

ICAI CA FOUNDATION BUSINESS LAW PAPER WITH SOLUTIONS
(JANUARY 2021)

Question 1:

(a) Mr. S aged 58 years was employed in a Govt. Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place, Mr. D offered a sum of Rs. 10 Lakhs as consideration to Mr. S in order to induce him to retire. Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office. Whether the above agreement is valid ? Explain with reference to provision of Indian Contract Act, 1872.

(b) ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows :

Directors and their relatives	190
Employees	15
Ex - employees (shares were allotted when they were employees)	20
Others	20

(Including 10 joint holders holding shares jointly in the name of father and son)
The Board of directors of the company propose to convert it into a private company. Advice whether reduction in the number of members is necessary for conversion.

(c) What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930 ?

Answer 1:

(a) According to the Provisions of Indian Contract Act, 1872

An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void; since they are tantamount to sale of public offices.

- (1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.
- (2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

In the given case Mr. D offered Rs. 10 lakh to Mr. S as consideration in order to induce him to retire so that Mr. D can be appointed in his place. The above agreement is opposed to public policy therefore void.

(b) According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that -

- (A) Persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

Shall not be included in the number of members.

In the instant case, Total No. of Members of ABC Ltd. will be counted as follow:

1. Directors & their relatives	-	190
2. Others (10 Couple) (10x1)	-	<u>10</u>
		<u>200</u>

Since No. of member do not exceed 200. Therefore, there is no need for reduction in the number of members.

- (c) An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. An auctioneer is an agent governed by the Law of Agency. When he sells, he is only the agent of the seller. He may, however, sell his own property as the principal and need not disclose the fact that he is so selling. Legal Rules of Auction sale: Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:
- (a) Where goods are sold in lots: Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
 - (b) 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 and until such announcement is made, any bidder may retract from his bid.
 - (c) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
 - (d) Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
 - (e) Reserved price: The sale may be notified to be subject to a reserve or upset price; and
 - (f) Pretended bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Question 2:

- (a) Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance.
- (b) State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008.

Answer 2:

(a) Definition of Acceptance:

In terms of Section 2(b) of the Indian Contract Act, 'the term acceptance' is defined as follows:

“When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise”.

Analysis of the above definition

1. When the person to whom proposal is made - for example if A offers to sell his car to B for Rs. 200000. Here, proposal is made to B.
2. The person to whom proposal is made i.e. B in the above example and if B signifies his consent on that proposal. , then we can say that B has signified his consent on the proposal made by A.
3. When B has signified his consent on that proposal, we can say that the proposal has been accepted.
4. Accepted proposal becomes promise.

Legal Rules regarding a valid acceptance

- (1) **Acceptance can be given only by the person to whom offer is made:** In case of a specific offer, it can be accepted only by the person to whom it is made. [Boulton vs. Jones (1857)]

Case Law: Boulton vs. Jones (1857)

Facts: Boulton bought a business from Brocklehurst. Jones, who was Brocklehurst’s creditor, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not in his name. Jones refused to pay Boulton for the goods because by entering into the contract with Brocklehurst, he intended to set off his debt against Brocklehurst. Held, as the offer was not made to Boulton, therefore, there was no contract between Boulton and Jones.

In case of a general offer, it can be accepted by any person who has the knowledge of the offer. [Carlill vs. Carbolic Smoke Ball Co. (1893)]

- (2) **Acceptance must be absolute and unqualified:** As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

M offered to sell his land to N for £280. N replied purporting to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly instalments of £ 50 each. It was held that N could not enforce his acceptance because it was not an unqualified one. [Neale vs. Merret [1930] W. N. 189].

A offers to sell his house to B for Rs. 1,00,000/-. B replied that, “I can pay Rs. 80,000 for it. The offer of ‘A’ is rejected by ‘B’ as the acceptance is not unqualified. B however changes his mind and is prepared to pay Rs. 1,00,000/-. This is also treated as counter offer and it is upto A whether to accept it or not. [Union of India v. Bahulal AIR 1968 Bombay 294].

