



PAPER – 2: BUSINESS LAWS



QUESTIONS

Indian Regulatory Framework

1. What is Law and what is the process of making a law?

The Indian Contract Act, 1872

2. Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:
 - (i) Rahul contracts with Bhanu (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the factory catches fire and everything is destroyed.
 - (ii) A coolie in uniform picks up the luggage of Rohan to be carried out of the railway station without being asked by Rohan and Rohan allows him to do so.
 - (iii) Obligation of finder of lost goods to return them to the true owner.
3. Amit, a minor was studying in a college. On 1st July, 2023 he took a loan of ₹ 1,00,000 from Bhavesh for payment of his college fees and to purchase books and agreed to repay by 31st December, 2023. Amit possesses assets worth ₹ 9 lakhs. On due date, Amit fails to pay back the loan to Bhavesh. Bhavesh now wants to recover the loan from Amit out of his (Amit's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether Bhavesh would succeed.
4. Mr. Shyam aged 58 years, was employed in a government department. He was going to retire after two years. Mr. Dev made a proposal to

Mr. Shyam, to apply for voluntary retirement from his post so that Mr. Dev can be appointed in his place. Mr. Dev offered a sum of ₹ 10 Lakhs as consideration to Mr. Shyam to induce him to retire.

Mr. Shyam refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid? Explain with reference to provision of the Indian Contract Act, 1872?

5. What will be rights with the promisor in following cases under the Indian Contract Act, 1872? Explain with reasons:
 - (a) Sunil promised to bring back Jatin to life again.
 - (b) Aman agreed to sell 50 kgs of apples to Raman. The loaded truck left for delivery on 15th March but due to riots in between reached Raman on 19th March due to which the apples were rotten.
 - (c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.
 - (d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned.
6. Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition in Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered to the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872?
7. Explain any five circumstances under which contracts need not be performed with the consent of both the parties.

8. 'Sooraj' guarantees 'Vikas' for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March 2023. 'Vikas' supplied goods of ₹ 30,000 on 01.03.2023 and of ₹ 20,000 on 03.03.2023 to 'Nikhil'. On 05.03.2023, 'Sooraj' died in a road accident. On 10.03.2023, being ignorant of the death of 'Sooraj', 'Vikas' further supplied goods of ₹ 40,000. On default in payment by 'Nikhil' on due date, 'Vikas' sued legal heirs of 'Sooraj' for recovery of ₹ 90,000. Describe, whether legal heirs of 'Sooraj' are liable to pay ₹ 90,000 under the provisions of Indian Contract Act, 1872.

What would be your answer, if the estate of 'Sooraj' is worth ₹ 45,000 only?

9. Mr. Stefen owns a chicken farm near Gurugram, where he breeds them and sells eggs and live chicken to retail shops in Gurugram. Mr. Flemming also owns a similar farm near Gurugram, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel, so he had pledged his farm to Mr. Stefen for one year and received a deposit of ₹ 25 lakhs and went away. At that point of time, the stock of live birds was 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his farm with live birds and eggs.

After one year Flemming came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs.

Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only.

State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case.

The Sale of Goods Act, 1930

10. AB Cloth House, a firm dealing with the wholesale and retail buying and selling of various kinds of clothes, customized as per the requirement of the customers. They dealt with Silk, Organdie, cotton, khadi, chiffon and many other different varieties of cloth.

Mrs. Reema, a customer, came to the shop and asked for a specific type of cloth suitable for making a suit for her daughter's birthday. She

specifically mentioned that she required cotton silk cloth which is best suited for the purpose.

The Shop owner agreed and arranged the cloth pieces cut into as per the buyers' requirements.

When Reema went to the tailor to get the suit stitched, she found that seller has supplied her cotton organdie material, cloth was not suitable for the said purpose. It was heavily starched and not suitable for making the suit that Reema desired for. The Tailor asked Reema to return the cotton organdie cloth as it would not meet his requirements.

The Shop owner refused to return the cloth on the plea that it was cut to specific requirements of Mrs. Reema and hence could not be resold.

