PAPER – 2: BUSINESS LAWS

*Question No. **1** is compulsory.*

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

Working notes should form part of the answers.

Question 1

(a) 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 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? ***(7 Marks)***

(b) Hitarth Foundation was incorporated under Section 8 of the Companies Act, 2013 in May 2020 with the object to promote a healthier lifestyle of the human beings while caring for the planet. Hitarth was one among the founder members of the Company. Mission of the Company was to inspire healthier living by providing pure, organic, and sustainably sourced products that nurture both people and the planet.

Hitarth Foundation was running successfully in terms of its objectives. Being well aware of the success of Hitarth Foundation, Ram & Sons a partnership firm, (in which Hitarth's father Ram was having 80% stake) invested 25% in the equity of Hitarth Foundation in April 2024.

A few days later, Mr. Ram started interfering in the business of Hitarth Foundation by supplying poor quality raw materials which defeated the main purpose of Hitarth Foundation of providing pure and organic products to nurture people and the planet.

Besides, Ram & Sons pressurized the directors of the Company and Hitarth Foundation succumbed by the pressure was forced to declare dividend of 10%. Ram & Sons withdrew its share of dividends whereas the other shareholders did not withdraw their share of dividend on the ground that Hitarth Foundation was incorporated for other purposes.

Some farmers, who were earlier supplying organic vegetables to Hitarth Foundation and were denied to supply their products after the interference of Ram & Sons, filed a complaint before the Central Government to revoke the license of Hitarth Foundation. The Central Government after hearing all the stakeholders gave a notice for revocation of license of Hitarth Foundation after issuing a show cause notice to the company. After revocation of license, the Central Government ordered for winding-up of Hitarth Foundation in public interest. Some directors of Hitarth Foundation approached you for your advice in the following matters:

(i) Whether Ram & Sons can invest 25% in the total equity of Hitarth Foundation.

(ii) Ram & Sons has withdrawn its share of dividends since it has 25% stake in Hitarth Foundation. Whether Hitarth Foundation should have denied for declaration of any dividend.

(iii) Hitarth Foundation contended that the Central Government cannot give order for winding up of the Company. Maximum the Central Government can do is that it can revoke the license and thereafter Hitarth Foundation can run its business. Whether this contention was justified.

Analyzing the applicable provisions of the Companies Act, 2013 advise the directors. ***(7 Marks)***

(c) ABC & Co. a partnership firm is going to be dissolved. The partners seek your advice on the following points referring to the relevant provisions of the Indian Partnership Act, 1932 in this regard.

(i) Right of partners to have business wound up after dissolution.

(ii) Continuing authority of partners for purposes of winding up.

(iii) Mode of Settlement of partnership accounts. ***(6 Marks)***

Answer

(a) (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 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.

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.

(b) (i) A Section 8 Company can issue shares to persons/entities including partnership firms.

Hence, Ram & Sons can invest 25% in the total equity of Hitarth Foundation.

(ii) 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. The declaration of dividend under pressure from Ram & Sons was a clear violation of the conditions of the licence granted under Section 8.

Even though Ram & Sons has a 25% stake, no member of a Section 8 company has the right to receive dividends. The right of Ram & Sons to withdraw dividend is therefore legally invalid.

In the instant case, Hitarth Foundation should deny Ram & Sons for declaration of dividend @ 10% and withdrawal of the same as it is prohibited under Section 8 company.

(iii) Revocation of license: Section 8(6) of the Companies Act, 2013 (the Act) empowers the Central Government after giving reasonable notice and opportunity to be heard, 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.

Section 8(7) of the Act further provides that upon revocation of the licence, the Central Government may, by order, direct the company to convert its status and change its name, wind up or amalgamate with another Section 8 company having similar objects.

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.

Order of the Central Government: Where a licence is revoked then the Central Government may, in the public interest order direct the company to convert its status and change its name, wind up or amalgamate with another company registered under this section having similar objects, 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, or the company be wound up.

Therefore, the Central Government has the power to both revoke the licence and direct winding up in public interest.

Hence, the contention of the Hitarth Foundation is not justified as the Central Government can give order for winding up of the section 8 company in public interest.

(c) (i) Right of partners to have business wound up after dissolution (Section 46 of the Indian Partnership Act, 1932):

On the dissolution of a firm, every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

This means every partner has a right to ensure that the firm's debts are paid first from firm assets and only then, the remaining surplus is distributed. This right is enforceable against co-partners.

(ii) Continuing authority of partners for purposes of winding up (Section 47): After the dissolution of a firm, the authority of each partner to bind the firm and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

(iii) Mode of Settlement of partnership accounts (Section 48): In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed: -

(A) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(B) 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 the firm for advances as distinguished 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. If firm assets are insufficient to pay debts, the partners must contribute in proportion to their loss-sharing ratios (Section 49) to meet the deficiency.

