Law Handbook on Practical Problems

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INDIAN CONTRACT ACT, 1872

1) Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for Rs. 20 lakhs in the name of a nominee and then purchased it himself for Rs.24 lakhs. He then sold the same house to Mr. Ahuja for Rs 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much explain.

Agent is not to deal on his own account. If the agent wants to do deal on his own account, he must disclose all the material facts to his principal and obtain his consent. The principal can rescind the contract, if any material facts were dishonestly concealed by the agent or the dealings of the agent on his own account have been disadvantageous to the principal.
Agent can not make any secret profit out of the business of agency. If the agent deals on his own account without disclosing it to the principal, the principal is entitled to claim from the agent any benefit received by him, out of such transaction. Mr. Ahuja engages Mr. Singh as his agent for purchase of a house. Mr. Singh purchases a house in the name of the nominee and then purchases the same house on behalf of Mr. Ahuja (his principal), thus making a profit of Rs. 4 lakhs. However, he does not disclose these facts to Mr. Ahuja. Non-disclosure of profit of Rs.4 lakhs made by Mr. Singh amounts to a beach of duty by Mr. Singh. Therefore, Mr. Ahuja is entitled to claim the secret profit of Rs. 4 lakhs made by Mr. Singh.

2) A hires a carriage enough of B and agrees to pay Rs. 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B.

In case of a non-gratuitous bailment, the bailor is liable to disclose all the faults whether known to him or not. Accordingly, the bailor shall be liable for damages for any loss caused to the bailee whether or not he was aware of the faults.
In the the given case the hire of carriage of B by A amounts to non-gratuitous bailment. Therefore, it was the duty of B to disclose to A that the carriage was unsafe. It is immaterial as to whether or not B was aware of the fact that the carriage was unsafe. A is entitled to claim compensation from B.

3) C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contract with X to give time to B, Is A discharged from his liability?

Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surely is not discharged. Accordingly, A is not discharged from his liability.

4) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction / C guarantee A's performance of the contract. B does not supply the material as per the agreement. IS C discharged from his liability?

The surely is discharged by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. Failure to supply the necessary material by B (i.e., the creditor) amounts to an omission on the part of the creditor resulting in discharge of A (i.e., the principal debtor), and consequently, C (i.e., the surety) is discharged.

5) What are the difference between bank gaurantee and ususal gaurantee?

Following are some points of difference between a bank guarantee and a usual guarantee:A usual guarantee is governed by Sec. 126 of the Indian Contract Act, 1872. A bank guarantee is not directly governed by Sec. 126. An ordinary guarantee is a tri-partite (3 parties) agreement involving the surety, the debtor and the creditor.

But a bank guarantee is a contract involving two parties i.e. the bank and the beneficiary. In an ordinary guarantee, the contract between the surety and the creditor arises as a subsidiary to the contract between the creditor and the principal debtor. The bank guarantee is independent of the main contract. In an ordinary guarantee, the inter se disputes between the debtor and the creditor have a material effect upon the surety's liability. However, the bank guarantee is independent of the disputes, arising ex contractu (arising out of the contract). An ordinary guarantee does not have any time limit before which the debt has to be claimed. Bank guarantees generally have a specific time within which they are functional.

6) Can the invocation of a bank guarantee be prevented by initiating arbitration proceedings?
If the bank guarantee is unconditional, arbitration proceedings would in no way affect the enforcement of the guarantee. This is because an unconditional bank guarantee is independent of the main contract which refers disputes to arbitration. However, if the bank guarantee includes a clause to the effect that it could not be invoked prior to the decision of the arbitrators, such a bank guarantee, which is conditional, cannot be invoked and an injunction can be granted.

7) How can a beneficiary restrain the invocation of a bank gaurantee?
The invocation of a bank guarantee by the beneficiary can be restrained by an injunction under the Civil Procedure Code, 1908, or the Specific Relief Act, 1963. However, the normal considerations, which apply in granting an injunction, will not apply in cases of a bank guarantee.Courts are usually reluctant to grant an injunction against a bank guarantee. If a bank guarantee has to be restrained, it has to satisfy the following conditions:

Fraud;
Irretrievable injustice or injury

8) How do bank guarantees help in commercial contracts?

Guarantees are important instruments used to minimize the risks that are involved in commercial contracts. For the enforcement of ordinary guarantees, as construed dependence of the guarantee on the main contract may lead to unnecessary disputes and litigation, arising from the main contract. These disputes may have a material effect on the guarantee, thereby blocking funds in litigation. Hence, there was a need for an innovative instrument which would enable the guarantee to serve its original purpose; namely, providing a form of security.The bank guarantee is one such innovative financial instrument whereby, if the beneficiary perceives that there has been a breach of contract by the other party, he can encash the guarantee and avail of the amount immediately, without having to undergo the hassles of litigation. Thus, the relevance of a bank guarantee achieves relevance.

9) What does the term 'bank guarantee' mean?
A bank guarantee is a commercial instrument in the nature of a contract, intended between two parties, to secure compliance with the contract. It is an off-shoot of the main contract between two parties. A bank gaurantee is a guarantee made by a bank on behalf of a customer (usually an established corporate customer) should it fail to deliver the payment, essentially making the bank a co-signer for one of its customer's purchases.

10) A' stands surety for 'B' for any amount which 'C' may lend to B from time to time during the next three months subject to a maximum of Rs. 50,000. One month later A revokes the guarantee, when C had lent to B Rs. 5,000. Referring to the provisions of the Indian Contract Act, 1872 decide whether 'A' is discharged from all the liabilities to 'C' for any subsequent loan. What would be your answer in case 'B' makes a default in paying back to 'C' the money already borrowed i.e. Rs. 5,000?

The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. By Notice: A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).
The liability of the surety for previous transactions however remains. Thus applying the above provisions in the given case, A is discharged from all the liabilities to C for any subsequent loan.
Answer in the second case would differ i.e. A Is liable to C for Rs. 5,000 on default of B since the loan was taken before the notice of revocation was given to C.

11) 'A' applies to a banker for a loan at a time where there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. Whether the contract is induced by undue influence? Decide.
In the given problem, A applies to the banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence. As between parties on an equal footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. Only where the lender is in a position to dominate the will of the borrower, the relief is granted on the ground of undue influence. But this is not the situation in this problem, and therefore, there is no undue influence.

12) Mr. Dubious textile enters into a contract with Retail Garments Show Room for supply of 1,000 pieces of Cotton Shirts at Rs. 300 per shirt to be supplied on or before 31st December, 2006. However, on 1st November, 2006 Dubious Textiles informs the Retail Garments Show Room that he is not willing to supply the goods as the price of Cotton shirts in the meantime has gone upto Rs. 350 per shirt. Examine the rights of the Retail Garments Show Room in this regard.

In the given problem Dubious Textiles has indicated its unwillingness to supply the cotton shirts on 1st November 2006 itself when it has time upto 31st December 2006 for performance of the contract of supply of goods. It is therefore called anticipatory breach of contract. Thus Retail Garments show room can claim damages from Dubious Textiles immediately after 1st November, 2006, without waiting upto 31st December 2006. The damages will be calculated at the rate of Rs.50 per shirt i.e. the difference between Rs. 350/- (the price prevailing on 1st November) and Rs. 300/- the contracted price.

13) Ram, Rahim and Robert are partners of software business and jointly promises to pay Rs.30, 000 to Raheja. Over a period of time Rahim became insolvent, but his assets are sufficient to pay one-forth of his debts. Robert is compelled to pay the whole. Decide whether Robert is required to pay whole amount himself to Raheja in discharging joint promise.

