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) ABC Infrastructure Ltd. was running business successfully from several years. P was the purchase manager of company. He authorized his agent Q to buy Raw Material on his behalf for construction of Roads in Delhi. He instructed Q to buy only Mazboot Brand of Cement @ ₹ 2,000 – 2,500 per ton to maintain quality of Roads in Delhi. However, Q bought 1,000 tons of Mazboot Brand of cement from Mr. R a very well-known vendor of ABC Infrastructure Ltd. @ ₹3,500/- per ton. Mr. Q has not disclosed the fact to R that he was buying cement for ABC Infrastructure Ltd. When P discovered this aspect, he refused to pay Mr. R and rejects the cement bought by Q on the ground that Q has exceeded the authority. Mr. R suffered a huge loss on account of this transaction. Give your opinion in accordance with provisions from the Indian Contract Act, 1872:

(i) Whether P was bound to pay Mr. R for cement purchased by his agent Mr. Q?

(ii) On the other hand, Q being agent refused to accept any liability to compensate R. In this situation, Whether Mr. R can file a suit against Q? ***(7 Marks)***

(b) (i) State with reasons whether the following companies can be treated as Small Companies with reference to the provisions of the Companies Act, 2013:

1. STS Pvt. Ltd., having a turnover of ₹ 10 crores and the paid-up capital of ₹ 1 crore (1,00,000 equity shares of ₹ 100 each). Out of these 60,000 equity shares are held by UV Infratech Pvt. Ltd.

2. ZX Ltd., having a paid-up capital of ₹ 3 crores and turnover of ₹ 35 crores. ***(4 Marks)***

(ii) The paid-up equity share capital of ACD Ltd. is ₹ 80 crores & preference share capital of ₹ 20 crores. B Ltd. holds equity shares in ACD Ltd. worth ₹ 15 crores and preference shares worth ₹ 10 crores.

Can B Ltd. be considered as an Associate Company of ACD Ltd.?

(3 Marks)

(c) In accordance with provisions of the Indian Partnership Act, 1932, explain the following:

(i) The rights of an outgoing partner to carry on competing business.

(ii) The rights of a partner to be indemnified by the firm and the liability of a partner to indemnify the firm. ***(6 Marks)***

Answer

(a) Principal's liability when agent exceeds authority [Section 227 of the Indian Contract Act, 1872]: When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal not bound when excess of agent's authority is not separable [Section 228]: 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.

When the agent exceeds his authority, misleads the third person in believing that the agent has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

When the **agent does not disclose the name of the principal** then there arises a presumption that he himself undertakes to be personally liable.

In the instant case, Q violated the instructions of P by buying cement at ₹ 3,500 per ton, which is beyond the authorized price limit. Furthermore, Q did not disclose to R that he was buying cement for ABC Infrastructure Ltd.

Therefore, the answers are

(i) No, P was not bound to pay Mr. R, as the agent Q exceeded his authority, and the deviation was inseparable from the authorized act.

(ii) Yes, Mr. R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the principal.

Alternative Answer

In the light of the given facts in the question, P, the Purchase Manger of the ABC Infrastructure Ltd., authorised Q his agent to buy raw material on his behalf for construction of roads in Delhi. He instructed Q to buy only Mazboot brand of cement @ ₹ 2000-2,500 per ton. However, Q, violated the instructions of P by buying cement at ₹3,500 per ton. Furthermore, he did not disclose to R that he was buying cement for ABC Infrastructure Ltd.

The stated issue marked in the question is related to the undisclosed principal and exceeding of his authority. Given situation can be dealt with the provisions under section 230, 231 & 233 of the Indian Contract Act.

According to the provision stated in section 230, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. He can neither sue nor be sued on contracts made by him on his principal's behalf.

However, there are exceptions where the agent is presumed to have agreed to be personally bound.

Where the agent does not disclose the name of his principal or undisclosed principal (Principal unnamed), then there arises a presumption that he himself undertakes to be personally liable. Also, when the agent exceeds his authority, misleads the third person in believing that the agent has the requisite authority in doing the act. In that case the agent can be made liable personally for the breach of warranty of authority.

Further section 231 of the Indian Contract Act specifies rights of third parties to a contract made by undisclosed agent.

As per the provision, if an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.

