

Mock Test Paper - Series II: August, 2025

Date of Paper: 26th August, 2025

Time of Paper: 2 P.M. to 5 P.M.

FOUNDATION COURSE

PAPER 2: BUSINESS LAWS

Question No. 1 is compulsory.

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

(Time allowed: 3 Hours)

(100 Marks)

1. (a) (i) Tanishka purchased two flats in Ansal VVIP Homes at Greater Noida, one at Block A and another at Block D. She also entered in contract with Sakshi to letout the flat at Block D. At the time of entering into contract, both Tanishka and Sakshi were unaware that Block D is completely destroyed due to earthquake. Afterwards knowing the facts Sakshi requested to transfer the contract in favour of flat at Block A. In the light of provisions of the Indian Contract Act, 1872, whether Tanishka is liable to handover the possession of flat at Block A in place of Block D? **(4 Marks)**
- (ii) Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872. **(3 Marks)**
- (b) The paid-up capital of Darshan Photographs Private Limited is ₹ 1 Crores in the form of 50,000 Equity Shares of ₹ 100 each and 50,000 Preference Shares of ₹ 100 each (Preference shares are not having any voting rights). Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited. State with reason,
 - (a) Whether Darshan Photographs Private Limited is subsidiary of Shadow Evening Private Limited?
 - (b) Whether your answer would be different in case Shadow Evening Private Limited is holding 25,000 Equity Shares and 5,000 Preference Shares in Darshan Photographs Private Limited? **(7 Marks)**
- (c) Explain the five essential elements of partnership under the Indian Partnership Act, 1932. **(6 Marks)**

2. (a) (i) Rajnikant agrees to sell some specific goods coming on a ship name "Titanic" to Chiranjivi which will be delivered on arrival of "Titanic". The ship arrived at the port but goods were not found on the ship. Chiranjivi had to procure the goods from open market at higher price. Afterwards, Chiranjivi sued Rajnikant for recovery of extra payment he made for goods. State with reasons, whether Rajnikant is liable to compensate Chiranjivi under the provisions of the Sale of Goods Act, 1930? **(4 Marks)**
- (ii) Saurabh purchased electric scooter of Vivek for ₹ 5000 only on the gun point. Vivek decided to file the complaint and to avoid the contract on the basis of coercion applied against him by Saurabh. But before he could do that, Saurabh sold the scooter to Vinay who had no idea about the situation on which the scooter was purchased by Saurabh. Vivek sued Saurabh and Vinay for recovery of scooter. Referring to the provisions of the Sale of Goods Act, 1930, whether Vivek was correct in his decision? **(3 Marks)**
- (b) Briefly explain the nature of shares under the Companies Act, 2013 with reference to legal position of shareholders, treatment as movable property, and requirement of numbering. **(7 Marks)**
- (c) Discuss the provisions of the LLP Act, 2008 relating to partners in a Limited Liability Partnership. In your answer, explain:
- (a) The eligibility and disqualifications of a person to become a partner,
- (b) The minimum number of partners required and the consequences of reduction below the statutory limit, and
- (c) The concept of designated partners, including the requirement of having a resident designated partner. **(6 Marks)**
3. (a) X, Y and Z are partners in a firm named M/s XYZ & Co. Timber is used in the business of firm in the ordinary course of business. Y with intention to deceive W, a timber dealer, purchased timber on behalf of M/s XYZ & Co. Y uses the timber for construction of his own building. W has no idea that Y purchased the timber for his own use and claims the payment from M/s XYZ & Co. M/s XYZ & Co. refuses the payment as the timber was never received by it. State:
- (i) Whether firm is liable to pay the price of Timber?
- (ii) Whether the answer be different in case part of timber so purchased was delivered to firm and rest was used by Y for his personal use which was not in the knowledge of firm and W. **(7 Marks)**
- (b) (i) Nolimit Private Company is incorporated as unlimited company having share capital of ₹ 10,00,000. One of its creditors, Mr. Samuel filed a suit

against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the Court that he is not liable as he is just a shareholder. Explain whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent? **(4 Marks)**

- (ii) A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company held a general meeting by giving only 14 days' notice. Is this valid? **(3 Marks)**

- (c) On the basis of the mode of formation, contracts can be classified into different types. Explain the various kinds of contracts, namely:

1. Express Contracts
2. Implied Contracts (including Tacit Contracts)
3. Quasi-Contracts
4. E-Contracts **(6 Marks)**

4. (a) (i) Rahul is manufacturer of jute bags. He contracted with Sonia to purchase raw jute for the purpose of making bags. Rahul informed Sonia that production process of jute bags would start from 27.06.2025 but Sonia must supply raw jute till 25.06.2025 so that quality verifications can be done in next two days. Sonia supplied the jute on 27.06.2025 and informed Rahul that she couldn't supply on 25.06.2025 due to some unavoidable reasons and she also assured that quality measures were not anyway compromised in supplies. But Rahul wanted to avoid the contract as he was not given opportunity to examine the goods. In light of provisions of the Indian Contract Act 1872, whether Rahul can avoid the contract? **(4 Marks)**

- (ii) Kajal, wife of Ajay, is lunatic. She purchased a Diamond set of ₹ 15 Lakhs from a famous Jewellers on credit. The Jewellers demanded the payment from her husband, Ajay. The Jewellers filed suit against Ajay for recovery of price of Diamond set. Referring to the provisions of the Indian Contract Act, 1872, decide whether the Jewellers is entitled to claim the price from Ajay? **(3 Marks)**

- (b) Under what circumstances is presentment for payment of a negotiable instrument not necessary under the Negotiable Instruments Act, 1881? **(7 Marks)**

- (c) What is the significance of the Supreme Court and High Court in the Indian judiciary? **(6 Marks)**

5. (a) Anant needs an air conditioner for his room. For this purpose, he approaches M/s Frontline Electronics. The sales manager of M/s Frontline Electronics said that its technician will visit the room of Anant and there after they will suggest the air conditioner suitable for his room. After visiting the room, the technician suggests that a split AC of 1 tonne capacity will be sufficient for his room. On this advice, he purchases the suggested AC but after sometimes Anant found that AC is insufficient to cool the room area. Now, Anant wants to avoid the contract, but M/s Frontline Electronics denies returning or changing the AC as AC is installed and returning or changing will result a heavy loss to it. Referring to the provisions of the Sale of Goods Act, 1930, whether Anant can avoid the contract after installation? **(7 Marks)**
- (b) On the dissolution of a firm, what are the rights and obligations of partners under the Indian Partnership Act, 1932 with respect to:
- (i) The right to have the business wound up and surplus distributed,
 - (ii) The continuing authority of partners for the purpose of winding up and completing unfinished transactions, and
 - (iii) The application of firm debts and separate debts of partners. **(7 Marks)**
- (c) Define a Contract of Guarantee under the Indian Contract Act, 1872. Also explain the essential features of a valid contract of guarantee. **(6 Marks)**
6. (a) 'Nakul' made promissory note in favour of 'Sahdev' of ₹ 10,000 and delivered to him. 'Sahdev' indorsed the promissory note in favour of 'Arjun' but delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note. Whether 'Arjun' can recover amount under the provisions of the Negotiable Instruments Act, 1881? **(7 Marks)**
- (b) Define the term Ratification under the Indian Contract Act, 1872. Explain the rights of a person as to acts done for him without his authority. What is the effect of ratification? **(6 Marks)**
- (c) (i) When is the contract of sale in an auction complete?
- (ii) What is the effect of pretended bidding by the seller in an auction?
- (iii) Can the seller reserve a right to bid at his own auction? If yes, how? **(7 Marks)**

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PAPER 2: BUSINESS LAWS

ANSWERS

1. (a) (i) Section 20 of the Indian Contract Act, 1872 provides, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void. Bilateral mistakes may be as to the quality, existence, identity, title, price or quantity of the subject matter.
- In the instant case, Tanishka purchased two flats in Ansal VVIP Homes at Greater Noida in Block A and Block D. She also entered in contract with Sakshi to letout the flat at Block D. But at that time the Block D was completely damaged by earthquake unknown to both Tanishka and Sakshi. Sakshi demanded the possession of flat at Block A.
- Here, the matter discussed in above problem is concerned with bilateral mistake. As in case of bilateral mistake, contract is void, both Tanishka and Sakshi are not bound with this contract. Hence Sakshi cannot demand the possession of flat at Block A from Tanishka.
- (ii) According to section 16 of the Indian Contract Act, 1872, a contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other.
- When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.
- Hence, the contract between Mr. A and Mr. B is voidable at the option of Mr. B as it was induced by undue influence by Mr. A and therefore Mr. B can sue Mr. A.
- (b) According to Section 2(87) of the Companies Act, 2013 "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

For the purposes of this section —

- (I) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (II) the expression "company" includes anybody corporate;

In the instant case, Darshan Photographs Private Limited is having paid-up capital of ₹ 1 Crores in the form of 50,000 Equity Shares of ₹ 100 each and 50,000 Preference Shares of ₹ 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited.