Example: ‘A’ enquires from ‘B’, “Will you purchase my car for Rs. 2 lakhs?” If ‘B’ replies “I shall purchase your car for Rs. 2 lakhs, if you buy my motorcycle for Rs. 50000/-, here ‘B’ cannot be considered to have accepted the proposal. If on the other hand ‘B’ agrees to purchase the car from ‘A’ as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition. Therefore, the acceptance in this case is unconditional.

- (3) **The acceptance must be communicated:** To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant

conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. The above points will be clearer from the following examples:

Brogden vs. Metropolitan Railway Co. (1877)

Facts: B a supplier, sent a draft agreement relating to the supply of coal to the manager of railway Co. viz, Metropolitan railway for his acceptance. The manager wrote the word "Approved" on the same and put the draft agreement in the drawer of the table intending to send it to the company's solicitors for a formal contract to be drawn up. By an over sight the draft agreement remained in drawer. Held, that there was no contract as the manager had not communicated his acceptance to the supplier, B.

Where an offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto. (Bhagwandas v. Girdharilal)

A mere variation in the language not involving any difference in substance would not make the acceptance ineffective. [Heyworth vs. Knight [1864] 144 ER 120].

Example: A proposed B to marry him. B informed A's sister that she is ready to marry him. But his sister didn't inform A about the acceptance of proposal. There is no contract as acceptance was not communicated to A.

- (4) **Acceptance must be in the prescribed mode:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.

Example: If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

- (5) **Time:** Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses. What is reasonable time is nowhere defined in the law and thus would depend on facts and circumstances of the particular case.

Example: A offered to sell B 50 kgs of bananas at Rs. 500. B communicated the acceptance after four days. Such is not a valid contract as bananas being perishable items could not stay for a period of week. Four days is not a reasonable time in this case.

Example: A offers B to sell his house at Rs. 10,00,000. B accepted the offer and communicated to A after 4 days. Held the contract is valid as four days can be considered as reasonable time in case of sell of house.

- (6) **Mere silence is not acceptance:** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

Case Law: Felthouse vs. Bindley (1862)

Facts: F (Uncle) offered to buy his nephew's horse for £30 saying "If I hear no more about it I shall consider the horse mine at £30." The nephew did not

reply to F at all. He told his auctioneer, B to keep the particular horse out of sale of his farm stock as he intended to reserve it for his uncle. By mistake the auctioneer sold the horse. F sued him for conversion of his property. Held, F could not succeed as his nephew had not communicated the acceptance to him.

Example: 'A' subscribed for the weekly magazine for one year. Even after expiry of his subscription, the magazine company continued to send him magazine for five years. And also 'A' continued to use the magazine but denied to pay the bills sent to him. 'A' would be liable to pay as his continued use of the magazine was his acceptance of the offer.

- (7) **Acceptance by conduct/Implied Acceptance:** Section 8 of the Act lays down that "the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.

Therefore, when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

Example: when a tradesman receives an order from a customer and executes the order by sending the goods, the customer's order for goods constitutes the offer, which has been accepted by the trades man subsequently by sending the goods. It is a case of acceptance by conduct.

Example: When a cobbler sits with a brush and polish, a person giving his shoes for polishing constitutes as acceptance by conduct.

(b) Unlimited liability in case of fraud (Section 30 of LLP Act 2008):

- (1) In case of fraud:

- In the event of an act carried out by a LLP, or any of its partners,
- with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose,
- the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose
- shall be unlimited for all or any of the debts or other liabilities of the LLP.

However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

- (2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with
- imprisonment for a term which may extend to 2 years and
 - with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lakhs.

- (3) Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

Question 3:

(a) (i) What do you mean by "Particular Partnership" under the Indian Partnership Act, 1932 ?

OR

(ii) Who is a nominal partner under the Indian Partnership Act, 1932 ? What are his liabilities ?

(b) "Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932.

(c) Mr. B makes a proposal to Mr. S by post to sell his house for Rs. 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.

Examine with reference to the Indian Contract Act, 1872 :

(i) On which date, the offer made by Mr. B will complete ?

(ii) Discuss the validity of acceptance.

(iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together ?

Answer 3:

(a) (i) **Particular Partnership:**

A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership'.