Section 233 gives the option to a third person to sue the Agent or the Principal. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Therefore, the following are the answers:

(i) No, P was not bound to pay Mr. R for purchase of the cement @ ₹ 3500/- per ton, as the agent Q does not disclose the name of his principal and also exceeded his authority, thus making himself to be personally bound and liable for the doing of said transaction.

(ii) Yes, in the light of the section 233, Mr. R is given an option to sue the agent or the Principal or both. Yes, R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the P (principal).

(b) (i) According to Section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company—

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

(ii) **turnover** of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions: This clause shall not apply to:

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

In the instant case,

(i) STS Pvt. Ltd. though is a small company taking into account its turnover and paid up share capital (i.e. ₹ 10 crores and ₹ 1 crore respectively), but since it is the subsidiary c.ompany of UV Infratech Pvt. Ltd. (UV Infratech Pvt. Ltd. holds ₹ 60,00,000 equity share capital of STS Pvt. Ltd.), hence STS Pvt. cannot be considered as small company.

(ii) ZX Ltd. cannot be considered as a small company since it is a public company.

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

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

In the given case, the paid up share capital of ACD Ltd. is ₹ 80 crores. B Ltd. holds equity share capital of ₹ 15 crore in ACD Ltd. i.e. less than 20% significant influence. Therefore ACD Ltd. cannot be considered as an Associate Company of B Ltd.

Alternate conclusion

Since the question is asked with reference to B Ltd. who had stake of ₹ 15 crores in the ACD Ltd. to be considered as an associate company or not.

So, the conclusion may be alternatively as follows:

In the given case, the paid up share capital of ACD Ltd. is ₹ 80 crores. B Ltd. holds equity share capital of ₹ 15 crore in ACD Ltd. i.e. less than 20% significant influence. Therefore, B Ltd. cannot be considered as an Associate Company.

(c) (i) Rights of outgoing partner to carry on competing Business (Section 36 of the Indian Partnership Act, 1932)

An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-

(a) use the firm name,

(b) represent himself as carrying on the business of the firm or

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreement in restraint of trade- A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

(ii) Right of the partners to be indemnified by the firm [Section 13(e)]: Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

Liability of partner to indemnify the firm [Section 13(f)]: A partner must indemnify the firm for any loss caused to it by wilful neglect in the conduct of the business of the firm.

Question 2

(a) S purchased a dress from a reputed showroom and made the payment in cash. The dress she purchased require some alteration. The shopkeeper assured S that it would take just one day to get the dress altered. It was agreed that once the dress was altered the shopkeeper would inform S through phone and she would collect the dress. Next day, by evening the dress was altered and kept ready to be delivered to S. The shopkeeper however forgot to inform S that the dress was ready.

In the meantime, a short circuit occurred near the delivery counter of the shop and some packets ready for delivery caught fire. After waiting for 10 days, when, S went to collect her dress she was informed that she came late and her dress was burnt in fire. S, then asked for refund of money what she paid. The shopkeeper refused, by saying that the dress was kept ready the very next day of purchase and the loss due to fire occurred after a week. He refused to bear the liability by saying that if S had collected the dress on time, it would not have been burnt. S insisted that she was waiting for a call from the shop and thus, entitled to claim the refund of cost of dress.

Examine, with reference to the provisions of the Sale of Goods Act, 1930, whether shopkeeper will be liable to refund the cost of dress to S? ***(7 Marks)***

(b) Doctrine of indoor management allows all those who deal with the company to assume that the officers of the company have observed the provisions of the articles. In light of the above statement, explain the doctrine of indoor management and its exceptions, if any, according to provisions of the Companies Act, 2013. ***(7 Marks)***

(c) (i) Limited Liability Partnership (LLP) gives the benefits of Limited Liability of a company on one hand and the flexibility of Partnership on the other. Discuss according to provisions of the Limited Liability Partnership Act, 2008. ***(3 Marks)***

(ii) Raju and his friend Anil have approached you to help them to form a LLP. The object of the proposed LLP is to run a charitable school which provides free education to the poor children. What would be your suggestion in accordance of provisions of the Limited Liability Partnership Act, 2008? ***(3 Marks)***

Answer

(a) Specific goods to be put into a deliverable state (Section 21 of the Sale of Goods Act, 1930): Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

According to section 26, "unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not".

