

PAPER 2 : BUSINESS LAW

Question No. 1 is Compulsory.

Answer any four question from the remaining five questions.

Wherever necessary, suitable assumptions should be made and disclosed by way of note forming part of the answer. Working Notes should form part of the answer.

Answer 1:

(a) Difference between Coercion and Undue influence:

Basis of difference	Coercion	Undue Influence	
Nature of action	It involves the physical force or threat. The aggrieved party is compelled to make the contract against its will.	It involves moral or mental pressure.	{1 M}
Involvement of criminal action	It involves committing or threatening to commit and act forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully.	No such illegal act is committed or a threat is given.	{1 M}
Relationship between parties	It is not necessary that there must be some sort of relationship between the parties.	Some sort of relationship between the parties is absolutely necessary.	{1 M}
Exercised by whom	Coercion need not proceed from the promisor nor need it be the directed against the promisor. It can be used even by a stranger to the contract.	Undue influence is always exercised between parties to the contract.	{1 M}
Enforceability	The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside or enforce it in a modified form.	{1 M}
Position of benefits received	In case of coercion where the contract is rescinded by the aggrieved party, as per Section 64, any benefit received has to be restored back to the other party.	The court has the discretion to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions.	{1 M}

Answer:

- (b) **Section 3** of the Companies Act, 2013 states that a company may be formed for any lawful purpose by 7 or more persons in case of public company, 2 or more persons in case of private company and 1 person in case of a one person company. Hence, a company cannot be formed for an unlawful purpose or for carrying on illegal business. **Section 9** of the Act further provides that from the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may from time to time, become members of the company, shall be a body corporate capable of exercising all the functions of an incorporated company under this Act. Under this Act a company can be formed for a lawful purpose. Hence, a company cannot be formed in the first place for an illegal business activity. In the present case the Registrar was at fault in issuing the certificate of incorporation but the issue of the certificate of incorporation does not give the company the right to do illegal business. On applying the above provisions in the present problem, the company's contention is wrong. Though a certificate of incorporation is a conclusive evidence of its formation and existence, it does not render its illegal objectives as legal. Therefore, the contention of the company that the nature of business cannot be gone into after the certificate of incorporation has been obtained is not tenable. Moreover, the illegality of its objects is adequate grounds for the Registrar to rectify his gross

mistake and suo motto take necessary steps to cancel the certificate of incorporation. }

Answer:

- (c) According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved. }
1. There must be an agreement between all the persons concerned; }
 2. The agreement must be to carry on some business; }
 3. The agreement must be to share the profits of a business and }
 4. The business was carried on by all or any of them acting for all. }
- On the basis of above provisions and facts provided in the question, Mr. Ajay and Mr. Vijay cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. }
- Hence, there is no partnership between them. Therefore, Mr. Ajay is liable to pay his share only i.e. Rs. 1500. Mr. Haris has to claim rest Rs. 1500 from Mr. Vijay. }

Answer 2:

- (a) (i) **Condition as to wholesomeness:** In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome. }
- Hence, Z could recover damages in light of the violation of said condition as regards to the consumption of goods i.e. the bun from the baker which is not of merchantable quality. }
- (ii) **Condition as to description:** As per Section 37(3) of the Sale of Goods Act, 1930 where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole. }
- Hence, X may accept 25 chairs of the type agreed upon and may reject the other 25 chairs of some other type not agreed upon or may reject all 50 chairs. }

Answer:

- (b) **Doctrine of Indoor Management:** The Doctrine of Indoor Management is the exception to the Doctrine of Constructive Notice. The Doctrine of Constructive Notice does not 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. }
- The doctrine 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. }
- In the given Question, Mr. Sohan has made payment to Mr. Kamesh and he (Mr. Kamesh) gave to receipt of the same to Mr. Sohan. Thus, it will be rightful on part of Mr. Sohan to assume that Mr. Kamesh was also authorised to receive money on behalf of the company. }

Hence, Mr. Sohan will be free from liability for payment of goods purchased from Sunflower Limited, as he has paid amount due to an employee of the company. } {1^{1/2} M}

Answer:

(c) Name (Section 15):

- (1) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
- (2) No LLP shall be registered by a name which, in the opinion of the Central Government is—
 - (a) undesirable; or
 - (b) identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

Reservation of name (Section 16):

- (1) A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—
 - (a) the name of a proposed LLP; or
 - (b) the name to which a LLP proposes to change its name.
- (2) Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15, reserve the name for a period of 3 months from the date of intimation by the Registrar.