Question 2

(a) Romi went to a renowned furniture showroom named 'TRENDS IN DELHI' in Kirti Nagar, for the purpose of customizing and fixing a sofa in her office cabin. Within 30 minutes, she finalized one design which suited her office cabin colors scheme and space. Mr. Parth (owner of TRENDS IN DELHI) assured her that he will deliver the sofa within a month. Mr. Parth told her that the sofa will cost ₹ 45,000 and he will charge extra ₹ 4,500 towards cartage and corporate packing. The amount of ₹ 4,500 towards cartage and corporate packing must be paid by Romi at the time of delivery of the sofa and the remaining amount may be paid within the period fixed for approval of the transaction. He also assured Romi that he will be responsible for assembly and installation of the same without causing any harm to her office cabin, situated in the 9th floor of the building at no extra cost. Romi agreed with the terms and conditions of Mr. Parth but with the condition that she will not approve the sofa and return the same if it will not be perfect according to the size and color described. Mr. Parth agreed to this condition but fixed the maximum time by which Romi can reject the sale, i.e. 20 days after delivery and installation is over, for which Romi also agreed with.

As per the schedule, Mr. Parth sent the sofa to Romi's office. D (Employee of Parth) denied delivering the sofa at 9th floor by stairs as it was not accommodating in the service lift. Romi paid D ₹1,500 to deliver the sofa at 9th floor by stairs. After assembly and installation, she paid ₹ 4,500 for cartage and corporate packing as mutually agreed upon.

One month later, when Mr. Parth asked for payment of ₹ 45,000, Romi said that she wants to return the sofa contending that it was not according to *size and description of her office as she had mentioned at the time of buying the sofa. Alternatively, she was ready to pay only ₹ 25,000 towards the cost of the Sofa in place of ₹ 45,000 as the sofa was not according to her choice and exact requirements.*

Analyzing the applicable provisions of the Sale of Goods Act, 1930, advise on the following with reasons:

(i) Whether Romi can refuse to make the payment of ₹ 45,000 by mentioning that the sofa was not according to size and description which she described at the time of placing the order.

(ii) In your opinion whether Romi has signified her approval to Mr. Parth in any manner before the specified day of approval?

(iii) Whether Mr. Parth should file a suit against Romi for non-payment or he should accept ₹ 25,000 towards the full and final payment of sofa as there was remote chance of having a positive outcome of the suit and the sofa was customized and already delivered to Romi. ***(7 Marks)***

(b) (i) Differentiate (any three points) between the Equity Shares with differential rights and Preference Shares under the Companies Act, 2013. ***(3 Marks)***

(ii) Discuss the Doctrine of Constructive Notice. ***(4 Marks)***

(c) (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. ***(6 Marks)***

Answer

(a) (i) Sale by description [Section 15 of the Sale of Goods Act, 1930]: Where there is a contract of sale of goods by description (including size, colour, specifications), 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.

Romi had placed a customised order specifying size and colour that suited her office cabin. If the sofa delivered does not correspond to the agreed description (size and colour), Romi has the right to reject it.

Implied condition of fitness for purpose [Section 16(1)]: Where the buyer makes known to the seller the particular purpose for which the goods are required and relies on the seller's skill or judgment, there is an implied condition that the goods shall be reasonably fit for that purpose. Since Romi described her exact requirements (size, colour scheme matching her office cabin) and relied on Parth's showroom expertise, this implied condition is also triggered.

In the instant case, Romi had specifically reserved the right to reject the sofa if it was not according to the agreed size and color description. Mr. Parth accepted this condition and fixed a maximum approval period of 20 days after delivery and installation. This was a sale on approval with a fixed return period under Section 24.

Even if the sofa did not correspond with the description or was not fit for the intended purpose, Romi's remedy was to give notice of rejection within the 20-day period. She failed to do so, therefore the property in the sofa passed to Romi automatically on expiry of the 20-days period and her right to reject on grounds of description or fitness was available only within the approval period — having retained the sofa without rejection, she is now bound to pay.

Romi cannot refuse payment of ₹ 45,000 after the expiry of the 20-days approval period. The property in the sofa was passed to her and her right to reject on grounds of description or fitness was available only within the approval period.

(ii) Rule related to Acceptance of Delivery of Goods (Section 42): Acceptance is deemed to take place when the buyer-

(a) intimates to the seller that he had accepted the goods; or

(b) does any act to the goods, which is inconsistent with the ownership of the seller; or

(c) retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.