A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

OR

(ii) **Nominal Partner:**

A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

He is not entitled to share the profits of the firm. Neither he invest in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

(b) **Mutual Agency:**

Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

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- (c) (i) Offer made by Mr. B will be completed on 13 April 2020. (when it comes to the knowledge of Mr. S)
- (ii) Here acceptance is not valid as he revoked his acceptance by telegram before letter of acceptance reaches Mr. B
- (iii) If letter of acceptance and letter of revocation reaches together than two situation may arise.
- (i) It will be decided on the basis of the letter which he reads first like if he reads acceptance than acceptance is valid and if revocation first than acceptance is revoked.
- (ii) In absence of any such information revocation is absolute.

Question 4:

- (a) What are the differences between a 'Condition' and 'Warranty' in a contract of sale ? Also explain, when shall a 'breach of condition' be treated as 'breach of warranty' under provisions of the Sale of Goods Act, 1930 ?
- (b) M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.
Explain with reasons :
- (i) Whether P's private estate is liable for the price of furniture purchased by the firm ?
- (ii) Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive ?

Answer 4:

(a)

Point of Differences	Condition	Warranty
Meaning	A condition is a stipulation essential to the main purpose of the contract.	A warranty is a stipulation collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

Section 13 of Sales 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.

Example: A agrees to supply B 10 bags of first quality sugar @ Rs. 625 per bag but supplies only second quality sugar, the price of which is Rs. 600 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, accept the second quality sugar and claim damages @ Rs. 25 per bag.

- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.
 - (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.
- (b)**
- (i) Liability of estate of deceased partner (Sec.35 of Indian Partnership Act 1932) Ordinarily, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners. 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.

Fact of the Case :
Only order was placed during the life time of Mr. P but no delivery of furniture was made during his lifetime.

Applying the above Provision :
Since as there was no debt due in respect of goods in P's lifetime so his estate will not be held liable for the payment of price of furniture to J.R. Limited. Further death of partner do not require any public notice.
 - (ii) It will not make any difference even if JR Limited supplied the furniture to the firm believing that all the three partners are alive since after the death of any partner his estate is not liable for any act done by firm after his death. And death of partner do not require public notice also.

Question 5:

- (a)** Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house, at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.
 - (i) Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act. 1930 ?
 - (ii) What is the remedy available to Mr. M ?
- (b)** Explain Doctrine of 'Indoor Management' under the Companies Act, 2013. Also state the circumstances where the outsider cannot claim relief on the ground of 'Indoor Management'.

Answer 5:

- (a)** **Legal Provision** – According to Section 15 of Sales of Goods Act, 1930. Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle

that “if you contract to sell peas, you cannot compel the buyer to take beans.” The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

It is a condition which goes to the root of the contract and the breach of it entitles the buyer to reject the goods whether the buyer is able to inspect them or not.

Fact : Here in the given problem Mr. M went to Mr. T's (retail trader) shop and asked for exhaust fan and approved a particular brand and paid for it. The fan which was delivered at M's house was a table fan. So he asked Mr. T to exchange the same but Mr. T refused to do so.

Conclusion : Applying the above legal provision is the given problem we can conclude as follows :

- (1) Mr. T is not right he can't refuse to exchange the fan as the goods are not according to description. Buyer has asked for exhaust fan and seller has supplied table fan condition as to description is breached.
- (2) Remedy available to Mr. M – Mr. M can repudiate / rescind the contract, i.e. he can return the table fan and ask for damages or both.

(b) Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The aforesaid doctrine of constructive notice does in no sense mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. This can be explained with the help of a landmark case **The Royal British Bank vs. Turquand**. This is the doctrine of indoor management popularly known as **Turquand Rule**.

FACTS of The Royal British Bank vs. Turquand

Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, Coal and Swansea and Loughor Railway Company. It was incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the articles of association), directors only had power to borrow up to an amount authorized by a company resolution.

A resolution had been passed but not specifying how much the directors could borrow.

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor affairs are the company's problem.

Exceptions to the doctrine of Indoor Management: Thus, you will notice that the aforementioned rule of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if

they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.

