-Phone from Abeer to Chhaya has already been done, which amounts to 'Completed Gift' and is covered by explanation 1 to Section 25.

Hence, gift given by Abeer to Chhaya is valid.

- (iii) According to Section 25 of the Indian Contract Act, 1872, an agreement made without consideration is void, subject to certain exceptions.

One important exception is:

An agreement made out of natural love and affection between parties standing in a near relation to each other is valid, provided it is in writing and registered.

Position when Amol and Chakori are Friends: Since the Amol and Chakori are merely friends (and not near relatives) and do not come within the purview of Section 25(1). The promise to give a gold ring is mere

promise and not supported by consideration. Hence the promise made by Amol is not legally enforceable.

Position when Amol and Chakori are Husband & Wife: In this position the parties are in near relation and Amol promised out of natural love and affection to gift her wife a gold ring. This can be legally enforceable provided the promise is in writing and registered under the law.

In other words, this can be legally enforceable provided the promise is in writing and registered under the law as Amol and Chakori are in near relation and Amol promised out of natural love and affection to gift her wife which comes within the purview of Section 25(1) of the Indian Contract Act, 1872.

- (b) **Bill of Exchange:** A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Parties to the bill of exchange

- (a) **Drawer:** The maker of a bill of exchange.
- (b) **Drawee:** The person directed by the drawer to pay is called the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability is primary and unconditional.
- (c) **Payee:** The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.

Essential characteristics of bill of exchange

- (a) It must be in writing.
- (b) Must contain an express order to pay.
- (c) The order to pay must be definite and unconditional.
- (d) The drawer must sign the instrument.
- (e) Drawer, drawee, and payee must be certain. All these three parties may not necessarily be three different persons. One can play the role of two. But there must be two distinct persons in any case. As per Section 31 of

the RBI Act, 1934, a bill of exchange cannot be made payable to bearer on demand.

- (f) The sum must be certain.
- (g) The order must be to pay money only.
- (h) It must be stamped.

(c) (i) **Supreme Court:** The Supreme Court is the apex body of the judiciary. It was established on 26th January 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.

(ii) **High Court:** The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellant, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory, and one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

5. (a) 1. According to section 44 of the Sale of Goods Act, 1930, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

Risk of loss of goods *prima facie* follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods

kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.

2. If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

- (a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]
- (b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

(b) **Expulsion of partner and factors to be kept in mind:** As per Section 33 of the Indian Partnership Act, 1932, a partner may not be expelled from a firm except

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm and shall be null and void.

The test of good faith as required under Section 33(1) includes three things:

- (i) The expulsion must be in the interest of the partnership
- (ii) The partner to be expelled is served with a notice
- (iii) He is given an opportunity of being heard.

Yes, a partner may be expelled by other partners strictly in compliance with the provisions of section 33.

- (c) Section 124 of the Indian Contract Act, 1872 states that “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person”, is called a “contract of indemnity”.

Section 126 of the Indian Contract Act, 1872 states that “A contract to perform the promise made or discharge liability incurred by a third person in case of his default” is called a “contract of guarantee”.

The conditions under which the guarantee is invalid, or void is provided in section 142, 143 and 144 of the Indian Contract Act, 1872. These include:

- (i) Guarantee obtained by means of misrepresentation.
- (ii) Guarantee obtained by means of keeping silence as to material circumstances.
- (iii) When a contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

6. (a) Section 138 of the Negotiable Instruments Act, 1881 covers dishonor of cheques for insufficiency of funds in the account.

- (i) Section 138 shall not apply, unless the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

In the instant case, Alok’s defenses are not valid as Manish presented the cheque within one month i.e. within the validity period of three months.

- (ii) Section 138 shall not be applied unless the below conditions are complied with:

(a) **Demand for the payment through the notice:** The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(b) **Failure of drawer to make payment:** The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

The complaint can be filed after 45 days of dishonor of the cheque i.e., 30 days of notice period +15 days of the receipt of the said notice.

Therefore, in the instant case, since Manish sent notice to Alok for outstanding debts but Alok ignored the notice, Manish can file a suit against Alok and can file a complaint within 45 days of dishonor of cheque.

(b) Definition of Fraud under Section 17 of the Indian Contract Act, 1872: 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

According to Section 18, there is misrepresentation:

- (1) Statement of fact, which of false, would constitute misrepresentation if the maker believes it to be true but which is not justified by the information he possesses;
- (2) When there is a breach of duty by a person without any intention to deceive which brings an advantage to him;
- (3) When a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter.

Distinction between fraud and misrepresentation:

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to

		be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

- (c) (i) **Suit for Specific Performance (Section 58 of the Sale of Goods Act, 1930):** Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.

This remedy is allowed by the Court subject to these conditions:

- (a) The contract must be for the sale of specific and ascertained goods.
- (b) The power of the court to order specific performance is subject to provisions of Specific Relief Act of 1963.
- (c) It empowers the Court to order specific performance where damages would not be an adequate remedy.
- (d) It will be granted as remedy if goods are of special nature or are unique.

- (ii) **Right of Re-Sale [Section 54 of the Sale of Goods Act, 1930]:** The right of re-sale is a very valuable right given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

The unpaid seller can exercise the right to re-sell the goods under the following conditions:

- (i) **Where the goods are of a Perishable in Nature:** In such a case, the buyer need not be informed of the intention of resale.

- (ii) **Where he gives notice to the buyer of his intention to re-sell the goods:** If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.
- (iii) **Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods:**

The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.
- (iv) **A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale:** Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will re-sell the goods to some other person. In such cases, the seller is said to have reserved his right of re-sale and he may re-sell the goods on buyer's default.
- (v) **Where the property in goods has not passed to the buyer:** The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien". This is the additional right used in case of agreement to sell.