According Section 43 of Indian Contract Act, 1872 when two or more persons make a joint promise, the promisee may, in absence of express agreement to 7
the contrary, compel any one or more of such joint promisers or perform the whole of the promise. Further, if any one of two or more joint promisers makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in this case, Robert is entitled to receive 2,500 from Rahims assets and 13,750 from Ram.

14) Miss.Chitra, a singer, enters in to a contract with the manager of Bangalore Gate Club, to sing in the Club for two concerts every week during the next two months and the club agrees to pay her at the rate of Rs.2000 for each concert. On the seventh concert Miss.Chitra willfully absents herself. With the assent of the manager of the club, Miss.Chitra sings for the eighth concert. But on the following day, the club, puts an end to the contract. Can Miss.Chitra claim damages for breach of contract? Advise .

On the seventh Concert when Miss.Chitra willfully absents herself, the club is at liberty to put an end to the contract. If Miss.Chitra sings on the eighth Concert with the consent of the club. The club has signified its acquiescence in the continuance of the contract and cannot now put an end to it. The club is entitled to compensation for the damage sustained because of Miss.Chitra's failure to sing on the seventh concert. If the club puts an end to the contract, Miss.Chitra can claim damages for breach of contract [Section 39 of The Indian Contract Act, 1872)].

15) Mr. X, is employed as a cashier on a monthly salary of Rs.2,000 by ABC bank for a period of three years. Y gave surety for X's good conduct. After nine months, the financial position of the bank deteriorates. Then X agrees to accept a lower salary of Rs.1,500/- per month from Bank. Two months later, it was found that X has misappropriated cash since the time of his appointment. What is the liability of Y?

If the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Y is liable as a surety for the loss suffered by the bank due to misappropriation of cash by X during the first nine months but not for misappropriations committed after the reduction in salary. [Section 133, Indian Contract Act, 1872].

16) A bank sanctions an overdraft limit against the security of a continuing guarantee. The surety dies. Can the bank proceed against the heirs of the surety under the guarantee and, if so, to what extent ?

The death of the surety operates, in the absence of a contract to the contrary, as a revocation of a continuing guarantee as regards future transactions. It may, however, be noted that the estate of the surety shall be liable for all transactions entered into between the creditor and the principle debtor prior to the death of the surety, unless there was a contract to the contrary. However, his estate shall not be liable for the transactions entered into after his death, even if the creditor has no notice of the death. Thus, in the given problem, since there is nothing against attachment of surety's properties after his death, the heirs of the surety shall be liable for the debit balance in the overdraft account but this liability shall be limited to the higher of the following two: 1. The amount of debit balance in the overdraft account as on the date of surety's death; and
2. The value of the surety's estate acquired by the heirs.

17) A guaranteed the honesty of a servant in the employment of B. The servant was guilty of dishonesty in the course of the service, but B continued to employ him and did not inform A of what had occurred. Subsequently, the servant committed further acts of dishonesty. B requires A to make good the loss. Discuss the liability of A.

In the given case, A cannot be held liable because of change in circumstances not brought to his notice by the creditor having knowledge of the same. Under such circumstances. Section 139 of the Indian Contract Act, 1872 becomes operative. It provides that if the creditor does any act which is inconsistent with the right of surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of surety himself against the principal debtor is thereby impaired, the surety is discharged. Thus, in the present case the omission of the creditor to inform A of servant's dishonesty and his conduct of continuing to employ him, shall discharge the surety A.

18) An illiterate woman executes a sale deed on the assumption that it was a power of attorney and that the deed after it was executed, was not read over to the lady. Advise the lady. In the present case, illiterate woman claims to have signed a power of attorney whereas she has actually signed a sale deed. Thus, there is a mistake as to the very nature of the contract itself. In such cases. Courts have held that inspite of the mistake being unilateral, contract shall be void because consent is a function of mind and, therefore, if a person has mentally not consented to something, he has actually not consented at all. So there is no consent to the sale deed and thus no contract at all. Thus, lady may be advised to proceed under mistake and the sale deed shall be set aside. Similar facts appeared before the Calcutta High Court in the case of Bala Devi v. Shantirnoy.

19) A enters into a contract with B for the sale of goods to be delivered at a future date. Is it a wagering agreement? Give reasons. The contract in question is not a wagering agreement. It only involves future consideration and is a valid, enforceable, common business transaction. A transaction, to be wagering, must make the performance of the transaction dependent upon the happening or non-happening of an uncertain future event. The performance in the given case being not so dependent, transaction is not wagering.

20) fraudulently informs B that A's estate is free from encumbrance. B there- upon buys the estate. The estate is subject to a mortgage. Is it a void or voidable contract? State reasons. The contract in question shall be voidable at the option of B. As per the given facts, the fact of the estate being subject to mortgage was actively concealed by A. Such an active concealment amount to fraud as per Section 17 state and Section 19 of the Indian Contract Act declares contract affected by fraud voidable at the option of the aggrieved party. Hence, contract in question is not void but voidable at the option of B.

21) A tailor, expecting to make good profits at a place on the occasion of a festival there, sent through a railway company, a sewing machine and some cloth for carriage to the place of the festival. Due to the fault of the servants of the railway company, the machine and the cloth could not be delivered till the termination of the festival. Discuss the rights of the tailor. In the given problem, it is apparent that the delay in delivering the machine and cloth was caused because of the fault of the servants of the Railway. Therefore, there is no doubt that the Railway company shall be subject to damages for the fault of its employees.

But the question is Which kind of damages. Can the tailor claim loss of profit or say only his fare, stay expenses, return fare for the goods, etc.? Loss of profit is a special loss, whereas other loses are ordinary damages. Ordinary damages shall no doubt be claimable. Regarding special damages, i.e., loss of profit, claim shall be acceptable only and only if the facts and the likely loss had been communicated to the Railway company.
This rule regarding special damages was laid down in the case of Hadley v. Baxendale and has been duly incorporated in Section 73 of the Indian Contract Act. Thus, communication of the special circumstances is a pre-requisite to the claim for special damages. Since in the facts given, there is no mention of the peculiar circumstances, i.e., of using the machine and cloth for the festival, having been communicated, the tailor may only claim ordinary damages.

22) A Mohammedan lady asks for your advice whether she can sue her own father-in-taw to recover arrears of allowance payable to her by the father-in-law under an agreement between her own father and her father-in-law in consideration of her marriage. Give reasons for your answer.

Although the general rule of law is that a stranger to a contract cannot sue, it has been widely accepted that a beneficiary of a contract may do so. Similar facts appeared before the Court in the case of Kwaja Muhammad v. Haisaini Begum and the court allowed the lady, the daughter-in-law, to claim the arrears to allowance agreed to be payable under an agreement with his father in consideration of her marriage. Thus, in the present case, lady shall succeed in her case.

23) A contract to purchase certain immovable properties had been made by a guardian on behalf of a minor and the minor sued the other party for a decree of specific performance to recover possession. State whether the suit will succeed. Yes- Although the general rule of law is that a stranger to a contract cannot maintain a valid suit, it was recognised in Kwaja Mohd. v. Haisaini Begum, that a beneficiary can always claim the benefits and bring a suit directly against the promisor. Moreover, the beneficiary being a minor, it shall make no difference because under the Indian Contract Act, a minor can always be beneficiary under the contract and validly enforce such benefits. Thus, minor, in the present case, shall succeed in his suit for specific performance.