The above mentioned doctrine of Indoor Management or Turquand Rule has limitations 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.

In **Howard vs. Patent Ivory Manufacturing Co.** where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

Likewise, in **Morris v Kanssen**, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

(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.

The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority. Where, for example, as in the case of **Anand Bihari Lal vs. Dinshaw & Co.** the plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property.

Similarly, in the case of **Haughton & Co. v. Nothard, Lowe & Wills Ltd.** where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual "that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it." Any other rule would "place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf."

(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.

Forgery may in circumstances exclude the '**Turquand Rule**'. The only clear illustration is found in the **Ruben v Great Fingall Consolidated**. In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant's company. The company's secretary, who had a fixed the seal of the company and forged the signature of the two directors, issued the certificate.

The plaintiff contended that whether the signature were genuine or forged was apart of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.

Question 6:

- (a) The general rule is that an agreement without consideration is void. Discuss the cases where the agreement though made without consideration will be valid and enforceable as per Indian Contract Act, 1872.
- (b) Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932.
- (c) SK Infrastructure Limited has a paid-up share capital divided into 6,00,000 equity shares of INR 100 each. 2,00,000 equity shares of the company are held by Central Government and 420,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.

Answer 6:

(a) No consideration no contract:

The general rule is that an agreement made without consideration is void (Section 25 of Indian Contract Act, 1872). In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there. However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. **In case of an agreement on account of natural love and affection:** An agreement on account of natural love and affection will be valid if it :
 - Written
 - Registered
 - Based on Natural Love affection
 - Parties stand in near relation with each other (e.g. husband and wife)

Example: A husband, by a registered agreement promised to pay his earnings to his wife. Held the agreement though without consideration, was valid.

2. **Agency:** In case of contract of agency the consideration is not required.
3. **Bailment:** In case of contract of bailment the consideration is not required.
4. **Completed gift:** Completed gift means a gift actually handed over. Thus gifts actually made by a donor and accepted by the donee are valid even without consideration.

Example: On A's birthday, B gives him a gold chain as birthday gift in this case B can not demand back the chain on the ground that there was no consideration.
5. **Charity:** A mere promise for charity is void because it is without consideration. But if a person promises to contribute for charity and the promisee undertakes liability i.e. incur liability then the contract will be valid up to the extent of the subscription promised.

(Kadarnath V. Gorie Mohammad)

Note: In case of charity, the promisee is liable to pay the amount of incurred liability but upto promised amount.

6. **Compensation for Past Voluntary Service:** When a person has already voluntarily done something for the promisor then a promise to compensate either wholly or partly will be binding when:
 - (a) The services should have been done voluntarily (but not involuntarily)
 - (b) The services should have been rendered for the promisor
 - (c) The promisor must be in existence at the time when services was rendered
 - (d) The promisor must have intended to compensate

Example: P finds R's purse and gives it to him. R promises to give P Rs. 1,000. This is a valid contract.

7. **In case of Promise to Pay time barred debt:** Time barred debt or a debt based by limitation refers to an amount which has remained unclaimed beyond a time period of 3 years.

A promise to pay time barred debt is valid if:

- It is in writing
- &
- Signed by the person making promise or by his agent.

Example: A is indebted to C Rs. 6,000 but the debt is barred by the Limitation Act. A signs a written promise now to pay Rs. 5,000 in final settlement of the debt. This is a contract without consideration, but enforceable.

(b) LIABILITY TO THIRD PARTY (SECTION 25-27 OF INDIAN PARTNERSHIP ACT 1932)

The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.

The question of liability of partners to third parties may be considered under different heads. These are as follows:

1. **Contractual liability/Liability of a partner for acts of the firm:**

- Every partner is liable jointly with other partners and also severally for the acts of the firm done while he is a partner.
- The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.

Example:- Thus, where certain persons were found to have been partners in a firm when the acts constituting an infringement of a trademark by the firm took place, it was held that they were liable for damages arising out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm.

2. **Liability for tort or wrongful act:** A firm is liable for the loss or injury caused to a third party by the wrongful acts of a partner if they are done by partner while acting (a) in the ordinary course of the business of the firm (b) with the authority of the partners.