With reference to the doctrine of "Caveat Emptor" explain the duty of the buyer as well as the seller. Also explain whether Mrs. Reema would be able to get the money back or the right kind of cloth as per the requirement?

11. Samuel purchased a Television set from Arun, the owner of Gada Electronics, on the condition that for the first three days he will check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Arun demands the price of Television set from Samuel. Whether Samuel is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss?
12. Suraj sold his car to Sohan for ₹ 1,75,000. After inspection and satisfaction, Sohan paid ₹ 75,000 and took possession of the car and promised to pay the remaining amount within a month. Later on, Sohan refuses to give the remaining amount on the grounds that the car was not in good condition. Advise Suraj as to what remedy is available to him against Sohan under the Sale of Goods Act, 1930.
13. Akash purchased 100 Kgs of wheat from Bhaskar at ₹80 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed to Akash that he can take the delivery of wheat from him and till then he is holding wheat on Akash's behalf. Before Akash picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Akash wants his price on the

contention that no delivery has been done by seller. Whether Akash is right with his views under the Sale of Goods Act, 1930.

The Indian Partnership Act, 1932

14. Sahil, Amit and Kunal were partners in a firm. The firm is a dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2023, one of the partners, Mr. Kunal died in a road accident. The firm ordered M/s AB and Co. to supply the furniture for their business on 25th May 2023, when Kunal was also alive.

Now Sahil and Amit continue the business in the firm's name after Kunal's death. The firm did not give any notice about Kunal's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25th July 2023. The fact about Kunal's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Kunal's private estate is also liable for the price of furniture purchased by the firm?

15. State whether the following are partnerships under the Indian Partnership Act, 1932:
- (i) A and B buy commodity X and agree to sell the commodity with sharing the profits equally.
 - (ii) Two firms each having 12 partners combine by an agreement into one firm.
 - (iii) A and B, co-owners, agree to conduct the business in common for profit.
 - (iv) Some individuals form an association to which each individual contributes ₹ 5000 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
 - (v) A and B, co-owners share between themselves the rent derived from a piece of land.

16. When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.

The Limited Liability Partnership Act, 2008

17. State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008.

The Companies Act, 2013

18. A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the artwork of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April 2021 onwards.

However, on 30th September 2023, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act, 2013.

Discuss what powers can be exercised by the Central Government against ABC club, in such a case?

19. HP Polytech Limited has a paid-up share capital divided into 6,00,000 equity shares of ₹ 100 each. 2,00,000 equity shares of the company are held by the Central Government and 1,20,000 equity shares are held by the Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether HP Polytech Limited can be treated as a Government Company.
20. Nolimit Private Company is incorporated as unlimited company having share capital of ₹ 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?

The Negotiable Instruments Act, 1881

21. What are Negotiable Instruments? Explain its essential characteristics under the Negotiable Instruments Act, 1881.

22. Manoj purchased some goods from Sagar. He issued a cheque to Sagar for the sale price on 14th June, 2023. Sagar presented the cheque in his bank and his bank informed him on 19th June, 2023 that cheque was returned unpaid due to insufficiency of funds in the account of Manoj. Sagar sued against Manoj under section 138 of the Negotiable Instruments Act, 1881. State with reasons, whether this suit is maintainable?



SUGGESTED ANSWERS/HINTS

1. What is Law?

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

The Process of Making a Law

- (i) When a law is proposed in parliament, it is called a Bill.
- (ii) After discussion and debate, the law is passed in Lok Sabha.
- (iii) Thereafter, it has to be passed in Rajya Sabha.
- (iv) It then has to obtain the assent of the President of India.
- (v) Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- (vi) The law will become applicable from the date mentioned in the notification as the effective date.
- (vii) Once it is notified and effective, it is called an Act of Parliament.

2. (i) It is a void contract.

Void Contract: Section 2 (j) of the Indian Contract Act, 1872 states as follows: "*A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable*". Thus, a void contract is one which cannot be enforced by a court of law.

- (ii) **It is an implied contract and Rohan must pay for the services of the coolie.**

Implied Contracts: Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Indian Contract Act, 1872 contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

- (iii) Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

Quasi-Contract: A quasi-contract is not an actual contract, but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on the part of either party to make a contract, but law imposes a contract upon the parties.