24) A, B and C borrow Rs. 10,000 from X. All of them have executed a promissory note in favour of X. A dies. X sues B alone for Rs. 10,000. Is X entitled to do so? If so, what is the remedy, if any, to B ?

Section 43 of the Indian Contract Act, 1872 provides that when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. Thus, in the given case, X is entitled to claim performance from B alone. B, of course, in turn, shall be allowed to claim contribution in excess of his share {i.e., 1/3] from C aswell as legal representative of A. In this regard. Section 43 again provides that each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract. Thus, B shall be entitled to claim Rs. 3,333.33 each from C and A's legal representative.

25) A proposes by a letter sent by post to sell his house to B. B accepts the proposal by letter sent by post. State the legal position regarding revocation of offer and acceptance by A and B respectively.

The problem in question is based on the provisions of Section 5 of the Indian Contract Act. According to Section 5, a proposal may be revoked at any time before the communication of acceptance is complete as against the proposer as per Section 4. Communication of acceptance against the proposer is complete when the letter of acceptance is posted. Thus, B may revoke his proposal at any time before or at the moment when B posts his letter of acceptance but not afterwards.
Revocation of acceptance, as per Section 5, may be made at any time before the communication of the acceptance is complete as against the acceptor, but not after- wards. As per Section 4, communication of acceptance is complete as against the acceptor when it comes to the knowledge of the proposer. Thus, B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

26) 'A' applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. Whether the contract is induced by undue influence? Decide.
For relief on ground of undue-influence under Section 16, two requirements need to be satisfied, viz.,

(i) the party alleged must be in a position to dominate the will of the other; and
(ii) he must have exercised that domination to obtain an undue advantage. In the given case, a bank cannot be said to be in a position to dominate the will of the borrower — the borrower having option to borrow from other banks or other sources. Thus, contract cannot be said to be induced by undue influence.

27) A offers to B his scooter for Rs. 6,000. B writes back agreeing to buy it for Rs. 5,500. Is there a concluded contract between A and B for sale of the scooter for Rs. 5,500? No; For conclusion of a contract it is necessary that the offer of the party be accepted in absolute and without any qualifications or conditions. In the present case. B's agreeing to buy the scooter for Rs. 5,500 instead of the proposed amount of Rs. 6,000, only amounts to a fresh proposal or counter-proposal and doesn't constitute acceptance of the proposal or offer of A.

28) Anil agrees with Gopal to let out the house under construction and obtains an advance for the purpose. The house is, however, requisitioned by Government and, therefore, Anil is unable to honour his promise. What are the rights of Gopal against Anil? Can Gopal recover damages for breach of contract?

No- Gopal cannot recover damages for breach of contract. The problem in question relates to Section 56 of the Indian Contract Act. According to Section 56, a contract becomes void in the event of supervening/subsequent impossibility as to its performance. As the house is requisitioned by the Government (assuming under the legitimate powers). Anil shall be excused of his obligations, the contract becoming void under Section 56. However, Gopal can claim refund of the advance made by him to Anil. Section 65, in this regard, provides that when an agreement becomes void, any person who has received any advantage under such agreement or contract is bound to restore it.

29) In a private Company, after the death of Mr.X entire capital of the company is held by his son Y. Decide, whether Y can continue business of the co. with single shareholder. In such a situation, Y can continue to carry on the business of the Company but, in accordance with the provisions of Sec.45 of the Act, if the same position continues for more than six months, then y will become personally liable for all the liabilities of the Company contracted after six months from the date he becomes only shareholder.

30) Both the shareholders of the Private Company died in a car accident. Decide whether Company's existence also comes to an end.

The Company's existence is not affected by the death of its shareholders, since the Company has separate legal entity. This is clearly established in Salomon Vs. Salomon & Co. Ltd, Lee Vs. Lee Air farming Ltd & Kandoli tea Co. Ltd. cases. Further the Company has having perpetual succession.

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32) A borrower grants a power of attorney to bank authorising the bank to sell a ertain property belonging to him and appropriate the sale proceeds towards his ndebtedness. He also agrees not to institute any legal proceedings against the bank challenging either the bank's actions or its statements of account. The property is sold for a low price and the bank calls upon the borrower to pay the balance. Can the borrower institute legal proceedings against the bank questioning the sale ?

Yes- The borrower can institute legal proceedings since the clause in the agreement restraining the borrower from legal proceedings is void as per Section 28 of the Indian Contract Act and thus unenforceable. Section 28 in this respect reads as :

Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals, is void to that extent.

33) Anil was due to perform a contract on 20th Feb. 1989, but on 16th Feb., repudiated his obligation. On 23rd Feb., the contract became illegal through a change in law. Varun, the other party to the contract, filed a suit for breach of contract on 20th Feb. Decide the case with reasons.

Varun in this case will be held entitled to the remedies for breach of a contract. The case is not covered under Section 56 whereunder supervening illegality renders a contract void thereby relieving the promisor of his obligations. Section 56 covers those cases where supervening impossibility/illegality takes place before the time for performance is due. Since in the given case, performance was due on 20th Feb. 1989, the repudiation on 16th amounts to breach of contract and thereby entitles the aggrieved party, viz., Varun, to claim compensation (damages). He, however, will not be entitled to claim 'specific performance'—the transaction having become illegal.
Thus, the contract becoming illegal on 23rd Feb., will not affect Varun's right to claim damages.

34) A offers to sell a cannon to B. A knows that the cannon has a defect in it and puts a metal plug to conceal the defect. B accepts the cannon without examining it. The cannon bursts before it is paid for. Is B liable to pay the price ? The facts of the given problem are similar to those of Horsefall v. Thomas, in which case it was held that a fraud that actually does not deceive is not fraud. The court held that there was no fraud because B would have bought it even if no deceptive plug had been put. He was in fact not deceived by it since he did not even care to examine the cannon. The decision seems to be based upon the feeling that law shall not protect those who are negligent about their interests.

35) An artist offers to sell a painting to an industrialist for Rs. 10,000. The industrialist offers to buy it for Rs. 8,000, which is not accepted. The industrialist then sends a cheque for Rs. 10,000 and asks the artist to sell the painting to him. Comment on the legal position.

Section 7 of the Indian Contract Act requires that an acceptance to be valid must be absolute and unqualified. In other words, an offer should be accepted "as it is without any 'ifs' and 'buts'." An acceptance with a variation, however slight, is no acceptance, and amounts to a mere counter-offer which the offer or may or may not accept. Even where the offeree subsequently changes his mind and is prepared to accept the offer as per original terms, it shall be deemed as a fresh offer from him which may or may not be acceptable to the original offerer. Thus, in the given case, the artist shall have the option to accept or refuse the cheque for Rs. 10,000 since the sending of cheque for the original offer amount shall be deemed as a fresh proposal from the industrialist.

36) A, in Bombay, bets with B and loses. A applies to C for a loan in order to pay B. C gives the loan to A to enable him to pay B. Can C recover the amount of loan from A? Would it make any difference if this transaction takes place in Hyderabad? No- C cannot recover the amount of loan from A. The contract between the two is void being a collateral transaction to an illegal

agreement. In Bombay, wagering agreements are not merely void; they are illegal. The consequence of an agreement being illegal is that if any collateral transaction is made by a person knowing the illegal object of the main transaction, the collateral transaction also becomes unenforceable.