Example: one of the two partners in coal mine acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result thereof, an injury was caused to a workman. The other partner was held responsible for the same.

3. **Liability for misappropriation by a partner:** A firm is liable:

- (a) When a partner, acting within his apparent authority and receives money or other property from a third person and misapplies it or
- (b) Where a firm, in the course of its business, received money or property from a third person and the same is misapplied by a partner while it is in the custody of the firm.

Example: A, B, and C are partners of a place for car parking. P stands his car in the parking place but A sold out the car to a stranger. For this liability, the firm is liable for the acts of A.

Note:- If receipt of money by one partner is not within the scope of his apparent authority, his receipt cannot be regarded as a receipt by the firm and the other partners will not be liable, unless the money received comes into their possession or under their control.

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- (c) **Legal Provision** – As per Section 2(45) of Companies Act, 2013 Government company means any company in which not less than 51% of the paid-up share capital is held by-
- (i) the Central Government, or
 - (ii) by any State Government or Governments, or
 - (iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

Facts : Here in the given problem out of 6 Lac equity shares of SK Infrastructure Ltd. 3,20,000 (2,00,000 + 1,20,000) shares are with the Central Govt. and Govt. of Maharashtra which is more than 51% of the paid up share capital of SK Infrastructure Ltd.

Conclusion : Applying the above legal provision we can say SK Infrastructure Ltd. is a Government Company.

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Mittal Commerce Classes

BUSINESS CORRESPONDENCE AND REPORTING

(JANUARY 2021)

Question 7:

- (a)** Read the passage carefully and answer the questions given below :
- Success of any organization depends on offering quality products at competitive prices. All over the world, it is being realized that quality control be ensured through inspection and test alone. Every department and individual has a contribution to make in the achievement of quality. Quality product at competitive prices is the most significant factor in determining the long - run success of any organization. High quality of products can give a competitive edge to an organization. On the other hand, good quality generates satisfied customers who reward the organization with continued patronage and favourable word of mouth advertising. Growth in consumer quality awareness has put a greater strain on businesses. Consumer demand and dynamic technological changes have opened up new and highly competitive markets. The quality of goods and services can no longer be taken for granted.
- The rapid growth of the service sector has also introduced new perceptions of quality management. Institutions, such as the Government, banks and hospitals do not produce tangible goods. The interaction between employees and customers is much more critical in such organizations. As a result, the skills, attitudes and training of service personnel affect the quality of the services delivered. Information processing represents a large component of the work done by service organizations and poses special quality considerations. Errors in computer billing, or airline and hotel reservations are the results of poor quality control of computer software and data input systems.
- In view of globalization of markets, Governments have begun to realize that quality is essential to international trade and the national economy. Therefore, public purchasing authorities have been instructed to buy goods that conform to the quality standards.
- (i) In what manner good quality products give rewards to organizations?
- (ii) Most significant factor which determines the long run success of an organization?
- (iii) Quality of goods and services cannot be compromised by organizations, give reasons.
- (iv) Write the summary of the above passage.
- (b)** Read the Passage :
- Whether one runs a large business, or is starting out with a new venture, or works as a corporate professional, chances are that at some point, one would be required to make a business presentation. Whether you are selling a product to a client, sharing your vision with your employees, or looking for new investors for your business, your presentation will always matter.
- Making a good business presentation can be intimidating - you want to capture as much information as possible to answer any prospective questions from your audience, yet you want to keep your audience constantly engaged and interested. So, what makes a good presentation?
- It is important to connect with your audience with a story. And no, it doesn't mean your presentation needs to be the .most exciting work of fiction. Take your audience on a journey. When trying to convince potential investors, make them see the success you arc striving for and what it will do for you and for them. To win over

your employees with your new staff policy, take them through the journey of why you are introducing a new policy and how does it benefit them. Tell personal stories, give analogies and cite examples. Get your audience emotionally involved and you will be more likely to get them to side with you.

You want to keep your audience engaged at all times. Do not overwhelm them with a lot of information. Settle on three to five key messages that you want them to absorb and stick with them. You do not want to include everything. Instead, choose out powerful points that you want to make. It is important to keep your presentation as straight forward and concise as possible.

