

# TEST - CA - FOUNDATION - BUSINESS LAWS

Time – 3 Hours

Marks – 100

**Instruction:** Question Number 1 is compulsory and any 4 questions from the remaining questions.

**1. (A)**

Titu owes Guddu, the following debts as per the table given below:

Amount of the Debt (in INR)	Position of Debt
5,000	Time barred on 01 <sup>st</sup> July, 2023 as per the provisions of the Limitation Act, 1963
3,000	Time barred on 01 <sup>st</sup> July, 2023 as per the provisions of the Limitation Act, 1963
12,500	Due on 1 <sup>st</sup> April, 2022
10,000	Due on 15 <sup>th</sup> July, 2023
7,500	Due on 25 <sup>th</sup> November, 2023

Guddu makes payment on 1<sup>st</sup> April, 2023 mentioned as below without any notice regarding how to appropriate the amount/ payment.

- i. A cheque of Rs 12,500
- ii. A cheque of Rs 4,000.

In such a situation how the appropriation of the payment is done against the debts as per the provisions of the Indian Contract Act, 1872 by assuming that Titu also has not appropriated the amount received towards any particular debt.

**(6 Marks)**

**Answer:**

As per the provisions of Section 59 of the Indian Contract Act, 1872, where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

As per the provisions of Section 61 of the Indian Contract Act, 1872, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

In the present case, Guddu made two payments by way of two cheques. Also, neither Guddu nor Titu said anything as to the appropriation of the amount towards any particular debt.

Since one of the issued cheques was exactly the amount of the debt due i.e. of Rs 12,500, by applying the provisions of Section 59 we can say that this is a circumstance indicating for appropriation against that particular debt.

Cheque of Rs 4,000 can be appropriated in terms of the provisions of Section 61 since neither of the parties, have made any appropriation. The amount will be appropriated in

discharging of the debts in order of time against any lawful debt whether they are or are not barred by the law in force for the time being as to the limitation of suits.

Hence cheque of Rs 12,500 will be appropriated against the debt of Rs 12,500 which is due on 1st April, 2022.

As per the scenario given in the question, since two debts are persisting in order of time which were treated as time barred on 1st July 2023, the amount of Rs 4,000 will be appropriated proportionately, i.e. in proportion of 5,000:3,000. Therefore as per the provisions of the Indian Contract Act, 1872, Rs 2,500 will be appropriated for the first debt and Rs 1,500 will be appropriated towards the second debt.

**1. (B)**

**A mobile phone was displayed in a shop with a price tag of Rs 10,000 attached to the mobile display box. As the price displayed was very less as compared to M.R.P. of the mobile phone, Biru, a customer rushed to the cash counter and asked the shopkeeper to receive the payment and pack up the mobile phone. The shopkeeper refused to hand over the mobile phone to Biru in consideration of the price indicated in the price tag attached to the mobile phone. Biru seeks your advice whether he can sue to shopkeeper for the above cause under the Indian Contract Act, 1872.**

**(4 Marks)**

**Answer:**

An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer.

Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Biru reaches to shop and selects a Mobile Phone with a price tag of Rs 10,000 but the shopkeeper refused to hand over the mobile phone to Biru in consideration of the price indicated in the price tag attached to the mobile phone.

On the basis of above provisions and facts, the price tag with the Mobile Phone was not offer. It is merely an invitation to offer. Hence, it is Biru who is making the offer and not the shopkeeper. Shopkeeper has the right to reject Biru's offer. Therefore, Biru cannot sue the shopkeeper for the above cause.

**1. (C)**

**On 1st March 2023, T Readymade Dress Garments, Shimla enters into a contract with J Readymade Garments, Jaipur for the supply of different sizes of shirts 'S' (Small), 'M' (Medium), and 'L' (Large). As per the terms of the contract, 300 pieces of each category i.e. 'S' @ Rs 900; 'M' @ 1,000 and 'L' @ Rs 1,100 per piece have to be supplied on or before 31st May, 2023.**

**However, on 1st May, 2023, T Readymade Dress Garments, Shimla informed J Readymade Garments, Jaipur that the firm is not willing to supply the shirts at the above rate due to the rise of prices in the raw material cost. In the meantime, prices for similar shirts have gone up in the market to the tune of Rs 1,000; Rs 1,100; and Rs 1,200 for 'S', 'M' and 'L' sizes respectively.**

**Examine the rights of J Readymade Garments, Jaipur in this regard as per the provisions of the Indian Contract Act, of 1872.**

**(5 Marks)**

**Answer:**

As per the provisions of Section 39 of the Indian Contract Act, 1872, when a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

J Readymade Garments in the given situation has two options, out of which he has to select any one:

- i. Either to treat the contract as rescinded and sue T Readymade Dress Garments for damages from breach of contract immediately without waiting until the due date of performance or
- ii. He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold the other party responsible for the consequences of non-performance.