In the instant case, Romi's conduct clearly indicates acceptance because she allowed installation and assembly of the sofa, she paid ₹ 4,500 towards cartage and packing, she additionally paid ₹ 1,500 for carrying the sofa to the 9th floor by stairs and she retained and used the sofa beyond the agreed approval period of 20 days. These acts are inconsistent with rejection of goods.

Therefore, Romi had signified her approval before the specified day through her conduct. Hence, the sofa is deemed to have been accepted by her.

Alternate Answer to (ii)

(ii) Section 24 of the Sale of Goods Act, 1930, which deals with 'Sale on Approval' (Sale or Return): When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or

(c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

In the instant case, Romi's conduct clearly indicates that the goods pass to her because she allowed installation and assembly of the sofa, she paid ₹ 4,500 towards cartage and packing, she additionally paid

₹ 1,500 for carrying the sofa to the 9th floor by stairs and she retained and used the sofa beyond the agreed approval period of 20 days.

Therefore, Romi had signified her approval before the specified day through her conduct. This implies that she has accepted the Sofa.

(iii) Suit for Price (Section 55): According to Section 55 of the Sale of Goods Act, 1930, 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.

Damages for Non-Acceptance (Section 56): Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue the buyer for damages for non-acceptance.

Interest and Special Damages (Section 61): Allows the Court to award interest on the price from the date of tender or from the date of the suit, as the court deems fit.

In the instant case, Mr. Parth is not bound to accept ₹ 25,000 as full and final settlement because the rejection by Rumi was delayed and acceptance had already deemed to be taken place and the sofa was customized and not easily resalable.

(b) (i) Difference between Equity Shares with differential rights and preference shares

Basis of difference	Equity Shares with differential rights	Preference shares
Meaning	Equity shares carrying differential rights as to dividend, voting or otherwise.	Shares carrying preferential rights regarding dividend and repayment of capital.
Nature of Capital	Part of equity share capital. (Section 43(a)(ii)).	Separate category of share capital. (Section 43(b)).

Preference in Dividend	No preference over other equity shareholders.	Dividend is paid before equity shareholders.
Repayment of capital	No preferential repayment during winding up.	Preferential repayment during winding up
Dividend Rights	Dividend may differ according to terms of issue. DVR holders receive dividend like equity shareholders (variable, declared out of profits) but at a differential rate as specified.	Fixed preferential dividend is generally paid.
Nature of Rights	DVR shares are equity shares but with differential voting rights (more or less voting power) and/or differential dividend rights. May carry superior, inferior or no voting rights as per terms of issue.	Preference shares get preferential dividend and/or preferential repayment of capital but typically limited/ no voting rights. Generally, no voting rights, except in matters affecting their rights (Section 47).

(ii) Doctrine of Constructive Notice: Section 399 of the Companies Act, 2013 provides that any person can inspect by electronic means any document kept by the Registrar, or make a record of the same, or get a copy or extracts of any document, including certificate of incorporation of any company on payment of prescribed fees.

The Memorandum and Articles of Association of a company when registered with Registrar of Companies, become public documents, and they are available for inspection to any person, on the payment of a nominal fee. In other words, Section 399 confers the right of inspection to all. It is, therefore, the duty of every person dealing with a company to inspect its documents and make sure that his contract is in conformity with their provisions but whether a person reads them or not, it will be presumed that he knows the contents of the documents. This kind of presumed/implied notice is called constructive notice.

(c) (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.

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.

Question 3

(a) (i) Mr. Chand once an active partner in CHJ and Associates (a partnership firm) has lately taken a back seat due to his ailing health. He observed that the accounts of the firm were not being maintained properly and feared embezzlement by the other two partners. Keeping this in mind he assigned his interest in the firm to Mr. Niman, his nephew who is a qualified finance professional and has expertise in this field.

After some days of his nomination, Mr. Niman raised objection as to the transparency of the accounts and demanded an inspection of the books, which was refused by the other partners. A year later, CHJ and Associates decided to dissolve the partnership firm as the business was no longer profitable. Mr. Niman asked for the accounts of past 3 years to ascertain the share of profits been offered by the firm to him for which he was refused yet again.

Analysing the relevant provisions of the Indian Partnership Act, 1932, decide whether the firm was correct in refusing the inspection of accounts by Mr. Niman during its (Firm's) continuance.

Also decide whether Niman is legally eligible to ask for the accounts of the firm for past 3 years on dissolution. ***(4 Marks)***

(ii) Mr. Pramod a senior partner in PKL and Associates (a dairy product manufacturing firm having two partners) has been approached by Mr. Sanjay a raw material supplier of the Firm, to withdraw a long pending suit and settle through mediation and out of court settlement. The long pending matter relates to a dispute regarding supply of poor-quality raw materials by Mr. Sanjay to the Firm which has brought disrepute to PKL and Associates and had resulted in lowering of demand for the Firm's product in the market.