At the same time, you need to know your content extremely well. While you keep your presentation short and to the point, it is no excuse for you to not have more detailed information regarding the subject of your presentation. It is likely you would need to answer questions from your audience at the end of the presentation. You must review all pertinent information and key facts and figures before your presentation. Not only will it help you answer questions later, but it will also give you more confidence during your presentation, so you refer to your notes less and connect with your audience more.

In the end, a business presentation is about selling ideas. Do your researches well, describe your ideas crisply, weave them into an interesting story and you are more likely to succeed.

- (i) Make notes, using headings, sub -- headings and abbreviations whenever necessary.
- (ii) Write Summary.

Answer 7:

- (a)**
- (i) Good quality products generate satisfied customers who reward the organisation with continued patronage and favourable word of mouth advertising.
 - (ii) Quality product at competitive prices is the most significant factor in determining the long run success of any organisation.
 - (iii) The quality of goods and services cannot be compromised because of :
 - Growth in consumer quality awareness
 - Consumer demand
 - Dynamic technological changes
 - Highly competitive market.
 - (iv) Any organisation can be successful only by offering qualitative products that too at competitive price. Due to customer awareness and technological changes, the market is becoming highly competitive. Service sector is also rapidly growing and to maintain its level, it becomes important to not compromise on its quality. Government, too has to realize the quality standards in the era of globalisation for better international trade.

- (b)**
- (i)** Presentation Skills
 1. Imp. of Bus. Presentation
 - 1.1 Large business
 - 1.2 New venture
 - 1.3 Corporate prof.
 2. Good presentation involves
 - 2.1 Engaged aud.
 - 2.2 Story telling
 - 2.3 Your success story

3. Content awareness
 - 3.1 Short and crisp
 - 3.2 Review
 - 3.2.1 All info
 - 3.2.2 Key facts and figures
4. Selling ideas
 - 4.1 Will resrccd
 - 4.2 Dscrib idea

Key :

1.	Imp	=	Importance
2.	Bus	=	Business
3.	Prof	=	Professional
4.	Aud	=	Audience
5.	Info	=	Information
6.	Resrccd	=	Researched
7.	Dscrib	=	Describe

- (ii) Business presentation has become an important part in every sector like large business, new ventures and even in corporate profession. Thus, it becomes pertinent to have good presentation skills. It involves engaged audience. This is possible if one can share personal stories related to one's successful life. Apart from this, to be will informed about the content is also equally important. Thus, content should be complete and should not include too much of unnecessary information. Selling ideas through presentation is required and that is possible with a good research and detailed description.

Question 8:

- (a) Emotional barriers affect communication, discuss.
- (b) (i) Choose the word which best expresses the meaning of the given word:
Repulsive
 (1) Attractive
 (2) Normal
 (3) Disgusting
 (4) Confused
- (ii) Select a suitable antonym for the word given under :
Gratify
 (1) Frustrate
 (2) Depress
 (3) Discourage
 (4) Distress
- (iii) Change the following sentence to indirect speech :
He said, "The horse died in the night".
- (c) Write a precis and give appropriate title to the passage given below :
 Gratitude implies thankfulness or an appreciation of benefits conferred together with a desire, when practicable, to return those benefits. It should be distinguished from

thanks, which is too often a matter of words and not accompanied by a feeling of thankfulness or by those actions which indicate a grateful mind. The grateful man feels joy at the kindness of his benefactor and cultivates a respect that is akin to love.

In almost all the relations of ordinary life the feelings of gratitude should be aroused. The child owes thanks to his parents for food, clothes, education and tender care; the scholar to his teachers for the training of his intelligence; personal friends to one another for mutual services.

The frequent use of the phrase, "Thank you," though Wien not more than a polite convention, nevertheless shows the universal belief in the necessity for cultivating a grateful attitude towards those who do something for us, however small that service be. As Citizens, there are few who have no cause to be grateful. Great generals who have given devoted service gratuitously, statesmen, poets and philosophers, all those who have stood for right, justice and freedom of thought, have conferred inestimable benefits upon their countrymen.