**Important Note:**

The answer can also be given as per Section 73 of the Indian Contract Act, 1872 which lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

In the instant case, J Readymade Garments, Jaipur would be entitled to get the damages i.e. difference between the contract price and the market price on the day of default from T Readymade Dress Garments, Shimla. In other words, the amount of damages would be Rs 90,000 [300 piece @ Rs 100 (Small), 300 piece @ Rs 100 (Medium) and 300 piece @ Rs 100 (Large)].

**1. (D)**

**“Mere silence does not amount to fraud”. Explain the statement as per the provisions contained in the Indian Contract Act, 1872.**

**(5 Marks)**

**Answer:**

**Mere silence not amounting to fraud:** Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.

It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Exceptions to this rule:

- i. Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one

contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).

- ii. Where the silence is, in itself, equivalent to speech.

## 2. (A)

Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited Rs 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872.

Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha? (4 Marks)

### Answer:

As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts.

In the instant case, Radha cannot sue her three friends for the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship.

If the said party organised by Radha had been a "Contributory 2023 New year celebration party", then Radha could have sued her three friends for the loss incurred in the said party as the agreement between her and her friends would have legal backing; on the basis of which Radha deposited the advance amount and the parties here intended to create legal relationship.

## 2. (B)

As per the general rule, "Stranger to a contract cannot file a suit in case of breach of contract". Comment and explain the exceptions to this rule as per the provisions of the Indian Contract Act, 1872. (6 Marks)

### Answer:

Under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party; but the third party cannot sue on contract. Only a person who is party to a contract can sue on it.

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

- 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.
- 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.

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

## 2. (C)

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

**(5 Marks)**

**Answer:**

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 is as follows:

- Step 1 :- When a law is proposed in parliament, it is called a Bill.
- Step 2 :- After discussion and debate, the law is passed in Lok Sabha.
- Step 3 :- Thereafter, it has to be passed in Rajya Sabha.
- Step 4 :- It then has to obtain the assent of the President of India.
- Step 5 :- Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- Step 6 :- The law will become applicable from the date mentioned in the notification as the effective date.
- Step 7 :- Once it is notified and effective, it is called an Act of Parliament.

## 2. (D)

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

**(5 Marks)**

**Answer:**

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 endorsement 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 are as follows:**

- It is necessarily in writing.
- It should be signed.
- It is freely transferable from one person to another.

- Holder's title is free from defects.
- It can be transferred any number of times till its satisfaction.
- Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
- The sum payable, the time of payment, the payee, must be certain.
- The instrument should be delivered. Mere drawing of instrument does not create liability.

### 3. (A)

**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? (5 Marks)**

#### **Answer:**

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.

### 3. (B)

**HP Polytech Limited has a paid-up share capital divided into 6,00,000 equity shares of Rs 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. (4 Marks)**

**Answer:**

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
- (iv) 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 Rs 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.

**3. (C)**

**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 Rs 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.**

**(5 Marks)**

**Answer:**

- (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 exists no business.

**3. (D)**

**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. (6 Marks)**

**Answer:**

(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.

**4. (A)**

**Amit, a minor was studying in a college. On 1st July, 2023 he took a loan of Rs 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 Rs 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 Marks)**

**Answer:**

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 necessities 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 necessities 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. (B)**

**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? (6 Marks)**

**Answer:**

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.

#### **4. (C)**

**Suraj sold his car to Sohan for Rs 1,75,000. After inspection and satisfaction, Sohan paid Rs 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. (7 Marks)**

**Answer:**

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.

**4. (D)**

Akash purchased 100 Kgs of wheat from Bhaskar at Rs 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. **(3 Marks)**

**Answer:**

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.