If the aforesaid transaction had taken place in Hyderabad, it would have been a valid and enforceable contract since in Hyderabad betting transactions are only void and not illegal. Transactions collateral to a void agreement are valid.

37) A, a minor, borrows Rs. 10,000 and executes a pronote for the amount in favour of B. After attaining the majority, A executes another pronote in settlement of the first pronote. Will B succeed in recovering money from A? Give reasons in support of your answer.

No-B will not succeed in recovering money from A. Although Section 2(d) recognises the concept of past consideration, but it must be something to which law attaches a value. A contract with a minor is void ab initio. The consideration for the second pronote is a void agreement and hence of no value. Besides, ratification by a minor of a contract, on attaining majority is not allowed.

38) Peter Feraro offered to pay Rs. 10,000 to any person, who would swim a hundred yards on Bombay's sea coast on the New Year's Day of 1983. A fisherman, without any information about the offer, claimed Rs. 10,000 on swimming the distance to save his life after he was accidently thrown overboard by the rough sea waves. Can the fisherman claim the money ?

No- the fisherman or servant cannot claim the money. They acted without any information as to the offer. How can a person accept an offer unless he is aware of it ?
Therefore, the offer cannot be said to have been accepted thereby resulting in a contract. Similar decision was given in Lalman Shukla v. Gauri Dutt.

39) A, a dealer in horses, sold a mare to B with the knowledge that the mare had a cracked hoof which A had filled up so as to prevent detection even after a diligent examination. Discuss the right of B when he subsequently detects it.

The facts of the above problem suggest that A has attempted to defraud B. But under Section 17 of the Indian Contract Act, mere silence as to the faults in the goods being sold, shall not ordinarily amount to fraud unless silence is either equivalent to speech or it was obligatory on the part of the party to disclose the facts. In the given case either of these exceptional situations not being present, the common rule of caveat emptor, i.e., let the buyer beware shall apply, that is, it is the duty of the buyer to satisfy himself about the goods he is buying. It is no duty of the seller to point out the defect of his goods. Thus, in the present case, when buyer later on detects the defect, he may not have any remedies against the seller.

40) C with the intention of inducing D to enter into a contract with him, makes a statement to D, which is, in fact, untrue and thereby induces D to enter into the contract. What are D's rights, if the statement is made by C :

(i) knowing that it was untrue,

(ii) recklessly, without caring to know whether it was true or false,

(iii) in good faith but negligently,

(iv) in good faith and without negligence?

In the first two situations, i.e., where untrue statement has been made either knowingly or recklessly, it amounts to fraud and the rights of the party defrauded include not only rescission of the transaction but also a claim for damages. On the other hand, since in situations (iii) and (iv) mis-statement was made in good faith, i.e., innocently—without knowing it to be untrue, it amounts to misrepresentation. The effect in these cases shall be that D shall be entitled only to rescind the transaction. He cannot claim damages.

41) A agrees with B to give a motor car to B's son in consideration of his marrying A's daughter. Can B's son sue A on the agreement?

Yes- B's son can sue. A stranger to the contract has no right to seek the performance. But, if the stranger happens to be a beneficiary under a transaction, he is permitted to seek its direct enforcement. Thus, in the given problem, although contract is between A and B and B's son, therefore, as a stranger to the contract, he shall, being beneficiary of it, be entitled to enforce it.

42) X sells a horse to Y for Rs. 1,200, but unknown to both parties at the time of the transaction, the horse was dead. Discuss the rights and liabilities of X and Y. Would it make any difference to your answer if the horse was seriously ill at the time of transaction and died within a few hours after the transaction? Agreement is void on account of mutual mistake of fact essential to the agreement (Section 20). In the alternative situation, however, X will be entitled to the price.

43) A enters into a contract with B for supplying 800 tonnes of iron ore within 4 months. A fails to make delivery in time owing to difficulty in transport. But he admitted the availability of iron ore in the market at a higher price. Can A take the plea of impossibility of performance? Give reasons. No-difficulty of performance and commercial impossibility should be distinguished from impossibility of performance. Section 56 of the Indian Contract Act declares only contracts void which become impossible of execution.

44) Ram's son absconded from home. He sent his servant in search of the boy. When the servant had left, Ram, by handbills, offered to pay Rs. 500 to anybody discovering the boy. The servant came to know of this offer only when he had already traced the missing boy. He, however, brought an action to recover the reward. Will he succeed in his attempt? Give reasons.

No- since the servant was not aware of the offer. An offer, unless communicated, is not valid. The facts of the given problem are similar to the case of Lalman Shukla v. Gauri Dutt in which the identical decision was given.

45) M/s Ganguly & Co., Calcutta, entered into a contract with the General Manager of the Indian Railways at Calcutta for the construction of a bridge and received an advance of Rs. 10 lakhs for the same. They did not complete the work within time and the Railways terminated the contract. This contract was found to be void from its inception'for not being in conformity with the Constitution of India". The
Indian Railways want to recover the advantage given to the contractor. Will it succeed? Discuss.

"The problem is based on the provisions of Section 21 read with Section 24 and Section 65 of the Indian ContractAct. Section 21 and 24 read together, provide that a contract based on mistake as to any law in force in India is not voidable and where any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreements is void.
Thus, the agreement between M/s Ganguly & Co., Calcutta with the Indian Railways is void (and not voidable) being not in conformity with the Constitution of India and both the parties are under a common mistake of law.
A void agreement does not create any legal obligations or confer any rights. However, Section 65 provides for restitution. It reads "where an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore, it, or to make compensation for it, to the person from whom he received it."
In view of the above, Indian Railways can recover the advance of Rs. 10 lakhs paid to M/s Ganguly & Co. [Jigi Bhai v. Nagji; Gulabchand v. Fulbai; State of Orissa v Raj Ballaie]

46) A contracted to indemnify B & Co., a publishing firm, against the consequences of any libel which might appear in any of their publications. B & Co. were forced to pay damages for a statement published by them which they knew to be libellous. The firm sues A on the basis of the agreement. Is this agreement enforceable?

No- the agreement between A and B & Co. is unlawful (Section 23 of the Indian Contract Act). The consideration or object of an agreement is unlawful if it involves or implies injury to the person or property of another. Similar view on similar facts was given in Anthrop v. Neville and Shackel v. Rosier.

47) A authorises B to sell a camera for him, and agrees to give B, a commission of 10 per cent of the sale price. A afterwards, by a telegram, revokes B's authority. B, after the telegram is sent, but before he receives it, sells the camera to C for Rs. 10,000. C is also not aware of the revocation of authority by A. A later refuses to deliver the camera to C and pay commission to B for the sale, on the ground that the sale was not binding upon him. Decide

(i) whether A's contention is valid ?

(ii) whether B is entitled to commission on the sale price ?

(iii) what are the provisions of the Indian Contract Act in this regard ?

(i) A's contention is not valid.

(ii) Yes, @ 10 per cent on Rs. 10,000.

(iii) Revocation of authority of an agent does not, insofar as the agent is concerned, take effect until it becomes known to him and insofar as third parties are concerned until it becomes known to them According to Sec. 208 of the Indian Contract Act.

48) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand." Is the agreement valid?

No-the agreement is not valid because the terms of the agreement are not certain. There is nothing to show which of the two prices was to be given. The agreement is, therefore, void because of uncertainty. Section 29 of the Indian Contract Act, specifically declares such agreements to be void.

49) A, a minor and an undergraduate student of a university, buys on credit from B, a clothier, seven suit lengths for his own use. Is B entitled to any payment in respect of the goods ?