When deeds are impossible, the expression of thanks is the best that can be done. The inscriptions on the tombs and monuments erected by a nation to its great men are an expression of thanks in words. As for deeds, an old story will serve as an excellent illustration. An old man was found planting fruit trees by a friend who came to him and said, "Why do you plant trees, the fruit of which I enjoy. I now plant trees that those who come after may enjoy fruit."

In conclusion, no good man wishes to give pain, especially to those who have done him good. The ungrateful man hurts the feelings of his benefactor and cannot, therefore, be a good man.

Answer 8:

- (a) One of the chief barriers to open and free communications is the emotional barrier. Anger, fear of criticism or ridicule, mistrust of person, suspicion of intentions, jealousy, anxiety and many more feelings and sentiments we carry within us, affect our communication ability and quality. A person who is upset and disturbed cannot pass on or receive information appropriately and objectively. His/her emotions will colour his/her perception and assessment of the communication.
- (b) (i) Disgusting
(ii) Frustrate
(iii) He said that the horse had died in the night.
- (c) **Gratitude : Sense of Appreciation.**
A feeling of thankfulness from your heart in order to appreciate someone is a sense of gratitude. It should prevail in all human beings in order to have happy and healthy surroundings. More use of word "Thank You" without feeling it is of no importance. Sense of gratitude will always prevail in a good man and he will always appreciate the good deeds of others.

Question 9:

- (a) (i) Define circuit and star network under network in communication.

OR

- (ii) Discuss the term "physical non – verbal communication" in communication.
- (b) (i) Choose the word which best expresses the meaning of the given word :

Nostalgic

- (1) Sharp
- (2) Painful
- (3) Delighted
- (4) Homesick

(ii) Choose the word which best expresses the meaning of the given word:

Economise

- (1) Reduce
- (2) Save
- (3) Minimise
- (4) Accumulate

(iii) Change the following sentence to indirect speech:
He said to him, "Please wait here till I return."

(c) Draft a circular to warn the employees of Packing Department not to participate in strike.

Answer 9:

(a) (i) **Circuit Network:**

When two persons communicate with each other sending messages and feedbacks, they form a communication circuit. Therefore it is known as circuit network. The two people interacting can be colleagues placed at the same hierarchical level in the organisation.

Star Network:

The star network communication has multiple channels of communication open between all members. This network propagates group communication and is essential where teamwork is involved. The members communicate and exchange information with each other freely, and without hindrance or hesitation.

OR

(iii) **Physical non-verbal communication: An individual's body language that is,** facial expressions, stances, gestures, , touches, and other physical signals constitute this type of communication. For example, leaning forward may mean friendliness, acceptance and interest, while crossing arms can be interpreted as antagonistic or defensive posture.

Research estimates that physical, non-verbal communication accounts for 55 percent of all communication. Smiles, frowns, pursing of lips, clenching of hands etc. transmit emotions which are not expressed through verbal communication.

- (b) (i) Homesick
(ii) Save
(iii) He requested him to wait here till he return.

(c) Circular No. XXI

7th July, 2020

Non Participation in Strike

For all employees

This is an official confirmation about the non participation in strike. Participation in strike will bring loss to the company. It is a sincere request to all the employees of packing department not to participate in strike.

Those who participate in the strike strict action will be taken against them.

XYZ
Manager.

Question 10:

- (a) How do organizational structure barriers affect communication?
- (b) (i) Change the sentence from Active to Passive Voice.
Rama was making a kite.
- (ii) Change the sentence from Passive to Active Voice.
The lion was shot by the hunter.
- (iii) Change the following sentence to indirect speech.
Father said to his son, "Work hard for success in life".
- (c) Write an article of about 250 words on the topic, "The Pleasures of reading".

Answer 10:

(a) **Organizational Structure Barriers:**

Communication problems occur when the systems, structures and processes in the organization are not clear or have gaps in them. If the chain of command is unclear, a person may not know whom to contact for a particular issue. Inappropriate information transmission systems, lack of supervision, and unclear role and responsibility demarcations lead to confusion and inefficiency.