3. According to section 68 of Indian Contract Act, 1872, if a person, incapable of entering into a contract, or any one whom he 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, since the loan given to Amit is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse Bhavesh.

Hence, Bhavesh can proceed against the assets of Amit.

4. Section 10 of the Indian Contract Act, 1872 provides for the legality of consideration and objects thereto. Section 23 of the said Act also states that every agreement of which the object or consideration is unlawful is void.

The given problem talks about entering into an agreement for sale of public office, which is opposed to public policy. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such consideration paid, being opposed to public policy, is unlawful.

In the given case, Mr. Shyam, who was going to be retired after two years was proposed by Mr. Dev, to apply for voluntary retirement from his post, in order that he can be appointed in his place. In lieu of that, Mr. Dev offered Mr. Shyam a sum of ₹ 10 lakh as consideration. Mr. Shyam refused initially but later accepted the said agreement to receive money to retire from his office.

Here, Mr. Shyam's promise to sale for Mr. Dev, an employment in the public services is the consideration for Mr. Dev's promise to pay ₹ 10 lakh. Therefore, in terms of the above provisions of the Indian Contract Act, the said agreement is not valid. It is void, as the consideration being opposed to public policy, is unlawful.

5.
 - (a) The contract is void because of its initial impossibility of performance.
 - (b) Time is essence of this contract. By the time apples reached Raman, they were already rotten. The contract is discharged due to destruction of the subject matter of contract.
 - (c) Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.
 - (d) Such contract is discharged without performance because of subsequent illegality nature of the contract.
6. As per Section 73 to 75 of Indian Contract Act, 1872, damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (*Hadley Vs Baxendale*).

Therefore, when a breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course

of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities. Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

7. Under following circumstances, the contracts need not be performed with the consent of both the parties:
- (i) **Novation:** Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties, the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)
 - (ii) **Rescission:** A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)
 - (iii) **Alteration:** Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)
 - (iv) **Remission:** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it

any satisfaction which he thinks fit. In other words, a contract is discharged by remission. (Section 63)

- (v) **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.
- (vi) **Neglect of promisee:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

8. According to section 131 of Indian Contract Act, 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.

In this question, 'Sooraj' was surety for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March, 2023. 'Vikas' supplied goods of ₹ 30,000, ₹ 20,000 and of ₹ 40,000 on 01.03.2023, 03.03.2023 and 10.03.02023 respectively. 'Sooraj' died in a road accident, but this was not in the knowledge of 'Vikas'. When 'Nikhil' defaulted on payment, 'Vikas' filed suit against legal heirs of 'Sooraj' for recovery of full amount i.e. ₹ 90,000.

On the basis of above, it can be said in case of death of surety ('Sooraj'), his legal heirs are liable only for those transactions which were entered before 05.03.2023 i.e. for ₹ 50,000. They are not liable for the transaction done on 10.03.2023 even though Vikas had no knowledge of death of Sooraj.

Further, if the worth of the estate of deceased is only ₹ 45,000, the legal heirs are liable for this amount only.

9. According to section 163 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to

the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

Duties of Mr. Stefen: Mr. Stefen (pawnee) is bound to deliver to Mr. Flemming (pawnor), any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e. the live birds and eggs).

Right of Mr. Flemming: Mr. Flemming is entitled to recover from Pawnee any increase in goods so pledged.

- 10. Duty of the buyer according to the doctrine of "Caveat Emptor":** In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

- (i) Fitness as to quality or use
- (ii) Goods purchased under patent or brand name
- (iii) Goods sold by description
- (iv) Goods of Merchantable Quality
- (v) Sale by sample
- (vi) Goods by sample as well as description

- (vii) Trade usage
- (viii) Seller actively conceals a defect or is guilty of fraud

Based on the above provision and facts given in the question, it can be concluded that Mrs. Reema is entitled to get the money back or the right kind of cloth as required to serve her purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by the buyer. [Section 16(1) of the Sale of Goods Act, 1930].