A contract with a minor is void ab-initio. Minor being incompetent of contracting as per Section 11 of the Indian Contract Act.
However, Section 68 recognises by way of quasi contractual obligation, contracts for the supply of necessaries of life to a minor or any of his dependants as validly enforceable against minor's properties, if any. Coats may be considered as necessity of life for a student coming from a reasonably good family. But it is doubtful, if seven coats at one time shall be considered as a necessity for a student even coming from a rich family. Thus, even the properties of the minor may not be held liable.

48) A, a tradesman, leaves his goods at B's house by mistake. B treats the goods as his own and appropriates them. Can A file a suit against B for the price of such goods?

The problem relates to quasi-contracts and is based on Section 72 of the Indian Contract Act which provides that a person, to whom money has been paid or anything delivered by mistake, must repay or return it. Thus, in the present case, B should either return the goods to A or pay for it.

49) A Hindu husband executed and registered a document in favour of his wife whereby, referring to quarrels and disagreement between the parties, he agreed to transfer one of his properties to her. Later, he refused to effect the transfer. Can the wife file a suit against the husband for enforcing the contract ?

No- Wife will not succeed.
The problem relates to the exception to the rule 'No consideration no contract'. Section 25 (1) of the Indian Contract Act provides that a contract without consideration shall be valid if made out of natural love and affection, between parties standing in a near relation to each other, and through a written and registered document. Thus, such a contract must be an outcome of natural love and affection between the parties. Mere nearness of relationship does not import natural love and affection. Thus, in the present case, since promise is made to transfer properties after reference to quarrels, natural love and affection being absent, contract shall not be enforceable. The same was the decision in the case of Rajhikhy Dohee v. Bhootnath on which the facts of the present problem have been based.

50) A stationer agreed to supply white paper on rate contract for one year. Later, due to steep increase in market prices, the contractor stated that he would suffer very heavy loss by supplying at the contracted rates. Under the contract, the rates were tobe firm except for statutory levies. The stationer claimed that the contract had become commercially impossible of performance and that he was discharged. Comment on the legality of his plea.

Section 56 of the Indian Contract Act provides that a contract shall become void if the contracted act becomes, by reason of some event which the promisor could not prevent, impossible. However, impossibility contemplated under Section 56 is genuine or literal impossibility and shall not be deemed to include cases like failure to realise expected profits or the availability of raw materials at higher prices or with difficulty. Such situation may render a transaction commercially impossible but not really impossible. Thus, in the given case the stationer's plea shall not be acceptable and in the event of non-performance he will be held liable for breach and the consequential damages.

51) A landlord agrees with a bank to lease to it space in a building under construction and obtains an advance for the purpose. The building is, however, requisitioned by Government and, therefore, the landlord is unable to honour his obligations. What are the rights of the bank as against the landlord? Can the bank recover damages for breach of contract?

The problem in question relates to supervening/subsequent impossibility. Section 56 of the Indian Contract Act exonerates a promisor from any liability if the transaction becomes impossible of performance because of some event which the promisor could not prevent. The contract in such cases becomes void. Thus, in the above case since the Government has requisitioned the premises, the agreement to lease out the same is naturally impossible. Hence, the landlord cannot be subjected to any damages for not honouring his obligations. Bank can only ask for the return of advance on grounds of failure of consideration.

52) A owes B two debts of Rs. 2,000 and Rs. 550. B telephones to A saying that he is in urgent need of Rs. 550 and that A should at least pay Rs. 550. A merely sends a cheque for Rs. 550. B then finds that the other debt of Rs. 2,000 is about to get time-barred. So he applies the cheque in part payment of that debt. Discuss.

Section 59 of the Indian Contract Act, 1872 gives us the rule regarding appropriation of payments. It says, where a debtor, owing several distinct debts to oneperson, makes a payment to him, either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly. In the given question, it seems that the payment has been directed to pay off the outstanding debt of Rs. 550 and must, therefore, have been applied towards the same.
Its application to the other debt of Rs. 2,000 is not valid.

53) A bank sanctions an overdraft limit against the security of a continuing guarantee. The surety dies. Can the bank proceed against the heirs of the surety under the guarantee and, if so, to what extent ?

The death of the surety operates, in the absence of a contract to the contrary, as a revocation of a continuing guarantee as regards future transactions. It may, however, be noted that the estate of the surety shall be liable for all transactions entered into between the creditor and the principle debtor prior to the death of the surety, unless there was a contract to the contrary. However, his estate shall not be liable for the transactions entered into after his death, even if the creditor has no notice of the death. Thus, in the given problem, since there is nothing against attachment of surety's properties after his death, the heirs of the surety shall be liable for the debit balance in the overdraft account but this liability shall be limited to the higher of the following two: 1. The amount of debit balance in the overdraft account as on the date of surety's death; and
2. The value of the surety's estate acquired by the heirs.

54) 'A' applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. Whether the contract is induced by undue influence? Decide.

For relief on ground of undue-influence under Section 16, two requirements need to be satisfied, viz.,

(i) the party alleged must be in a position to dominate the will of the other; and

(ii) he must have exercised that domination to obtain an undue advantage.

In the given case, a bank cannot be said to be in a position to dominate the will of the borrower — the borrower having option to borrow from other banks or other sources. Thus, contract cannot be said to be induced by undue influence.

55) A is a minor aged seventeen years, who broke his right leg in a football match. He engaged B, a doctor, to set it. Does the doctor have a valid claim for his services? Give reasons.

Under Section 68, minor's properties, if any, can be held liable for necessaries supplied or necessary service rendered to a minor or to any of his dependents. Medical service of the nature under reference can well be considered as necessary and, therefore, the doctor shall have claim only against the properties of the minor, if any i.e., he can sue for attachment of minor's properties. Money cannot be recovered from the minor personally.

56) A enters into a contract with B for the sale of goods to be delivered at a future date. Is it a wagering agreement? Give reasons. The contract in question is not a wagering agreement. It only involves future consideration and is a valid, enforceable, common business transaction. A transaction, to be wagering, must make the performance of the transaction dependent upon the happening or non-happening of an uncertain future event. The performance in the given case being not so dependent, transaction is not wagering.

57) A contract to purchase certain immovable properties had been made by a guardian on behalf of a minor and the minor sued the other party for a decree of specific performance to recover possession. State whether the suit will succeed. Yes-Although the general rule of law is that a stranger to a contract cannot maintain a valid suit, it was recognised in Kwaja Mohd. v. Haisaini Begum, that a beneficiary can always claim the benefits and bring a suit directly against the promisor. Moreover, the beneficiary being a minor, it shall make no difference because under the Indian Contract Act, a minor can always be beneficiary under the contract and validly enforce such benefits. Thus, minor, in the present case, shall succeed in his suit for specific performance.

58) K agreed to sing at the Star Theatre for a period of three months beginning 1 st January 1996. She further agreed not to sing at any other theatre during this period. Is this contract enforceable against her?

Restraint of trade is considered against public policy and, therefore, is bad in the eyes of the law. Section 27 of the Indian Contract Act declares it void. However, with regard to service agreements, restraints of the nature mentioned in the given problem shall bevalid, if reasonable. The facts of the given problem are based on the case of Lumley v. Wagner in which the Court held this restraint of 3 months to be reasonable and thus enforceable. Thus, K can be restrained from singing elsewhere during the period of 3 months.