Answer:

- (b) (i) A kite was being made by Ram.
(ii) The hunter shot the Lion.
(iii) Father advised his son to work hard for success in life.

Answer:

(c) **THE PLEASURES OF READING**

By XYZ

Some people get pleasure from picnics and tours. Others like to discuss various topics and find pleasure in it. Not the reading of books provides us with such pleasure as we do not get from any other activity. Great is the blessing of books.

Books are written by learned persons. They contain the best experiences and thoughts of their writers. Literature is said to mirror the society. Writers put in their books not only their own ideas and feelings, but also what they observe and find in the society. The books of the past reflect the condition of the times in which they were written. By reading books written by great thinkers, we come in contact with their minds. Books enable us to know the best of different countries. So, if we want to keep abreast of the great minds of all ages, we must read books.

When we are alone, books are our best friends. They entertain us in our spare moments. Good novels, books on poetry and short stories give great enjoyment. At

times, we become so absorbed in our books that we forget even our important engagements. Loneliness is no trouble for a reader.

If we are in a cheerful mood, our joy is increased by reading. When we are in a depressed and dejected mood, books console and soothe our troubled minds. They provide us with the best advice and guidance in our difficulties. Indeed, books are our best friends as they help us in our need. Books contain grains of wisdom. They give us sound moral advice. It is through the reading of books that we learn to love virtue and hate sin. The reading of good books develops and elevates our character. Nowadays, the world is changing fast. A man cannot remain in touch with the changes in his own country, or in the world, without reading the latest literature. One, who wants to be respected in cultured society, must keep himself well-informed. Good magazines, newspapers and other books provide us with valuable up to-date information. It gives us great pleasure to feel that our knowledge is up to-date. We get great satisfaction when we feel ourselves to be well-informed and capable of moving in any educated society. Reading of good books is the key to the store-house of pleasure.

It was the English author Bacon who said that reading makes a full man. No one can question the truth of this saying. But we cannot derive full advantage from reading, if our choice is not good. Some books are such that instead of doing any good; they do positive harm to the readers. Such books must be avoided. Cheap books, not in cost but in contents, should not be read, even if they provide some amusement and entertainment. It is the reading of good books alone which bestows upon us the maximum benefit.

Question 11:

- (a) What do you mean by diagonal communication?
- (b) Select the correct meaning of Idioms/Phrases given below:
- (i) **Pen and Ink**
- (1) Modern day technology
 - (2) Extensively
 - (3) Wastage
 - (4) In writing
- (ii) **A snake in the grass**
- (1) Unforeseen happening
 - (2) Secret or hidden enemy
 - (3) Unreliable person
 - (4) Unrecognizable danger
- (iii) Change the sentence into Active voice :
Twenty runs were scored by him.
- (iv) Choose the word which best expresses the meaning of the given word.
Applaud
- (1) Flatter
 - (2) Praise
 - (3) Pray
 - (4) Request
- (c) Mr. ABC is an IT manager in Quick Software Solution Private Limited. Write a mail on behalf of Mr. ABC to Mr. MNJ, dealer of HP Laptops seeking quotation for 100 new

laptops of Model HP-610. The laptops are required for new branch of Quick Software Solutions Private Limited.

Answer 11:

(a) Diagonal Communication :

Cross-functional communication between employees at different levels of the organizational hierarchy is described as diagonal communication. Diagonal communication is increasingly common in larger organizations. It reduces the chances of distortion or misinterpretation by encouraging direct communication between the relevant parties. For example, a junior engineer reports directly to the General Manager regarding the progress on the project.

- (b)**
- (i) In writing
 - (ii) Secret or hidden enemy
 - (iii) He scored twenty runs.
 - (iv) Praise.

(c) To : Mr. MNJ

CC / BCC :

Subject : Seeking quotations for laptops.

Dear Mr. MNJ,

This is for your information that we require laptops for our new branch of quick software solutions private limited.

Please send us quotations for 100 new laptops of Model HP-610. We are attaching the required details with this mail.

Please get back to me in case you require any clarification and also send the quotation as soon as possible.

Thanks and regards,

Mr. ABC
IT Manager.

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