However, Section 26 also lays down an exception to the rule that 'risk follows ownership.' It provides that where delivery of the goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

In the instant case, S had paid in full and purchased a specific dress but the dress required alteration, and it was agreed that the shopkeeper would inform S after alteration for collection. The ownership had already passed to S when she paid for the dress, subject to alteration. The delivery was conditional upon the shopkeeper informing S after alteration.

Even though the ownership may have passed to S, the seller (shopkeeper) failed to complete the delivery by not informing S. Under Section 26, when delivery is delayed due to the fault of the seller, the loss falls upon the party at fault.

Therefore, the shopkeeper is liable to refund the cost of the dress to S.

Alternative Answer

The given problem is based on the concept "Agreement to Sell" under section 4 of the Sale of Goods Act, 1930. The term is defined in Section 4(3) of the Sale of Goods Act, 1930, as – "where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is called an agreement to sell." Thus, whether a contract of sale of goods is an absolute sale or an agreement to sell, depends on the fact whether it contemplates immediate transfer from the seller to the buyer or the transfer is to take place at a future date. Hence, in an agreement to sell, the ownership of the goods is not transferred immediately. It is intending to transfer at a future date upon the completion of certain conditions thereon.

In the instant case, though S had paid and purchased a specific dress, but the dress required alteration. Shopkeeper assured S that it would take just one day to get the dress altered and it was agreed that he would inform S after alteration for collection. This reflects that transfer or property in goods is to be transferred subject to fulfilment of the condition i.e., after the alteration.

Further, Reservation of right of disposal given under Section 25, is applicable here. 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, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

Therefore, still the ownership lies with the seller on account of non-fulfilment of condition as to informing to the S that the dress is altered and is ready.

Further the plea taken by Shopkeeper that 10 days were passed after the alteration done and he is not liable for damage caused, is not justifiable on account of not being a reasonable circumstance and a ground.

Hence, in the light of the given facts, the shopkeeper is liable to refund the cost of the dress to S.

(b) Doctrine of Indoor Management: According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.

They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above-mentioned doctrine of Indoor Management has limitations/exceptions of its own. That is to say, it is inapplicable to the following cases, namely:

(a) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

(b) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

(c) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction, but it cannot apply to forgery which must be regarded as nullity.

(c) (i) LLP gives the benefits of limited liability of a company on one hand and the flexibility of a partnership on the other:

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners. The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

(ii) The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus, LLP cannot be formed for charitable or non-economic purpose.

In the instant case, Raju and Anil cannot form LLP to run a charitable school which provides free education to the poor children.

In view of above it is suggested to them that they can form a section 8 company for this purpose.

Question 3

(a) *ABC & Co. is a renowned partnership firm doing business in textile industry from last twenty years. But due to technical up-gradation, firm incurred heavy debts of ₹ 50 lakhs. To maintain the integrity of the firm they introduced Mr. D, as a new partner. Before admission of D, other partners A, B, and C decided on their own and made an agreement with the creditors that the new partner will be liable for existing debt through novation. When D joins, he came to know about the debt of ₹ 50 lakhs. With reference to the provisions of the Indian Partnership Act, 1932, give your opinion:*

(i) *Whether D would be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors?*

(ii) *Whether your answer will be different if D was minor at the time of admission?*

(iii) *Whether D would be liable to pay the debt upon becoming major?*

(7 Marks)

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

(4 Marks)

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

With reference to provisions of the Companies Act, 2013 decide whether SNM Ltd. can declare dividend @ 10% to equity shareholders for the year ending 31st March 2025. ***(3 Marks)***

(c) *According to provisions of the Indian Contract Act, 1872, define the following terms with reference to contract of guarantee:*

(i) *Nature and extent of Surety's Liability*

(ii) *Discharge of a Contract of Surety by Invalidation of the Contract of Guarantee.* ***(6 Marks)***

Answer

(a) (i) Liability of D: As per section 31 of the Indian Partnership Act, 1932, the liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. The mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In the instant case, D would not be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors.

(ii) If D was minor at the time of admission: As per section 30, the liability of the minor is confined only to the extent of his share in the profits and the property of the firm.

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

Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

Hence, D would not be liable in this case also.

(iii) Liability of D upon becoming major: A minor partner on attaining majority becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

Hence, D would not be liable to pay the existing debt upon becoming major.

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

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

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

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

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

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

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

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

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

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

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

(c) (i) Nature and extent of Surety's Liability [Section 128 of the Indian Contract Act, 1872]

(A) The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.