Mr. Sanjay as a part of out of court settlement has offered the Firm one of his properties at a price much below the market price. Mr. Pramod is considering to accept the offer as not only it would settle a long pending dispute, but also result in acquisition of a property to the firm at a price which is much below the market price. Mr. Pramod has communicated the above offer to the other partner Mr. Kumar whose view is not available at this moment as he is out of the state for some personal work.

Analysing the applicable provisions of the Indian Partnership Act, 1932 decide whether at this juncture Mr. Pramod as an active partner is authorized to withdraw the suit and acquire the property as offered by Mr. Sanjay when one of the partners has not offered his view.

(3 Marks)

(b) State Power Corp Private Limited was incorporated under the Companies Act, 2013 with 51% shares held by the Central Government to promote infrastructure for a future Information Technology project. The Board of the Company had the appropriate representation of the nominees of the Central Government. The Company performed extremely well in the initial years after incorporation. However, use of Artificial Intelligence in the field of Information Technology broke the backbone of the Company and its scale of performance nosedived during the last three years. State Power Corp Private Limited has neither conducted any business nor filed the required returns with the Registrar for the last two financial years. The Board now wishes to apply for 'Dormant' status. Some directors of the Company opined that having 51% stake of the Central Government, the

Company should be considered as a Public Financial Institution in terms of the provisions of the Companies. Act, 2013. In the contrary, some other directors also opposed that being a Private Company State Power Corp Private Limited even cannot be considered as a Government Company. The directors decided to procure your advice regarding the following matters:

(i) Having 51% stake of the Central Government whether State Power Corp Private Limited could be considered as a Government Company since it was incorporated as a private company.

(ii) Whether State Power Corp Private Limited could be considered as a Public Financial Institution in terms of the provisions of the Companies Act, 2013.

(iii) Whether the Company is eligible to apply for availing the status of a Dormant Company.

Analyzing the applicable provisions of the Companies Act, 2013 advise the directors supported by justification. ***(7 Marks)***

(c) Referring to the applicable provisions of the Indian Contract Act, 1872, answer the following:

(i) State the situations where Vindictive or Exemplary damage is awarded (with justification).

(ii) Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of contract. However, it is very difficult to draw a clear line of distinction between the two. State any three principles which may be helpful to differentiate between Penalty and liquidated damages. ***(6 Marks)***

Answer

(a) (i) Whether the firm was correct in refusing the inspection of accounts by Mr. Niman during the firm's continuance?

As per Section 29(1) of the Indian Partnership Act, 1932 (the Act), a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

In the given case during the continuance of partnership, such transferee Mr. Niman is not entitled:

- to interfere with the conduct of the business.
- to require accounts.
- to inspect books of the firm.

However, Mr. Niman 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.

Therefore, CHJ & Associates was correct in refusing Niman the right to inspect accounts during the firm's continuance. Niman's demand was legally unenforceable.

Whether Niman is legally eligible to ask for the accounts of the firm for past 3 years on dissolution?

As per Section 29(2) of the Act, if the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution. Also, there is no provision entitling Niman to demand accounts for the past 3 years (prior to dissolution).

In the instant case, as the CHJ and Associates decided to dissolve the partnership firm, Mr. Niman is not eligible to ask for the accounts of the firm for past 3 years on dissolution. He is entitled to an account of the firm from the date of the dissolution only.

(ii) Implied authority of partner as agent of the firm (Section 19 of the Indian Partnership Act, 1932): Subject to the provisions of Section 22 of the Act, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his “implied authority”.

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) Submit a dispute relating to the business of the firm to arbitration;

(b) withdraw a suit or proceedings filed on behalf of the firm;

(c) acquire immovable property on behalf of the firm;

In the instant case, Mr. Promod cannot submit the suit against Mr. Sanjay, a raw material supplier of the firm for poor quality raw materials to Mediation as it is beyond the Implied authority of a partner.

As he cannot, on his own, withdraw the existing suit against Mr. Sanjay to enable out-of-court settlement (mediation), as Section 19(2)(d) restricts a partner's implied authority to withdraw a suit on behalf of the firm.

Furthermore, he cannot acquire the immovable property offered by Mr. Sanjay on behalf of the firm.

Mr. Pramod cannot unilaterally withdraw the suit or acquire the property on behalf of the firm without the consent of Mr. Kumar. He must wait for Mr. Kumar to return or seek his consent before proceeding. Acting without consent would make Pramod personally liable for any adverse consequences.