59) A, a minor, borrowed Rs. 5,000 on loan from B, staling that he was a major and executed a receipt in his favour. Discuss the remedies available to B to recover the money lent by him. A minor is always allowed to plead minority and is not estopped to do so even where he had procured a loan or entered into some other contract by falsely representing that he was of full age. In Leslie v. Shiell, S, a minor, borrowed £ 400 from L, a money lender, by fraudulently misrepresenting that he was of full age. On default to pay by S, L sued for return of the £ 400 and damages for the tort of deceit. Held, L could not recover £ 400 and his claim for damages also failed. The Court did not grant relief, otherwise it would have been an indirect way of enforcing a void contract. Even on equitable grounds, the minor could not be asked to refund £ 400, as the money was not traceable and the minor had already spent the same. Thus, in the given case, the agreement being void, B shall not be allowed to recover the money. However, if the money can be traced with A, the minor shall be liable, on equitable grounds, to restore the same since a minor cannot be given a liberty to cheat.

60) The lessor let out his premises to the lessee on a fixed rent. The deed recited that "if the company did not vacate the premises by a specific date, the company shall commence paying the then prevalent market rent." Does this provision in the lease deed make the contract void for uncertainty? Yes- such an agreement shall be void as per Section 29 of the Indian Contract Act being uncertain in terms of the rent payable.

The expression 'market rent' lends uncertainty to the amount of rent chargeable since rent might vary from location to location, premises to premises. Hence the clause in the lease deed suggesting payment of rent at market rate shall be void and unenforceable.

61) A customer entrusts certain G.P. Notes for safe custody to his bank. The bank keeps the G.P. Notes in a wooden box. Later, it is found that the Notes are destroyed by white ants. What is the bank's liability to the customer?

Section 151 of the Indian Contract Act, 1872 charges a bailee (which the bank is in the present case) to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.
Further, Section 152 provides that if the bailee has taken reasonable amount of care which a man of ordinary prudence would take, then in the absence of any special contract, he will not be responsible for the loss, destruction or deterioration of the goods bailed.
In the present case, if to the knowledge of the bank manager, the premises were infested with white ants, it would certainly be considered negligence on his part to have stored valuable documents like G.P. Notes in a wooden box. Otherwise, i.e., not being aware, keeping G.P. Notes in wooden box is not likely to be considered as improper and hence bank may not be subjected to any liability.

62) The manager of a cinema theatre gave instructions that no tickets were to be sold to R. R, knowing this, asked his friend to buy a ticket for him. With this ticket R went to the theatre but was refused admission. He filed a suit for damages for breach of contract, against the theatre. Would he succeed? Decide giving the provisions of the Indian Contract Act in this regard.

R would not succeed. Section 22 of the Indian Contract Act provides that a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact essential to the agreement. However, in certain exceptional cases, a unilateral mistake renders a contract unenforceable. One such circumstance may be 'mistake with regard to the identity of the person contracted with'. A large number of a legal decisions are available on this point including those of Candy v. Lindsey.
The facts of the given problem are similar to those of Said v. Butt in which the contract was declared void on ground of mistake. Manager of the theatre having issued instructions not to sell ticket to R, suggests that he had no intentions to make contract with R. Thus, had it been known that the ticket was being purchased for R, it would have been refused. There is thus absence of consent altogether and hence no valid agreement. R would, therefore, not succeed in his suit for damages.

63) X, an old lady, by a deed of gift made over certain property to her daughter D, with the specific directions that she should pay P, who is the sister of the old lady, a sum of Rs. 100 per month. The same day D entered into an agreement with P to pay her the agreed amount. D now refuses to pay her aunt P, the above amount on the plea that no consideration had moved from P to D. P, therefore, sues D. Is the suit maintainable and can D be held liable to pay the amount? Decide.

Yes-D can be held liable to pay the amount to P. Consideration may move from a stranger [Section 2(d) of the Indian ContractAct]. The facts of the given problem are based on the case of Chinnaya v. Ramaya in which a similar decision was given.

64) A & Co., through a newspaper advertisement, announced a reduction sale of ready-made woollen garments and exhibited articles in their showroom with the original and reduced prices marked on them. B, who has read the advertisement, picks up a woollen suit marked Rs. 500 as the original price and Rs. 200 as the reduced price. But when B offers Rs. 200 to the salesman of A & Co., he refuses to accept the amount and handover the suit to B. Discuss the rights of B against -A & Co.

Price quotations and price-tags do not amount to an offer but are only an invitation to an offer.
"Therefore, B's picking up the woollen suit with a price tag of Rs. 200 as the reduced price amounts to an offer by B to purchase the same at that price. It remains to be accepted by the seller—the salesman of A & Co. to result in a concluded contract. The salesman has every right to refuse or to accept the offer. Thus, B shall have no remedies.

65) A, seeing a watch in B's shop, marked for sale for Rs. 200, entered the shop, placed Rs. 200 on the counter and asks for the watch. Is B bound to sell the watch ? Give reasons. No- B is not bound to sell the watch. Price labels on articles only amount to an 'invitation to offer' and not an 'offer'. Placing of Rs. 200 by A amounts to an offer which may or may not be accepted by B. In Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd., it was observed that in such cases, there is nothing to prevent a shopkeeper from saying, "I am sorry I cannot let you have this article, it is the only piece I have got and I have already promised it to another customer or there has been a mistake in writing its price or prices have been revised since then."

66) M agreed on Monday to sell his property to N by a written agreement which stated "that this offer to be left open until Saturday 10 a.m." In the meantime on Wednesday, M enters into a contract to sell the property to 0. N, who was sitting in the next room, hears about the deal between M and 0. On Friday, N accepts the offer and delivers to M the letter of acceptance. Is N's acceptance valid? Give reasons. N's acceptance is valid, the acceptance being made before revocation of the offer by M. The overhearing by N does not amount to a valid revocation. The situation would have been different if, before acceptance by N, M had formally communicated his revocation to him.

67) A executes a guarantee in favour of a bank as security for a loan to B. Later, A contends that the guarantee is not enforceable as it is not supported by consideration as he was not paid any guarantee commission. Is A's stand correct in law? A contract of guarantee must also be supported by lawful consideration. However, it is not necessary that something must have been done for the benefit of the guarantor. Anything done for the benefit of the principal debtor is a sufficient consideration to support the promise of the guarantor. Section 127 of the Indian Contract Act, 1872 lays down that, "Anything done, or any promise made for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee." Thus, A's stand shall not be upheld as correct.

68) A bank sanctions to an oil merchant a loan against the security of groundnut oil and an agreement is entered into between the bank and the borrower. Before the loan is disbursed, the Reserve Bank issues a statutory directive to all banks prohibiting grant of advances against the security of groundnut oil and, therefore, the bank cancels the loan. Can the customer sue the bank for damages for breach of contract ?

No- In the given problem, the customer shall not be entitled to claim damages from the bank for breach of contract. The relief to the bank shall be available under Section 56 of the Indian Contract Act, 1872. Section 56 provides that a contract to do an act which, after the contract is made, becomes impossible, or by reason of some event, which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. In the present case, performance by the bank after receipt of statutory directive from the Reserve Bank shall naturally be unlawful on its part. The contract shall, therefore, become void exonerating the bank of performance.

69) A minor, who wanted to become a professional cricket player, entered into a contract with a coach and agreed to pay him certain amount to learn the game. Is the minor liable to pay the amount?