(B) Liability of surety is of secondary nature as he is liable only on default of principal debtor.

(c) Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.

(D) A creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.

(ii) Discharge of a contract of Surety by the invalidation of the contract of guarantee.

(a) **Guarantee obtained by misrepresentation [Section 142]:** Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

(b) **Guarantee obtained by concealment [Section 143]:** Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

(c) **Guarantee on contract that creditor shall not act on it until co-surety joins (Section 144):** Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Question 4

(a) X was running a business of Car on lease. One fine day, Y came to hire a car for 10 days for his business tour from Delhi to Amritsar. X offered him a Honda city for ₹ 50,000/- for 10 days on a condition that petrol and toll expenses will be borne by him. During the journey, engine of car was choked. Y has to spend ₹ 10,000/- for repair of engine. When he was coming back from Amritsar, brakes of car were not working and a major accident of Y happened due to this. Y was admitted to hospital and paid a bill of ₹ 50,000 on recovery. Y asked X to compensate him charges for car repair and hospital expenses amounting ₹ 60,000/-. X denied for compensation by saying that he was not aware about the engine and brakes fault. Y filed a suit against X for recovery of damages. Give your opinion with reference to provisions of the Indian Contract Act, 1872:

(i) Whether Y can withheld the amount of hire charges ₹ 50,000/- on account of non-payment of damages?

(ii) Whether Mr. X was liable to pay Damage as he was not aware of the fact of faults in car? ***(7 Marks)***

(b) (i) "Delivery of an instrument is essential whether instrument is payable to bearer or order for effecting the negotiation." Discuss this statement with reference to provisions of the Negotiable Instruments Act, 1881. ***(3 Marks)***

(ii) Differentiate between a promissory note and bill of exchange.

(4 Marks)

(c) Explain in brief the important functions played by the Ministry of Finance, the Ministry of Corporate Affairs and the Ministry of Law and Justice in enforcing the law in India. ***(6 Marks)***

Answer

(a) Bailment: As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Bailor's duty to disclose faults in goods bailed in case of non-gratuitous bailment (Section 150): If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Duty to pay necessary expenses in case of non-gratuitous bailment [Section 158]: The bailor is liable to pay the extraordinary expenses incurred by the bailee.

Bailor's responsibility to indemnify losses [Section 164]: It is the duty of bailor to indemnify all the losses and expenses, which bailee has to pay on account of defective goods.

In the instant case, Y took a car on lease from X for 10 days for ₹ 50,000. During the journey, Y has to spend ₹ 10,000 for repair of engine and paid ₹ 50,000 for hospital expenses due to accident because of fault in brakes of car. These are the extraordinary expenses and losses and it is the bailor's duty to bear such expenses and losses.

Therefore, the answers are:

(i) Y can withhold the hire charges of ₹ 50,000 on account of non-payment of damages and claim an additional ₹10,000, from X.

(ii) X is liable for the full ₹ 60,000 (₹10,000 repair + ₹ 50,000 hospital) as it is the bailor's duty to supply a car fit for the purpose for which it was hired.

(b) (i) As per Section 46 of the Negotiable Instruments Act, 1881, 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.

(ii) Difference between promissory note and bill of exchange

S. No.	Basis	Promissory Note	Bill of Exchange
1.	**Definition**	"A Promissory Note" is an instrument in writing 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.	"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.
2.	**Nature of Instrument**	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.

3.	**Parties**	In a promissory note, there are only 2 parties namely: i. the maker and ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer (ii) the drawee (iii) the payee
4.	**Acceptance**	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bills of exchange needs acceptance from the drawee.
5.	**Payable to bearer**	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

(c) The Ministry of Finance

- The Ministry of Finance (Vitta Mantralaya) is a Ministry within the Government of India concerned with the economy of India, serving as the Treasury of India.
- In particular, it concerns itself with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.
- One of the important functions of the Finance Ministry is the presentation of the Union Budget. This annual event is eagerly awaited by professionals and the common man as it provides for the rates of taxes and budget allocations for the ensuing year.

The Ministry of Corporate Affairs

- The Ministry of Corporate Affairs is an Indian Government Ministry.
- It is primarily concerned with administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.

- It is responsible mainly for the regulation of Indian enterprises in the industrial and services sector.