(b) (i) 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 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, 51% of the shares of State Power Corp Limited is held by the Central Government. Therefore, the company shall be treated as a Government Company. The fact that it is incorporated as a private company does not affect its status as a Government Company. Therefore, the contention of some directors that a private company cannot be a Government Company is incorrect.

In view of the above, State Power Corp Private Limited is a Government Company under Section 2(45) despite being incorporated as a private company.

(ii) Public Financial Institutions (PFI) [Section 2(72)]: A "PFI" includes institutions specified in Schedule I of the Act (like IDBI, LIC, UTI, IFCI, ICICI, etc.)–and such other institution as may be notified by the Central Government. A Government Company does not automatically become a PFI merely because 51% shares are held by the Central Government.–Since State Power Corp Pvt Ltd was incorporated for infrastructure/IT purposes, there is no indication that State Power Corp Private Limited has been specifically established as a PFI under the Act or notified by the Central Government for this purpose, it cannot be regarded as a PFI. Hence, the view of the directors claiming it to be a PFI is not correct.

In view of the above, State Power Corp Private Limited cannot be considered a Public Financial Institution.

(iii) Dormant Company (Section 455): Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

"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.

Since State Power Corp Private Limited has neither conducted business nor filed the required returns during the last two financial years, it qualifies as an inactive company and is eligible to apply for the status of a Dormant Company.

(c) (i) Situations where Vindictive or Exemplary Damages are awarded: Under the Indian Contract Act, 1872, the general rule under Section 73 is that only ordinary/compensatory damages are awarded for breach of contract. However, vindictive or exemplary damages (punitive in nature) are awarded in the following exceptional situations:

1. **Breach of a contract to Marry:** In an action for breach of promise to marry, exemplary damages may be awarded considering the mental suffering, injury to feelings, and humiliation caused to the aggrieved party.

2. **Wrongful Dishonour of Cheque:** For wrongful dishonour by a banker of his customer's cheque (despite availability of sufficient funds), because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him. A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. *[Gibbons Vs. West Minister Bank]*.

(ii) Distinction between liquidated damages and penalty: Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of contract. It is very difficult to draw a clear line of distinction between the two but certain principles as laid down below may be helpful.

1. If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.

2. Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.

3. The expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant, the court will regard it as a penalty even if it is termed as liquidated damages in the contract.

4. The essence of a penalty is payment of money stipulated as a terrorem of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.

Alternate Answer to (ii)

(ii) Three principles to differentiate Penalty from Liquidated Damages (Section 74 of the Indian Contract Act, 1872):

Both penalty and liquidated damages are amounts stipulated in the contract as payable on breach. The distinction as developed by English law and recognised in India:

Principle 1 – Genuine pre-estimate vs. In terrorem: Liquidated damages represent a genuine pre-estimate of the loss likely to flow from the breach, agreed upon at the time of contract. A penalty is a sum fixed in terrorem (as a threat/deterrent) to secure performance, exorbitant and unconscionable compared to the greatest loss that could possibly flow from the breach.

Principle 2 – Proportionality to Breach: If a single sum is made payable on the occurrence of several events, some serious and some trivial, it is presumed to be a penalty (as it cannot be a genuine pre-estimate for all events). Liquidated damages would typically vary with the nature/extent of breach.

Principle 3 – Impossibility of Exact Estimation: If the nature of the breach is such that it is difficult to estimate damages precisely, a fixed sum agreed upon may be held as liquidated damages. Conversely, if the harm caused by breach is easily assessable and the fixed sum far exceeds it, the sum is a penalty.

Question 4

(a) 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 conditions of the loan with Mr. Bhusan without consent and knowledge of any of the guarantors? ***(7 Marks)***

(b) Referring to the applicable provisions of the Negotiable Instruments Act, 1881, answer the following questions.

(i) Negotiable instruments may be negotiated either by delivery or by indorsement and delivery.

State the situations when negotiable instrument is negotiated by the following modes: -

(A) By delivery only

(B) By delivery & indorsement

(ii) Delivery is important in both cases, i.e. either by delivery only or by delivery & indorsement.

(A) Explain why delivery is essential for negotiation?

(B) Whether there is any circumstance where, instruments cannot be negotiated even by delivery thereof? ***(7 Marks)***

(c) *Discuss the following terms which you would find while studying the Indian Regulatory Framework:*

(i) Common Law

(ii) Principles of Natural Justice. ***(6 Marks)***

Answer

(a) (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.

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

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.

(b) (i) (A) Modes of Negotiation: Section 14 of the Negotiable Instruments Act, 1881 defines Negotiation as the transfer of a negotiable instrument to another person in such a manner as to constitute the transferee the holder thereof.