- 11.** According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms, the property passes to the buyer:
- (i) when he signifies his approval or acceptance to the seller,
 - (ii) when he does any other act adopting the transaction, and
 - (iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

Further, as per Section 8, where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

Samuel purchases a Television set from Arun, the owner of Gada Electronics, on sale or approval for three days. Before Samuel could take any decision, the Television set spoiled due to earthquake.

According to the above provisions and fact, the property has not been passed to Samuel i.e. buyer as no condition of Section 24 is satisfied. Hence, risk is not passed to the buyer and the agreement is thereby avoided. Samuel is not liable to pay the price. The loss finally should be borne by Seller, Mr. Arun.

- 12.** As per section 55 of the Sale of Goods Act, 1930, an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that:
- (i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to

pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].

- (ii) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].

This problem is based on the above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to:

- (1) Interest on the remaining amount
- (2) Interest during the pendency of the suit.
- (3) Costs of the proceedings.

- 13.** As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery,

- (i) Actual delivery,
- (ii) Constructive delivery and
- (iii) Symbolic delivery.

When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to the seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

On the basis of the above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Akash is not right. He cannot claim the price back.

- 14.** According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Kunal's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in Kunal's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35). So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

15. (i) Yes, this is a case of partnership as there exists the element of doing business and sharing of profits equally.
- (ii) Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.
- (iii) Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.
- (iv) No, this is not a case of partnership as no charitable association can be floated in partnership.
- (v) No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.
16. **Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved.

The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 39 - 44)

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

17. Registered office of LLP and Change therein (Section 13 of the Limited Liability Partnership Act, 2008)

- (i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- (ii) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address

specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

- (iii) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
- (iv) If the LLP contravenes any provisions of this section, the LLP and its every partner shall be liable to a penalty of ₹ 500 for each day during which the default continues, subject to a maximum of ₹ 50,000 for the LLP and its every partner.

- 18.** 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, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.

ABC Club was a Section 8 company, and it was observed on 30th September 2023 that it had started violating the objects of its objective clause. Hence in such a situation the following powers can be exercised by the Central Government:

- (i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such

order shall be made unless the company is given a reasonable opportunity of being heard.

- (iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

19. Government Company [Section 2(45) of the Companies Act, 2013]:

Government Company means any company in which not less than 51% of the paid-up share capital is held by-

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

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

In the instant case, the paid-up share capital of HP Polytech Limited is 6,00,000 equity shares of ₹ 100 each. 200,000 equity shares are held by Central government and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000 which is more than 51% of total paid up equity shares.

Hence, HP Polytech Limited is a government company.

- 20.** Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share

capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

On the basis of the above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even though the company is an unlimited company. Mr. Innocent is liable for upto his share capital. His unlimited liability will arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

- 21. Meaning of Negotiable Instruments:** Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument is passed to a bonafide transferee for value.

The Act does not define the term 'Negotiable Instruments'. However, Section 13 of the Act provides for only three kinds of negotiable instruments, namely bills of exchange, promissory notes and cheques, payable either to order or bearer.

Essential Characteristics of Negotiable Instruments

1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
7. The sum payable, the time of payment, the payee, must be certain.

8. The instrument should be delivered. Mere drawing of instrument does not create liability.
22. By virtue of provisions of Section 138 of the Negotiable Instruments Act, 1881, where cheque was issued by a person to discharge a legally enforceable debt was dishonoured by bank due to insufficiency of funds, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque, or with both.

However,

- (a) the cheque has been presented to the bank within three months or validity period of the cheque, whichever is earlier;
- (b) the holder 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 from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the said notice.

In the instant case, Manoj issued a cheque to Sagar for payment of the price of goods purchased from him. When Sagar presented the cheque in bank, it was returned unpaid due to insufficiency of funds in the account of Manoj. Sagar sued against Manoj under section 138 of the Negotiable Instruments Act, 1881.

For filing the suit under section 138, Sagar should have to make a demand of payment by giving a notice in writing to Manoj upto 18th July, 2023. In case, Manoj failed in making the payment within fifteen days of the receipt of the said notice, Sagar could sue under section 138.