The Ministry of Law and Justice

- The Ministry of Law and Justice in the Government of India is a Cabinet Ministry
- It deals with the
  - ➢ management of the legal affairs, through the Department of Legal Affairs
  - ➢ legislative activities through the Legislative Department
  - ➢ administration of justice in India through the Department of Justice
- The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

Question 5

(a) (i) P sold certain antique items to Q for ₹ 3,00,000/- on 13.12.2024. As per the terms of agreement 75% of the amount was to be paid within a week and the balance 25% was to be paid till 31.12.2024. Q appointed his agent R to take delivery of the goods after payment of first installment. Q transferred a sum of ₹ 2,80,000/- in the account of P through NEFT on 18.12.2024 which was credited in P's account on the same date. R failed to take delivery of antique items due to medical emergency.

By the meantime, Q failed to make payment of the second installment till 31.12.2024. On 10.01.2025, Q's agent came to take the delivery of goods. But, P refused to deliver the goods and exercised his right of lien over the goods.

According to provisions of the Sale of Goods Act, 1930, give your opinion whether P was justified in exercising right of lien as only ₹ 20,000/- was left to be paid? ***(4 Marks)***

(ii) An auction takes place in Delhi for antique items. It is notified to the bidders that the sale will be completed, only when the hammer of the auctioneer hits the table and he announces "you are the highest

bidder". During the auction, L bids for an antique sculpture, worth ₹ 8 lakhs. The hammer falls, but announcement cannot be made as the auction suddenly stops before the auctioneer can utter any words. It is notified to everyone that there has been an unexpected rise in the market price for that particular sculpture, and therefore, it will not be sold on that particular day. L contends that the auctioneer is bound to sell the sculpture to him at the price he bid because once he bid at the highest price in the auction and the hammer fell, the auction sale was completed and therefore, the auctioneer is under a contractual obligation to sell the sculpture. The auctioneer disagrees. Discuss the validity of L's claim in reference to the provisions of the Sale of Goods Act, 1930. ***(3 Marks)***

(b) "The partner indeed virtually embraces the character of both a principal and an agent. The implied authority of a partner to bind the firm by all acts done by him in all matters connected with business is done in the usual way, not beyond the nature and scope of Partnership." Explain with reference to provisions of the Indian Partnership Act, 1932. ***(7 Marks)***

(c) (i) Give your opinion with reference to provisions of the Indian Contract Act, 1872:

1. Whether Joint promisor and promisee voluntary discharge their obligation even after death?

2. In case they won't be able to discharge their obligation, whether any of the joint promisor may be compelled?

3. What would be the situation in case of default by any one of them?

(4 Marks)

(ii) What are the effects of Coercion? "Whether threat to commit suicide is coercion"? Elaborate with reference to provisions of the Indian Contract Act, 1872. ***(2 Marks)***

Answer

(a) (i) Rights of lien (Section 47 of the Sale of Goods Act, 1930)

An unpaid seller has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. It is the right to retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered.

Exercise of right of lien: This right can be exercised by him in the following cases only:

(a) where goods have been sold without any stipulation of credit; (i.e., on cash sale)

(b) where goods have been sold on credit but the term of credit has expired; or

(c) where the buyer becomes insolvent.

In the instant case, P is still in possession of the goods and the full price was not paid by Q within the stipulated time i.e. till 31st December 2024. Therefore, P is an unpaid seller and can rightfully exercise lien under Section 47.

Even though the unpaid amount is only ₹ 20,000, P's refusal to deliver the goods is valid. Thus, P is legally justified in exercising right of lien.

(ii) Legal Rules of Auction sale: Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

Completion of the contract of sale: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. Until such announcement is made, any bidder may retract from his bid.

In the instant case, the sale of sculpture to L is not complete as only hammer falls but the auctioneer did not announce "you are the highest bidder".

Therefore, L's claim contending that the auctioneer is bound to sell the sculpture to him at the price he bid is not valid as the auction sale was not complete.

(b) The partner indeed virtually embraces the character of both a principal and an agent.

As per Section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purpose of the business of the firm. So as far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

The implied authority of a partner to bind the firm by all acts done by him in all matters connected with business is done in the usual way, not beyond the nature and scope of partnership.

Sections 19(1) and 22 deal with the implied authority of a partner. The impact of these Sections is that 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, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority. It is however subject to the following restrictions:

1. The act done must relate to the usual business of the firm, that is, the act done by the partner must be within the scope of his authority and related to the normal business of the firm.
2. The act is such as is done for normal conduct of business of the firm. The usual way of carrying on the business will depend on the nature and circumstances of each particular case.
3. The act to be done in the name of the firm or in any other manner expressing or implying an intention to bind the firm.