By Delivery Only: A bearer instrument (or one endorsed in blank) can be negotiated by mere delivery without any endorsement. The instrument passes from hand to hand by physical delivery alone.

Applicable when: The instrument is a bearer instrument (payable to bearer), or

The instrument has been endorsed in blank by the last endorsee, converting it into a bearer instrument.

(B) By Delivery & Indorsement: An order instrument (payable to a specified person or order) can only be negotiated by endorsement and delivery. Both acts are necessary:

Indorsement: The holder must sign on the back of the instrument (or on a slip affixed to it 'allonge'), and

Delivery: Physical delivery of the instrument to the transferee.

Without delivery, endorsement alone does not constitute valid negotiation.

Alternative Answer (b)(i)

Negotiation by delivery [Section 47 of the Negotiable Instruments Act, 1881]: Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Negotiation by delivery and indorsement [Section 48]

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

(ii) (A) Why is delivery essential for negotiation? [Section 46]

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

Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course.

The contract on a negotiable instrument until delivery remains incomplete and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered.

(B) Circumstances where instruments cannot be negotiated even by delivery: If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57)

If the endorsement on an order instrument is forged, delivery of such instrument cannot complete a valid negotiation; a forged endorsement is no endorsement (Section 58).

(c) (i) Common Law: A judicial precedent or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution. The doctrine of *Stare Decisis* is the principle supporting common law. It is a Latin phrase that means "to stand by that which is decided." The doctrine of *Stare Decisis* reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar or "on all four legs" with the earlier decision.

(ii) Principles of Natural Justice: Natural justice, often known as *Jus Natural* deals with certain fundamental principles of justice going beyond written law. *Nemo judex in causa sua* (Literally meaning No one should be made a judge in his own cause, and it's a Rule against Prejudice), *audi alteram partem* (Literally meaning hear the other party or give the other party a fair hearing), and reasoned decision are the rules of Natural Justice. A judgement can override or alter a common law, but it cannot override or change the statute.

Question 5

(a) Rishi is having a farmhouse in the outskirts of Ambala. The clay of his farmhouse is very heavy and strong. In order to cultivate some seasonal vegetables, he approached a multi-brand dealer to buy a tractor and six automatic seed planter machines. He categorically specified the condition of the clay of his farmhouse to the dealer and also informed the dealer that he is relying upon the expertise of the dealer for this purpose. The dealer in turn suggested the tractor and automatic seed planter machines (which are independent of each other) of a particular leading brand. Rishi relying upon the expertise of the dealer purchased the above items through a single bill with separately itemized pricing that breaks down the individual costs for the tractor and each of the six seed planter machines with item serial number. While they were being used for digging the land and sowing seeds, the tractor broke down just after 16 days of use as it was found to be unsuitable for the purpose. In contrast, only one out of the six seed planter machines broke down on the same day as it was also unsuitable for the particular field. By this time all the other five seed planter machines were also used in the specified field by Rishi and found to be suitable. Consequently, Rishi wanted to repudiate the entire contract and return the tractor and all the seed planting machines.

Analyzing the relevant provisions of the Sale of Goods Act, 1930, advise Rishi on the following based on the facts given above.

(i) Can Rishi return the tractor of the leading brand?

(ii) Can Rishi return all six seed planting machines? ***(7 Marks)***

(b) *A minor cannot be bound by a contract because a contract with a minor is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership.*

Referring to the provisions of the Indian Partnership Act, 1932, discuss the rights and liabilities of a minor partner. ***(7 Marks)***

(c) *Briefly discuss the exceptions to the rule "Doctrine of privity of contract" as laid down under the provisions of the Indian Contract Act, 1872.* ***(6 Marks)***

Answer

(a) (i) Condition as to quality or fitness [Section 16(1) of the Sale of Goods Act, 1930]:

There is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

(a) The buyer should have made known to the seller the particular purpose for which goods are required.

(b) The buyer should rely on the skill and judgement of the seller.

(c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

Similarly, where the goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of mercantile quality [Section 16(2)].

In the instant case, Rishi informed the dealer about the heavy and strong clay of his farmhouse and relied upon the dealer's expertise for selecting the tractor and seed planter machines. Therefore, the implied condition as to fitness for purpose under Section 16(1) applies.

As regards the tractor, it broke down within 16 days because it was unsuitable for the intended purpose. This amounts to breach of the implied condition regarding fitness for purpose.

Breach of a condition gives the buyer the right to treat the contract as repudiated and reject the goods and claim refund of price.

Hence, Rishi is entitled to reject and return the tractor and repudiate the contract relating to the tractor.