Yes- minor shall be held liable to pay the amount provided he has properties existing in his name. Education in India has been held as a necessity of life and as per Section 68 of the Indian Contract Act, the properties of a person incompetent to contract may be attached for necessaries supplied to him or to his dependants. The facts of the given problem are similar to the case of Roberts v. Gray in which the aforesaid view was taken.

70) A woman fraudulently represented to a firm of jewellers that she was the wife of a certain minister and thus obtained two pearl necklaces on credit on the pretend of buying them. She subsequently sold those necklaces to a third party. Can the jeweler recover the necklaces from the third party ?

Yes, the jeweller can recover the necklaces from the third party. It is because, consent is a mental phenomenon and absence of it renders a contract void ab initio. In the present case, since the woman introduced herself as the wife of a minister thereby leading the jeweller to believe that he was contracting not with the lady physically present in the shop but with the wife of the suggested minister. Hence, not that the contract is voidable on ground of fraud but because of mistake as to the person contracted with, there is no contract at all, there being absence of consent altogether.
The woman, therefore, got no title. And a person who has no title can obviously confer none. Thus, third party can claim no rights on those necklaces even though purchased in good faith and for value. Similar decision was given in the case of **Lake v. Simmons** on which the facts of this problem are based.

<u>Practical Questions In Negotiable Instruments Act</u>

Pr.1. State whether the following statements are promissory notes or not?

- **a.** "I promise to pay B or order Rs. 500".
- **b.** "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received".
- **c.** "Mr. B, I.O.U. Rs. 500".
- **d.** "I am liable to B, in a sum of Rs.500 to be paid by instalments.
- **e.** "I am bound to pay the sum of Rs.500 which I received from you."
- **f.** "I promise to pay B Rs. 500 and all other sums which shall be due to him".
- **g.** "I promise to pay B Rs. 1,000 and the fine according to the rules".
- **h.** "I promise to pay B Rs. 500, first deducting there out any money which he may owe me".
- **i.** "I promise to pay B Rs. 500 by instalments with a provision that no payment shall be made after my death". Master Minds.
- **j.** "I promise to pay B Rs. 500 first deducting there out any money which he may owe me".
- **k.** "I promise to pay B a sum of Rs.500 when convenient or able".
- **l.** "I promise to pay B Rs. 500 when he delivers the goods".
- **m.** "I promise to pay B Rs. 500 seven days after my marriage with C".
- **n.** "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum".
- **o.** "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next"
- **p.** "I promise to pay B Rs. 200 and deliver one quintal of paddy".
- **q.** "I promise to pay B in 20 shares and 10 bonds of XY Ltd".
- **r.** "I promise to deliver to B 100 bags of wheat".

Sol.:

- **a.** **Yes** – since it is an absolute promise to pay a specific sum of money to a specific person or his order.
- **b.** **Yes** – The maker is acknowledging his debt **and** also promises to pay for the value received.
- **c.** **No** - It is a mere acknowledgement of debt and there is not specific promise to pay the sum.
- **d.** **No** - It is a mere acknowledgement of debt and there is not specific promise to pay the sum.
- **e.** **No** – In this case drawer is agreeing that he is bound to pay. But he is promising to pay the sum.
- **f.** **No** –The amount is uncertain. (In commercial transactions the amount should be certain.)
- ***g.*** **No** – same as above.
- **h.** **No** – same as above.
- **i.** **No** – In this case death is a certain event and a negotiable can be drawn on the basis of such certain event. But this instrument is uncertain as to the amount. In commercial transactions certainty is very important.
- **j.** **No** – Since the amount is uncertain. (")
- **k.** **No** – A negotiable instrument can't be drawn on the basis of future uncertain event. In this case it is uncertain as to date of payment.
- **l.** **No** – A negotiable instrument can't be drawn on the basis of future uncertain event. In this case it is uncertain as to the date of payment. The other party may never deliver the goods.
- **m.** **No** – Negotiable instruments can be drawn to be payable on the basis of some future certain event. But marriage with C is an uncertain event. Maker may never marry C.
- **n.** **No** – Negotiable instruments can be drawn to be payable on the basis of some future certain event. In this case D's death is a certain event. But D may not leave enough sum. This is an uncertain event. Master Minds.

o. **No** – A negotiable instrument must be drawn for money and money only. In this case it is written for partly cash and partly kind.
p. **No** – same as above.
q. **No** – same as above.
r. **No** – Same as above.

Pr.2. "I of my own free will and accord approached B and borrowed from him the sum of Rs.100 bearing interest at the rate of 2 per cent per mensem. I have, therefore, executed these few presents by way of a promissory note so that it may serve as evidence and be of use when needed" signed by A.

Sol.: In this case the drawer is acknowledging the receipt of money. But there is no specific promise to pay a specific sum of money. [Bal Mukand Vs. Munna Lal Ramji Lal]

Pr.3. "We have received the sum of Rs.9,000 from shri R.R.Sharma. This amount will be repaid on demand. We have received this amount in cash.

Sol.: In this case there is an acknowledgement of receipt of money. On the other hand drawer is also promising to pay a specific sum of money on demand. Held, this is a promissory note [Surjit singh v. Ram Ratan]

Pr.4. "Mr. Little, Please let the bearer have $7 and oblige." Signed by A. is this a bill of exchange?

Sol.: This is not a bill of exchange as it contains a request and not an order [Little Vs. Slackford)

Pr.5 'I promise to pay B Rs.550 and all other sums which shall be due to him'. Is it a promissory note? State reasons.

Sol: It is not a promissory note since the amount payable is not a certain sum. The expression' all other sums which shall be due to him' makes the amount indefinite or incapable of being made definite. Section 4 of the Negotiable Instruments Act which defines Promissory Note reads:

A 'promissory note' is an instrument in writing (not being a bank note or currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. Master Minds.

Thus, to constitute a valid promissory note, the amount payable must be a certain sum or capable of being made certain.

Pr.6. Mr. X executes a promissory note in the following form, 'I promise to pay a sum of Rs.10,000 after three months'. Decide whether the promissory note is a valid promissory note.

Sol: The promissory note is unconditional promise in writing. Amount is certain. It is not dated, but dating is not a mandatory requirement. Filling of date later will not be 'material alteration' as long as date put is not before the date of actual execution. Thus, the instrument fulfils all requirements of promissory note as per Negotiable Instruments Act.

However, name of payee is not mentioned and hence it is a bearer instrument. As per RBI Act, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per RBI Act and cannot be legally enforced.

Pr.7. Mr. X promises by way of a promissory note to pay Mr.Y his partner a sum of Rs.10,000 in the event of later's retirement from partnership firm. Decide giving reasons for your answer whether the Promissory Note is a valid promissory note.

Sol: The promise is conditional on an event which is not certain. Hence, it is not a promissory note.

Pr.8. Examine the validity of the following Promissory Notes: (a) I owe you a sum of Rs.1,000. 'A' tells 'B'. (b) 'X' promises to pay 'Y' a sum of Rs.10,000, six months after 'Y's marriage with 'Z'.

Sol:

a. It is only acknowledgement of debt. It is not a promise to pay. Thus it is not a promissory note
b. Promissory note can be based on future event. The event should be certain, but date on which it will happen need not be certain. In this case, the event of Y's marriage with 'Z' is not certain, as Y may not marry or marry some other person. Hence, this is not a promissory note.

Pr.9. S writes "I promise to pay 'B' a sum of Rs.500, seven days after my marriage with 'C'". Is this a promissory note?

Sol: Promissory note can be based on future event. The event should be certain, but date on which it will happen need not be certain. In this case, the event of S's marriage with 'C' is not certain, as S may not marry or marry some other person. Hence, this is not a promissory note.