   Thus, a partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership.

(c) **(i)** 1. According to section 42 of the Indian Contract Act, 1872, if two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfil the promise. After death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last survivor the legal representatives of all the original co-promisors must fulfil the promise.

Hence, the legal representative can jointly discharge the obligations of joint promisor and promisee, after their death.

2. As per section 43, each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

   Hence, the joint promisor may be compelled.

3. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

(ii) Effects of coercion under section 19 of the Indian Contract Act, 1872

(i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

(ii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

Threat to commit suicide – Whether it is coercion?

Suicide though forbidden by Indian Penal Code is not punishable, as a dead man cannot be punished. But Section 15 declares that committing or threatening to commit any act forbidden by Indian Penal Code is coercion. Hence, a threat to commit suicide will be regarded as coercion.

Question 6

(a) Ram purchased a second-hand car from his friend Rohan for ₹ 5 lakhs on 10th November, 2022. He paid ₹ 4 lakh immediately and promised to pay ₹ 1 lakh within a year. But, he could not pay the remaining amount till December-2023. On 5th January, 2024 Ram received an invitation for Rohan's wedding which he could not attend but sent a cheque of ₹ 51,000 as gift by post.

When Rohan deposited the cheque, it was returned unpaid due to insufficient balance in the account of Ram. Rohan considered it as an offence under Section 138 of the Negotiable Instruments Act, 1881.

Advise

(i) Whether Ram would be held liable for dishonour of cheque?

(ii) Whether Rohan was justified in considering this as an offence under Section 138 of the Negotiable Instruments Act, 1881. ***(7 Marks)***

(b) With reference to provisions of the Indian Contract Act, 1872 define the following terms:

(i) Quasi-contracts and its salient features

(ii) Responsibility of finder of goods ***(6 Marks)***

OR

(b) Explain the following terms with reference to the Indian Contract Act, 1872:

(i) Pledge by mercantile agent

(ii) Pledge by person in possession under voidable contract ***(6 Marks)***

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

(i) What do you mean by Reservation of right of disposal? State the circumstances under which right of disposal may be reserved.

(ii) Sometime breach of condition will be treated as breach of warranty as a result of which buyer losses his right to rescind. State the circumstance where a contract cannot be avoided even on account of breach of condition. ***(7 Marks)***

Answer

(a) According to section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a

mere moral obligation, or for an illegal consideration, would be outside the purview of this section]

- is returned by the bank unpaid,
- either because of the—
  - o amount of money standing to the credit of that account is insufficient to honor the cheque, or
  - o that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

(i) In the given question, Rohan received a cheque from Ram, for ₹ 51,000 as a gift for his marriage. In terms of section 138, cheque given as a gift does not fall within this section. Hence, Ram would not be held liable for dishonour of cheque.

(ii) The explanation to the section provides that for the purpose of section 138 only a legally enforceable debt or other liability is to be taken into consideration. The cheque of ₹ 51,000 was issued in the nature of a gift and not as a part of the payment for the balance amount of car. Hence, Rohan was not justified in considering the dishonour of cheque, an offence under section 138 of the Negotiable Instruments Act, 1881.

(b) (i) Quasi- Contracts: 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 part of either party to make a contract but law imposes a contract upon the parties.

Salient features of quasi contracts:

(a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.

(b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and

(c) Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

(ii) Responsibility of finder of goods

As per section 71 of the Indian Contract Act, 1872, 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.

Thus, a finder of lost goods has:

(i) to take proper care of the property as man of ordinary prudence would take

(ii) no right to appropriate the goods and

(iii) to restore the goods if the owner is found.

OR

(b) (i) Pledge by mercantile agent: According to section 178 of the Indian Contract Act, 1872, a mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.

Such Pledge shall be valid as if were made with the authority of the owner of goods. Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.

(ii) Pledge by person in possession under voidable contract

According to section 178A of the Indian Contract Act, 1872, When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence), but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

(c) (i) Reservation of right of disposal: Section 25 of the Sale of Goods Act, 1930, 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.

Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal:

(1) 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.

(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.

(ii) Section 13 of the Sale of Goods Act, 1930, specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

(iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.

(iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.