(ii) In case of the six seed planter machines, only one machine was defective and unsuitable, whereas the remaining five machines were suitable and had already been used by Rishi. Further, the bill contained separately itemized pricing and serial numbers, indicating a severable contract.

The seed planter that broke down on the same day (16th day) was also found unsuitable for the specific field/purpose. This is essentially breach of implied condition of fitness for purpose under Section 16(1). Therefore, Rishi can return this one machine and claim refund.

Also, according to Section 37(3), where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject or may reject the whole.

The remaining 5 seed planters were used and found to be suitable for the field. Since they performed as expected, there is no breach of any condition or warranty for these 5 machines.

Therefore, Rishi can reject and return only the defective seed planter machine (breach of fitness condition), but he cannot return all six seed planter machines since the remaining five machines were suitable and already accepted by use.

(b) **Minors admitted to the benefits of partnership (Section 30):** A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Act. When this has been done with the consent of all the partners then the rights and liabilities of such a partner under Section 30 are as follows:

(1) **Rights:**

(i) A minor partner has a right to his agreed share of the profits and of the firm.

(ii) He can have access to, inspect and copy the accounts of the firm.

(iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.

(iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

(2) Liabilities:

(i) **Before attaining majority:**

(a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.

(b) Minor has no personal liability for the debts of the firm incurred during his minority.

(c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee (which means minor can recover his share in the firm on proportionate basis from official receiver/assignee)

(ii) **After attaining majority**: Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.

Where he has elected not to become partner, he may give public notice that he has elected not to become partner and such notice shall determine his position with regard to the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

(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) are as follows:

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

(ii) 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:**

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

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

(iii) 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.

(c) The rule that stranger to a contract cannot sue is known as a "doctrine of privity of contract", is subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

(1) **In the case of trust**, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.

(2) **In the case of a family settlement**, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.

(3) **In the case of certain marriage contracts/arrangements**, a provision may be made for the benefit of a person, he may file the suit though he is not a party to the agreement.

(4) **In the case of assignment of a contract**, when the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skill.

(5) **Acknowledgement or estoppel** – where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.

Where a party to a contract acknowledges or admits that he holds money or property for a third party, or where his conduct creates an estoppel, the third party can enforce the obligation. Example: A owes money to B. A receives money from C for B. B can directly claim from A.

(6) **In the case of covenant running with the land**, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

(7) **Contracts entered into through an agent:** The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Queston 6

(a) Examine the validity of the following instruments under the Negotiable Instruments Act, 1881, by providing justification in support of your conclusions (treating the three situations independent of each other)

(i) A promissory note for ₹ 25,000 executed by Alok, containing an undertaking to pay the unidentified person who brings his lost dog. Anand thereafter found and brought the dog and claimed the reward.

(ii) A signed bearer cheque was delivered by Alok as a reward to Anand for the already completed service of finding the lost dog.

(iii) Alok made a self-drawn and self-accepted bill of exchange and delivered it to Anand (as a reward) after the dog was found. ***(7 Marks)***

(b) Referring to the applicable provisions of the Indian Contract Act, 1872, answer the following:

(i) Rights of finder of lost goods

(ii) Rights of Pawnee/Pledgee ***(6 Marks)***

OR

(b) Answer both of the following with reference to the provisions of the Indian Contract Act, 1872.

(i) "The party defrauded has several remedies at his disposal". Discuss the remedies available to the party defrauded.

(ii) State the circumstances under which a contract of bailment shall terminate. ***(6 Marks)***

(c) Referring to the provisions of the Sale of Goods Act, 1930, answer the following:

(i) State the situations when a seller can restrain the passing of property to the buyer inspite of the fact that the goods have already been delivered to the buyer.

Also state the circumstances in which the seller is presumed to have reserved the right of disposal of the property in goods? ***(4 Marks)***

(ii) Discuss the provisions with regard to determination of price by a third party. ***(3 Marks)***

Answer

(a) (i) A Promissory Note for ₹25,000 payable to 'the person who brings the lost dog: According to Section 4 of the Negotiable Instruments Act, 1881, "A 'promissory note' is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument." The payee must be certain; either a named person, or 'bearer'. The undertaking to pay must be unconditional.

In the given case, the promissory note was made payable to the unidentified person who would bring the lost dog. Since the payee was uncertain at the time of making the instrument, the requirement of payment to a "certain person" is not fulfilled.

Therefore, the instrument is not a valid promissory note under Section 4 of the Negotiable Instruments Act, 1881.

(ii) A signed bearer cheque delivered by Alok to Anand as reward for finding the dog: Under Section 6 of the Negotiable Instruments Act, 1881, a cheque is a bill of exchange drawn on a specified banker and payable on demand.