Therefore, the answers are

- (a) On the basis of provisions of Section 2(87) and facts of the given problem, Shadow Evening Private Limited is holding one – half of total equity paid up share capital of Darshan Photographs Private Limited. Therefore, as Darshan Photographs Private Limited cannot be taken as subsidiary company of Shadow Evening Private Limited as for being subsidiary company, other company should control more than one – half of the total voting power.
- (b) Answer would remain same even if Shadow Evening Private Limited was also holding 5000 preference shares as they don't have voting rights.
- (c) The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. **ASSOCIATION OF TWO OR MORE PERSONS:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

The partnership Act is silent about the maximum number of partners but section 464 of the Companies Act, 2013 has now put a limit of 50 partners in any association/partnership firm.

2. **AGREEMENT:** Partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual.

An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

3. **BUSINESS:** Firstly, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.

4. **AGREEMENT TO SHARE PROFITS:** The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose.

5. **BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL:** The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners.

2. (a) (i) Section 6(2) of the Sale of Goods Act, 1930 provides the acquisition of goods which depends upon uncertain contingency are called 'Contingent Goods'.

Contingent goods also operate as 'an agreement to sell' and not a 'sale' so far as the question of passing of property to the buyer is concerned. In other words, like the future goods, in the case of contingent goods also, the property does not pass to the buyer at the time of making the contract.

In the instant case, there was an agreement between Rajnikant and Chiranjivi to sell some specific goods coming on a ship name "Titanic" by Rajnikant to Chiranjivi which will be delivered on arrival of "Titanic". On the arrival of ship, it was found that the goods were not on it. Chiranjivi

procured the goods from open market at higher price, and he sued Rajnikant for recovery of extra payment he made for goods.

On the basis of above provisions and facts, it is clear that goods under the agreement were contingent goods and the agreement between Rajnikant and Chiranjivi was 'an agreement to sell' and not a 'sale'. The property in goods will be passed only after arrival of goods. As there was no 'Sale' between them, Chiranjivi cannot recover extra payment he made for goods.

- (ii) By virtue of provisions of Section 29 of the Sale of Goods Act, 1930, 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.

In the instant case, Saurabh purchased electric scooter of Vivek for ₹ 5000 only by applying coercion. Before Vivek avoid the contract, Saurabh sold the scooter to Vinay who was an innocent buyer. Now, Vivek sued Saurabh and Vinay for recovery of scooter.

According to above provisions, even Saurabh purchased the electric scooter by applying coercion, Vinay got good title as he was an innocent buyer and purchased the scooter before setting aside the contract by Vivek. However, Vivek may claim damages only from Saurabh.

- (b) **Nature of shares:** Section 2(84) of the Companies Act, 2013 defines the term 'share' which means a share in the share capital of a company and includes stock. A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company. It is a measure of the interest in the company's assets to which a person holding a share is entitled.

Share is an interest in the company: Farwell Justice, in *Borland Trustees vs. Steel Bors. & Co. Ltd.* observed that "a share is not a sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount". The shareholders are not, in the eyes of law, part owners of the undertaking. The undertaking is somewhat different from the totality of the shareholders. The rights and obligations attaching to a share are those prescribed by the memorandum and the articles of a company. It must, however, be remembered that a shareholder has not only contractual rights against the company, but also certain other rights which accrue to him according to the provisions of the Companies Act.

Shares are a movable property: According to section 44 of the Companies Act, 2013, the shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Shares shall be numbered: Section 45 provides, every share in a company having a share capital, shall be distinguished by its distinctive number. This implies that every share shall be numbered.

(c) **Partners (Section 5 of the LLP Act, 2008):** Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

Minimum number of partners (Section 6):

- (i) Every LLP shall have at least two partners.
- (ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

Designated partners (Section 7):

- (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
- (iii) *Resident in India:* For the purposes of this section, the term resident in India means a person who has stayed in India for a period of not less than 120 days during the financial year.