**5. (A)**

**Make any 5 comparisons between PROMISSORY NOTE and BILL OF EXCHANGE. (5 Marks)**

**Answer:**

PROMISSORY NOTE	BILL OF EXCHANGE
A promissory note is a two-party instrument, with a maker (debtor) and a payee (creditor).	In a bill there are three parties: drawer, drawee and payee, though any two out of the three capacities may be filled by one and the same person. The drawer is the maker who orders the drawee to pay the bill to a person called the payee or to his order. When the drawee accepts the bill he is called the acceptor.
A note cannot be made payable to the maker himself.	In a bill, the drawer and payee may be the same person.
A note contains an unconditional promise by the maker to pay to the payee or his order.	In a bill there is an unconditional order to the drawee to pay according to the directions of the drawer.
A note is presented for payment without any prior acceptance by the maker.	A bill payable after sight must be accepted by the drawee or someone else on his behalf before it can be presented for payment.

The liability of the maker of a note is primary and absolute.	The liability of the drawer of a bill is secondary and conditional.
No such notice need to be given in the case of a note.	When a bill is dishonoured, due notice of dishonour is to be given by the holder to the drawer and the intermediate endorsee.
A promissory note cannot be made payable to bearer, even if it is made payable otherwise than on demand.	A bill can be drawn payable to bearer provided it is not payable on demand.

### 5. (B)

**Mention the importance of delivery in negotiation under the provisions of Negotiable Instruments Act, 1881. (5 Marks)**

**Answer:**

#### **IMPORTANCE OF DELIVERY IN 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 endorsee on his behalf or when the endorser, after endorsement, holds the instrument as an agent of the endorsee.
- 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 endorsed 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 endorsee unless after the endorsement the same has been delivered. If a person makes the endorsement of instrument but before the same could be delivered to the endorsee the endorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof.

#### **DELIVERY WHEN EFFECTIVE BETWEEN THE PARTIES [SECTION 57]**

- The legal representative of a deceased person cannot negotiate by delivery only, a promissory note, bill of exchange or cheque payable to order and endorsed by the deceased but not delivered.
- A legal representative is not an agent of the deceased. Therefore, a legal representative cannot complete the instrument if the instrument was executed by the deceased but could not be delivered because of his death.

### 5. (C)

**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? (4 Marks)

**Answer:**

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.

**5.(D)**

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? (6 Marks)

**Answer:**

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].

## 6. (A)

**When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain. (7 Marks)**

**Answer:**

Dissolution of firm

- According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the ‘**dissolution of the firm**’.
- Thus, the dissolution of firm means the discontinuation of the legal relation existing between all the partners of the firm.
- But when only one or more 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, it is called **dissolution of partnership**.
- The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place in following manners (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.

#### 6. (B)

**What do you mean by Dormant Company under Companies Act, 2013?**

**(3 Marks)**

**Answer:**

**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 **DORMANT COMPANY** may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- **DORMANT 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.
- **“SIGNIFICANT ACCOUNTING TRANSACTION”** means any transaction other than:
  - payment of fees by a company to the Registrar;
  - payments made by it to fulfil the requirements of this Act or any other law;
  - allotment of shares to fulfil the requirements of this Act; and
  - payments for maintenance of its office and records.

#### 6. (C)

**What are the advantages of Advantages of LLP?**

**(6 Marks)**

**Answer:**

**Advantages of LLP are as follows:**

- ✚ **Easy formation:** Unlike a company, formation of LLP involves lesser formalities and shorter time.
- ✚ **Liability of partners:** Unlike partnership firm, liability of the partners is not unlimited. Their personal assets are not used to discharge unpaid debts of the LLP.
- ✚ **Lower cost of compliance:** There are fewer compliance requirements when compared to a company and the compliances are not complex.
- ✚ **Audit requirements:** Unlike companies, audit is not mandatory for LLPs except as provided under the Act or under any other law.
- ✚ **Startup LLPs & Small LLPs:** These LLPs enjoy various concessions and are more flexible.
- ✚ **Entry and exit of partners:** Partners can be admitted and can move out easily without any rigidity, in accordance with the LLP agreement.
- ✚ **Separate legal entity:** LLPs have a separate legal entity, perpetual succession and are

not affected by change in the constitution of partners.

✚ **Easy to close down:** The procedure to wind up an LLP is easier and quicker compared to a company.

✚ **Members:** There is no restriction to the number of partners in an LLP.

✚ **Flexibility in management:** Since the rights and duties and terms of management are as per the LLP agreement, lot of flexibility is given to the partners to manage the affairs of the LLP. Here the owners themselves manage the LLP unlike a company.

## 6. (D)

**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.

**(4 Marks)**

**Answer:**

(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.