A signed bearer cheque delivered by Alok to Anand after the dog was found is a valid cheque. The fact that the service had already been completed does not affect the validity of the cheque as a negotiable instrument. A bearer cheque is payable to the person who presents it (the bearer).

Therefore, the bearer cheque is a valid negotiable instrument and Anand can claim payment on it.

(iii) A self-drawn and self-accepted Bill of Exchange by Alok, delivered to Anand: Under Section 5 of the Negotiable Instruments Act, 1881, 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.

A 'self-drawn and self-accepted' bill of exchange means Alok is both the Drawer and the Drawee/Acceptor — i.e., Alok has drawn a bill upon himself and accepted it.

Under Section 5 of the NI Act, where the drawer and drawee are the same person, the holder has the option of treating it as a Promissory Note or a Bill of Exchange. If treated as a Promissory Note, the instrument is valid — it is essentially Alok's promise to pay Anand.

The self-drawn self-accepted bill is a valid instrument. The holder (Anand) may treat it as a Promissory Note under Section 5, and it is enforceable against Alok.

(b) (i) Rights of finder of lost goods [Section 168 of the Indian Contract Act, 1872]: A person who finds some goods which do not belong to him, is called the finder of the goods. It is the duty of the finder of goods to find the true owner and surrender the goods to him. However, the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward on the lost goods, the finder may sue the owner for such reward, and may retain the goods until then.

When finder of thing commonly on sale may sell it [Section 169].

When a thing which is commonly the subject of sale, if lost, if the owner cannot with reasonable diligence be found or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it-

(i) When the thing is in danger of perishing or of losing the greater part of its value, or

(ii) When the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

(ii) Rights of Pawnee/Pledgee: Rights of Pawnee can be classified as under the following headings:

(a) **Right to retain the pledged goods [Section 173 of the Act]:** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

(b) **Right to retention of subsequent debts [Section 174 of the Act]:** The Pawnee can retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged. But he can exercise this right only when there is a contract to this effect. i.e. a right to retain goods for subsequent debts can be exercised only when it has been provided for in a contract to this effect.

(c) **Pawnee's right to extraordinary expenses incurred [Section 175 of the Act]:** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. For such expenses, however, he does not have the right to retain the goods, but he can sue the pawnor for such expenses.

(d) **Pawnee's right where pawnor makes default [Section 176 of the Act]:** If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee has the following rights:

i. the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or

ii. he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

(b) [SECOND ALTERNATE]

(i) When the consent to an agreement in caused by the fraud, the contract is voidable at option of the party defrauded and he has the following remedies:

(1) He can rescind the contract within a reasonable time.

(2) He can sue for damages.

(3) He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

(ii) Termination of Bailment: A contract of bailment shall terminate in the following circumstances:

1. **On expiry of stipulated period**: If the goods were given for a stipulated period, the contract of bailment shall terminate after the expiry of such period.

2. **On fulfilment of the purpose**: If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfilment of that purpose.

3. **By Notice:**

(a) Where the bailee acts in a manner which is inconsistent with the terms of the bailment, the bailor can always terminate the contract of bailment by giving a notice to the bailee.

(b) A gratuitous bailment can be terminated by the bailor at any time by giving a notice to the bailee. However, the termination should not cause loss to the bailee in excess of the benefit derived by him. In case the loss exceeds the benefit derived by the bailee, the bailor must compensate the bailee for such a loss.

4. **By Death:** A gratuitous bailment terminates upon the death of either the bailor or the bailee.

5. **Destruction of the subject matter**: A bailment is terminated if the subject matter of the bailment is destroyed or there is a change is in the nature of goods which makes it impossible to be used for the purpose of bailment.

(c) (i) Under the Sale of Goods Act, 1930, even if goods have been delivered to the buyer, the seller may restrain passing of property in the following situations:

1. **Right of Stoppage in Transit [Section 50]:** When the buyer becomes insolvent after goods have been dispatched but are still in transit (not yet received by the buyer), the unpaid seller may stop the goods in transit and resume possession. This right operates during the transit period.

2. **Reservation of Right of Disposal (Section 25 of the Sale of Goods Act, 1930):** This Section preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer.

   Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the same to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled. (sub-section 1)

   Circumstances where seller is presumed to have reserved the right of disposal [Section 25(2)]: If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved to the right of disposal. (Sub Section 2)

Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill.

And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him. (Sub Section 3).

(ii) **Determination of Price by Third Party:** Section 10 of the Sale of Goods Act, 1930 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault. If only part of the goods has been delivered and the third party fails to value, the buyer must pay a reasonable price for those goods actually delivered and accepted.
3. However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.