3. (a) 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. You must remember that an implied authority of a partner may differ in different kinds of business.

In the instant case, X, Y and Z are partners in a firm named M/s XYZ & Co. Y purchased timber from W in the name of firm but uses the timber for construction of his own building of which W was unaware. When W claims the payment from M/s XYZ & Co. it refuses the payment.

Therefore, the answers are

- (a) as timber is of the ordinary use of business of firm, firm has to pay the price of timber to W.
 - (b) The answer will be same part of timber so purchased was delivered to firm and rest was used by Y for his personal use which was not in the knowledge of firm and W.
- (b) (i) Section 2(92) of the Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of

each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

On the basis of above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even the company is an unlimited company. Mr. Innocent is liable upto his share capital. His unlimited liability will arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

- (ii) A company registered under Section 8 of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.

Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong.

Also, Section 8 company is allowed to call a general meeting by giving 14 days instead of 21 days.

(c) On the basis of the formation of contract

1. **Express Contracts:** A contract would be an express contract if the terms are expressed by words or in writing. Section 9 of the Indian Contract Act, 1872 provides that if a proposal or acceptance of any promise is made in words, the promise is said to be express.
2. **Implied Contracts:** Implied contracts in contrast come into existence by implication. Most often the implication is by action or conduct of parties or course of dealings between them. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Tacit Contracts: The word Tacit means silent. Tacit contracts are those that are inferred through the conduct of parties without any words spoken or written. A classic example of tacit contract would be when cash is withdrawn by a customer of a bank from the automatic teller machine [ATM].

3. **Quasi-Contract:** A quasi-contract is not an actual contract, but it resembles a contract. It is created by law under certain circumstances. The

law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

4. **E-Contracts:** When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts. In electronic commerce, different parties/persons create networks which are linked to other networks through EDI - Electronic Data Inter change. This helps in doing business transactions using electronic mode. These are known as EDI contracts or Cyber contracts or mouse click contracts.

4. (a) (i) "Performance of Contract" means fulfilment of obligations to the contract. According to Section 37 of the Indian Contract Act, 1872, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Further, the promisee should have a reasonable opportunity to see that the things offered is the things contracted for otherwise performance cannot considered as valid performance.

In the instant case, Rahul, a manufacturer of jute bags entered in a contract with Sonia to purchase raw jute with the instructions that his production process would start from 27.06.2025 but he needs raw jute till 25.06.2025 so that quality verifications can be done in next two days. But Sonia supplied the jute on 27.06.2025 with the information that she couldn't supply on 25.06.2025 due to some unavoidable reasons but quality measures were assured by her. Now Rahul wanted to avoid the contract as he was not given opportunity to examine the goods.

On the basis of facts of the case, Rahul was not given a proper opportunity to examine the goods at the time of performance. This cannot be considered as valid performance by Sonia. Hence, Rahul can avoid the contract entered with Sonia.

- (ii) By virtue of provisions of Section 68 of the Indian Contract Act, 1872, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. In other words, supplies of necessities to a lunatic can be recovered from property belonging to lunatic.

In the instant case, Kajal, a lunatic, purchased a Diamond set of ₹ 15 Lakhs from a famous Jewellers on credit. The Jewellers demanded the payment from her husband, Ajay.

Here, Diamond set purchased by Kajal is not necessities generally. Hence, the Jewellers cannot recover the amount of ₹ 15 Lakhs from Ajay.

(b) When presentment unnecessary (Section 76 of the Negotiable Instruments Act, 1881)

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

- (a)
 - (i) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
 - (ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
 - (iii) if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or
 - (iv) if the instrument not being payable at any specified place, he cannot after due search be found;
- (b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
- (c) as against any party if, after maturity, with knowledge that the instrument has not been presented—
 - he makes a part payment on account of the amount due on the instrument,
 - or promises to pay the amount due thereon in whole or in part,
 - or otherwise waives his right to take advantage of any default in presentment for payment;
- (d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

- (c) (i) Supreme Court:** The Supreme Court is the apex body of the judiciary. It was established on 26th January 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of

India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.