Change of name of LLP (Section 17):

- (1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a limited liability partnership, on its first registration or on its registration by a new body corporate, its registered name; is registered by a name which is identical with or too nearly resembles to—
 - (a) that of any other limited liability partnership or a company; or
 - (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it, then on an application of such limited liability partnership or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such limited liability partnership to change its name or new name within a period of three months from the date of issue of such direction:

Provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of three years from the date of incorporation or registration or change of name of the limited liability partnership under this Act.
- (2) Where a limited liability partnership changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within thirty days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement.
- (3) If the limited liability partnership is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the limited liability partnership in such manner as may be prescribed and the Registrar shall enter the new name in the register of limited liability

partnerships in place of the old name and issue a fresh certificate of incorporation with new name, which the limited liability partnership shall use thereafter:
 Provided that nothing contained in this sub-section shall prevent a limited liability partnership from subsequently changing its name in accordance with the provisions of section 16.

Answer 3:

- (a) According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied. But this section does not prohibit a third party to file suit against the unregistered firm or its partners. {1^{1/2} M}
- (a) On the basis of above, M/s KMP & Company cannot file the suit against M/s ABC & Company as M/s KMP & Company is an unregistered firm. {1^{1/2} M}
- (b) In case M/s ABC & Company is a registered firm while M/s KMP & Company is an unregistered firm, the answer would remain same as in point a) above. {1^{1/2} M}
- (c) In case M/s KMP & Company is a registered firm, it can file the suit against M/s ABC & Company. {1^{1/2} M}

Answer:

- (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. {3 M}
- 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. {2 M}
- 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. {2 M}

Answer:

- (c) **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 {1 M}
- promoting its objects and
 - prohibiting the payment of any dividend to its members.
- Examples** of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

Power of Central government to issue the license–

- (i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.
- (ii) The registrar shall on application register such person or association of persons as a company under this section.
- (iii) On registration the company shall enjoy same privileges and obligations as of a limited company.

{1 M}

Revocation of license: The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

{1 M}

Order of the Central Government: Where a licence is revoked there the Central Government may, in the public interest order that the company registered under this section should be amalgamated with another company registered under this section having similar objects, to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order, or the company be wound up.

{1 M}

Penalty/punishment in contravention: If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty- five thousand rupees but which may extend to twenty-five lakh rupees.

{1 M}

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

Section 8 Company- Significant points

- Formed for the promotion of commerce, art, science, religion, charity, protection environment, sports, etc.
- Requirement of minimum share capital does not apply.
- Uses its profits for the promotion of the objective for which formed.
- Does not declare dividend to members.
- Operates under a special licence from Central Government.
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Licence revoked if conditions contravened.
- On revocation, Central Government may direct it to
 - Converts its status and change its name
 - Wind – up
 - Amalgamate with another company having similar object.
- Can call its general meeting by giving a clear 14 days notice instead of 21 days.
- Requirement of minimum number of directors, independent directors etc. does not apply.
- Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.
- A partnership firm can be a member of Section 8 company.

{2 M}

Answer 4:**(a) Liability of Partner in case of death**

According to Section 35 of Indian Partnership Act, 1932, the estate of a deceased partner is not liable for any act of the firm done after his death. 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. {1 M}

In the instant case, M/s ABC & Company was having three partners A, B and C. The firm was going to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. Machine was purchased but after that A and B become insolvent and the firm was unable to pay for machine. {1 M}

On the basis of above provisions and facts of the problem given, the machine was purchased after the death of C. Hence, the estate of C would not be liable for the dues of M/s LMN & Company. {1 M}

Answer:

(b) Delivery of Bags: According to Section 56 (Para 2) of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently). {1^{1/2} M}

But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case. {1^{1/2} M}

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract (Budget V Bennington).

In this case Mr. Akhil could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 (Para 2) and hence Mr. Akhil is liable to Mr. Yatin for non-performance of contract. {1 M}

Answer:**(c) Rules as to compensation (Section 117)**

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules: {1 M}

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it; {1 M}

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places; {1 M}

(c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment; {1 M}

(d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places; {1 M}

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be {2 M}

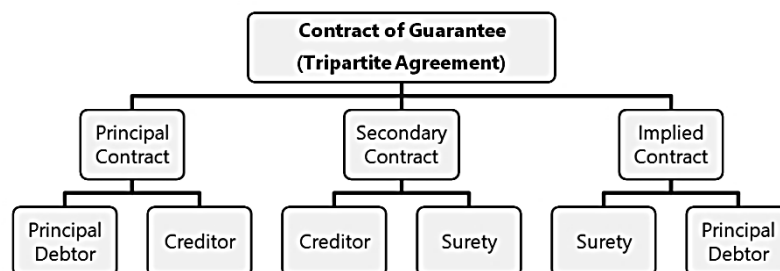
accompanied by the instrument dishonoured and the protest thereof (if any).
If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

Answer:

- (d) (i) **The Securities and Exchange Board of India (SEBI)**
- is the regulatory body
 - for securities and commodity market in India
 - under the ownership of Ministry of Finance within the Government of India.
 - It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.
- (ii) **Insolvency and Bankruptcy Board of India (IBBI)-**
- is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.
 - It was established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.
 - It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.
 - It attempts to simplify the process of insolvency and bankruptcy proceedings.
 - It handles the cases using two tribunals like NCLT (National company law tribunal) and Debt recovery tribunal.