- (ii) **High Court:** The highest Court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellate, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory, and one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

- 5. (a) According to Section 16(1) of the Sale of Goods Act, 1930, there is implied condition of the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:
 - (a) The buyer should have made known to the seller the particular purpose for which goods are required.
 - (b) The buyer should rely on the skill and judgement of the seller.
 - (c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

In the instant case, Anant approaches M/s Frontline Electronics for purchasing an AC. The technician of M/s Frontline Electronics visits the room of Anant where AC to be installed and on the suggestion of M/s Frontline Electronics a split AC of 1 tonne capacity is installed. But AC is insufficient to cool the room area. Now, Anant wants to avoid the contract, but M/s Frontline Electronics denies returning or changing the AC as AC is installed and returning or changing will result a heavy loss to it.

On the basis of above provisions and facts, undoubtedly Anant purchases AC only on the suggestion of M/s Frontline Electronics. AC is not fit and suitable for the room area of Anant, hence he can avoid the contract.

- (b) (i) **Right of partners to have business wound up after dissolution (Section 46 of the Indian Partnership Act, 1932):** On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in

payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

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

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

- (iii) **Payment of firm debts and of separate debts (Section 49):** Where there are joint debts due from the firm and also separate debts due from any partner:
 - (i) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;
 - (ii) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm.

(c) **“Contract of guarantee” [Section 126 of the Indian Contract Act, 1872]**

Contract of guarantee: A contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default.

Three parties are involved in a contract of guarantee

- (i) **Surety-** person who gives the guarantee
- (ii) **Principal debtor-** person in respect of whose default the guarantee is given
- (iii) **Creditor-** person to whom the guarantee is given

ESSENTIAL FEATURES OF A GUARANTEE

The following are the requisites of a valid guarantee:

1. **Purpose:** The purpose of a guarantee being to secure the payment of a debt, the existence of recoverable debt is necessary. If there is no principal debt, there can be no valid guarantee.
2. **Consideration:** Like every other contract, a contract of guarantee should also be supported by some consideration. A guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor.

As per Section 127 consideration received by the principal debtor is sufficient consideration to the surety for giving the guarantee, but past consideration is no consideration for the contract of guarantee. Even if the principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void.

3. **Existence of a liability:** There must be an existing liability or a promise whose performance is guaranteed. Such liability or promise must be enforceable by law. The liability must be legally enforceable and not time barred.
4. **No misrepresentation or concealment (section 142 and 143):** Any guarantee which has been obtained by the means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid (section 142)

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid (section 143).

5. **Writing not necessary:** Section 126 expressly declares that a guarantee may be either oral or written.
6. **Joining of the other co-sureties (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. That implies, the guarantee by a surety is not valid if a condition is imposed by a surety that some other person must also join as a co-surety, but such other person does not join as a co-surety.

6. (a) According to Section 48 of the Negotiable Instruments Act, 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Further, 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.

- (i) **Actual delivery** takes place when the instrument changes hand physically.
- (ii) **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.

In the present case, Nakul made a promissory note in favour of Sahdev and delivered it to him. Sahdev, in turn, indorsed the note in favour of Arjun and delivered it to Arjun's agent. This constitutes valid constructive delivery to Arjun. The subsequent death of Arjun's agent and the fact that Arjun later found the instrument in his agent's drawer does not affect the validity of the negotiation.

Therefore, since there was valid indorsement and delivery, Arjun has become the holder of the promissory note and is entitled to recover the amount from Nakul.

- (b) **Rights of person as to acts done for him without his authority, Effect of ratification [Section 196 of the Indian Contract Act, 1872]:** Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. In simple words, "Ratification" means approving a previous act or transaction. Ratification may be express or implied by the conduct of the person on whose behalf the act was done.

Essentials of a valid Ratification

- a. **Ratification may be expressed or Implied [Section 197]:** Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.
- b. **Knowledge requisite for valid ratification [Section 198]:** No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.
- c. **The whole transaction must be ratified [Section 199]:** There can be ratification of an act in entirety or its rejection in entirety. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.

- d. **Ratification cannot injure third person [Section 200]:** When the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.
 - e. **Ratification within reasonable time:** Ratification must be made within a reasonable period of time.
 - f. **Communication of Ratification:** Ratification must be communicated to the other party.
 - g. **Act to be ratified must be valid:** Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital, forgery of signatures, any other criminal offence, or anything which is not permitted under law.
- (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:

- (i) **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.
- (ii) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.
- (iii) **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.