Answer 5:

- (a) A contract of guarantee is a tripartite agreement between principal debtor, creditor and surety. There are, in effect three contracts
- (i) A principal contract between the principal debtor and the creditor.
 - (ii) A secondary contract between the creditor and the surety.
 - (iii) An implied contract between the surety and the principal debtor whereby principal debtor is under an obligation to indemnify the surety; if the surety is made to pay or perform.
- The right of surety is not affected by the fact that the creditor has refused to sue the principal debtor or that he has not demanded the sum due from him.



Answer:

- (b) As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or his authorized agent. Communication of acceptance by third person cannot be concluded in valid acceptance.

In the instant case, Mr. Preetam applied for a job as principal of a school and one member of the school management committee privately informed Mr. Preetam that he was appointed. Later, the management of the school appointed someone else as a principal. {1^{1/2} M}

On the basis of above provisions and facts, communication of appointment of Mr. Preetam should be made by school management committee or any authorised agent. The communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Preetam and school and Mr. Preetam cannot file a suit against the school for cancellation of his appointment. {1 M}

Answer:

(c) Agent's duty to disclose all material circumstances & his duty not to deal on his own account without principal's consent. The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction. On the other hand, section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then the principal may claim any benefit which may have accrued to the agent from such a transaction. {3 M}

Hence in the first instance, though Harmesh had given his consent to Meena permitting the latter to act on his own account in the business of agency, Harmesh may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him. {2 M}

In the second instance, Harmesh had knowledge that Meena was acting on her own account and also that the mine was in existence; hence, Harmesh cannot repudiate the transaction under section 215. Also, under Section 216, Harmesh cannot claim any benefit from Meena as he had knowledge that Meena was acting on her own account in the business of the agency. {2 M}

Answer:

(d) According to Section 50 to 52 of the Sale of Goods Act, 1930, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit and he may resume possession of the goods as long as they are in the course of transit and may retain them until payment or tender of the price. However right of stoppage in transit is available only in the following conditions: {4 M}

- (i) The seller must be an unpaid seller.
- (ii) When the buyer becomes insolvent; and
- (iii) When the goods are in transit.

This right of stoppage in transit is lost if buyer makes sub - sale of such goods during in transit and that buyer purchased in good faith.

(a) On the basis of above provisions and facts, it can be said that even Mr. Vasudevan is an unpaid seller, he cannot apply his right of stoppage in transit as goods has been taken by Mr. Ravi in good faith. {1 M}

(b) Further, if Mr. Ravi has knowledge of Mr. Manoharam's insolvency at the time of buying the goods, Mr. Ravi has not bought the goods in good faith. Hence, Mr. Vasudevan can exercise his right of stoppage in transit. {1 M}

Answer 6:

- (a) As per the facts stated in the question, Vishwendra (drawer) after having issued the cheque, informs Surender (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surender.
- Section 138 of the negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence. {2 M}
- Once a cheque is issued by the drawer, a presumption under Section 139 of the negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138. {1^{1/2} M}
- Also, Section 140 of the negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section. {1^{1/2} M}
- Accordingly, the act of Vishwendra, i.e., his request of stop payment constitutes an offence under the provisions of the negotiable Instruments Act, 1881. {1 M}

Answer:

- (b) Sale by person not the owner (Section 27): In general, the seller can sell only such goods of which he is the absolute owner. But sometimes a person may sell goods of which he is not the owner, then the question arises as to what is the position of the buyer who has bought the goods by paying price. The general rule regarding the transfer of title is that the seller cannot transfer a better title to the buyer for goods than he himself has. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of the seller. This rule is expressed in the Latin maxim "Nemo dat quod non habet" which means that no one can give what he has not got. {1 M}

Exceptions: In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value.

- (1) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
- If he was in possession of the goods or documents with the consent of the owner;
 - If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27). {0.75 M}

Mercantile Agent means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].

- (2) **Sale by one of the joint owners (Section 28):** If one of several joint owners of goods has the sole possession of goods by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell {0.75 M}
- (3) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29). {0.75 M}
- (4) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [Section 30(1)]. {0.75 M}
- (5) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)]. {0.75 M}
- (6) **Effect of Estoppel:** Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods. {0.75 M}
- (7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54 (3)]. {0.75 M}
- (8) **Sale under the provisions of other Acts:**
- (i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
 - (ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
 - (iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

Answer:

- (c) (i) Pledge by person in possession under voidable contract [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, 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. {2 M}
- Therefore, the pledge of diamond by Dropati with Mr. KB is valid.

- (ii) Right of retainer [Section 173 of the Indian Contract Act, 1872]: Yes, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. } {2 M}

Answer:

- (d) The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced. Consideration must however, be something to which the law attaches value though it need not be a equivalent in value to the promise made. } {2 M}
- According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given. } {1 M}

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