Pr.10. State, giving reasons, whether the following instruments are valid promissory notes - (i) X promises to pay Y, by a promissory note, a sum of Rs.5,000, fifteen days after the death of B. (ii) X promises to pay Y, by a promissory note, Rs.500 and all other sums, which shall be due.

Sol:

a. The future event i.e. death of B is certain, though date is uncertain. The instrument is valid.
b. the sum payable is not certain. Hence, it is not a negotiable instrument.

Pr.11. A bill is drawn as "Pay to X or order the sum of ten thousand rupees". In the margin the amount stated is Rs 1,000. Discuss the legal position.

Sol: This bill is a valid bill for Rs 10,000 because in case of discrepancy between the amount stated in figure and in words, the amount stated in words shall be the amount of the instrument.

Pr.12. Which of the following is a bill of exchange? Give reasons.

a. "To Anderson, Dear Sir, We hereby authorise you to pay on our account, to the order of Wolf, the sum of six thousand rupees."
b. "Rs. 500." "Pay to my order the sum of five hundred rupees, for value received." It is neither signed by any person as drawer nor addressed to any person as drawee. It is accepted by Lam.

Sol: Sec.5 of the Negotiable Instruments Act reads as "A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money, only to, or to the order of a certain person or to the bearer of the instrument."

a. In the given case there is no definite order to pay the sum of money. So, it is not a bill of exchange.
b. In the given case, drawee is neither named nor indicated with certainty. So, it is not a bill of exchange.

Q.13. 'A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for Rs. 500, to secure an advance which 'C' is to make to 'B'. 'B' fraudulently fills it up as a note for Rs.2,000, payable to 'C', who has in good faith advanced Rs. 2,000. Decide, with reasons, whether 'C' is entitled to recover the amount, and if so, up to what extent?

Sol: Section 20 of the Negotiable Instruments Act, 1881 provides that when one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instrument then in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamps. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same to any holder in due course for such amount. A person other than holder in due course is not authorised to recover anything in excess of the amount intends by him to be paid thereunder.

The principle contained in section 20 is that a person who gives another possession of his signature on blank stamped paper prima facie authorises the latter as his agent to fill it up and give to the world the instrument as accepted by him. The principle is one of estoppel. In the given problem 'A' is estopped from setting up B's fraud, and 'C' is entitled to recover Rs. 2,000/- from 'A' because 'C' has obtained it as a holder in due course. This liability does not stand of a person other than the holder in due course. 'C' as a holder in due course is entitled to enforce payment of the full amount even though the authority has been exceeded but it is necessary that the sum ought not to exceed the amount covered by the stamp. [Lloyds Bank vs. Cooke (1907) KB 794]

P.14. A signs, as the maker, a blank stamped paper and gives it to B and authorises him to fill it as a note for Rs. 2,000, it being the amount of advances made by B to A. B fraudulently fills it up as a note for Rs. 3,000 and then, for consideration, endorses it to C. Can C enforce the instrument?
OR
'A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for Rs. 500, to secure an advance which 'c' is to make to. 'B'. 'B' fraudulently fills it up as a note for Rs. 2,000, payable to 'C', who has in good faith advanced Rs. 2,000. Decide, with reasons, whether 'c' is entitled to recover the amount, and if so, upto what extent? Master Minds.

Sol: A duly signed blank stamped instrument is called an inchoate instrument. According to Section 20 of the Negotiable Instruments Act an Inchoate instrument is an incomplete Instrument in some respect. When a person signs and delivers blank or incomplete stamped paper to another, such other is authorised to complete it for any amount not exceeding the amount covered by the stamp. The person so signing is liable upon such instrument, to any holder in due course for any amount. But any other person can't claim more than the amount intended by the drawer of the instrument.

Thus, for C's claim to be valid and enforceable, two things are important:

- **a.** That C is a holder in due course, i.e., there should be valid consideration and he would have obtained it in good faith and before maturity.
- **b.** The amount filled in i.e. Rs. 3,000 is covered by stamp amount.

In Negotiable Instruments act every holder is deemed to be a holder in due course. Thus the other party has to establish that C is not a holder in due course.

P.15. State with reasons whether each of the following instruments is bearer or order:

- **a.** A bill is drawn payable to X or bearer.
- **b.** A bill is drawn payable to X who endorses it in blank in favour of Y.
- **c.** A bill is drawn payable to X.
- **d.** A bill is drawn payable to X or order.
- **e.** A bill is drawn payable to X only.

Sol: First state the rules related bearer instrument and order instrument.

Case	Decision	Reason
(a)	Bearer instrument [Explanation II to Sec.13 (1)]	It is expressed to be so payable.
(b)	Bearer instrument [Explanation II to Sec.13(1)]	The last endorsement is an endorsement in blank.
(c)	Order instrument [Explanation I to Sec.13 (1)]	It is expressed to be payable to a particular person and does not contain any words which prohibit transfer or

(d)	Order instrument [Explanation I to Sec.13(1)]	indicate any intention that it shall not be transferred. It is expressed to be so payable.
(e)	Not a negotiable instrument at all [Explanation I to Sec. 13(1)]	The use of word 'only' prohibits or indicates an intention that bill shall not be transferred.

P.16. State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instrument:

- **a.** A bill drawn in Delhi upon a merchant in Agra and accepted payable in London.
- **b.** A bill drawn in Delhi upon a merchant in London and accepted payable in Agra.
- **c.** A bill drawn in Delhi upon a merchant in London and accepted payable in London.
- **d.** A bill drawn in London upon a merchant in Agra and accepted payable in Delhi.
- **e.** A bill drawn in Delhi on a merchant in Agra but endorsed in London.
- **f.** A bill drawn in London on a merchant in Agra and endorsed in Delhi.

Sol: First state the provisions related to Inland instrument and Foreign instrument.

Case	Decision	Reason
(a)	Inland instrument [Section 11]	It is drawn in India and the drawee is resident in India.
(b)	Inland instrument [Section 11]	It is drawn in India and is payable in India.
(c)	Foreign Instrument [Section 12]	It is not accepted payable in India and at the same time its drawee is not a resident of India.
(d)	Foreign instrument[Section 12]	It is drawn in India.
(e)	Inland instrument [Section 11]	It is drawn in India and drawee is resident in India.
(f)	Foreign instrument [Section 12]	It is not drawn in India.

P.17. State with reasons whether each of the following instrument is an Ambiguous Instrument or Fictitious Instrument:

- **a.** A bill is drawn by A, an agent, acting within the scope of his authority, upon his principle P.
- **b.** X draws a bill on Y who is a fictitious person and negotiates it himself.
- **c.** X draws a bill on Y who is a minor.
- **d.** A bill is drawn by Delhi branch of Dena Bank upon its Bombay branch.
- **e.** A bill is drawn upon Y who is a major person payable to Z who is a fictitious person.
- **f.** A bill is drawn upon Y as payable to Z. The drawer is a fictitious person.

Sol: First state the provisions related to ambiguous instrument and fictitious instrument.

Case	***Decision***	***Reason***
(a)	Ambiguous instrument [Sec.17]	The drawer and the drawee are the same person.
(b)	Ambiguous instrument [Sec.17]	The drawee is a factious person.
(c)	Ambiguous instrument [Sec.17]	The drawee is competent to contract.
(d)	Ambiguous instrument [Sec.17]	The drawer and the drawee are the same person.
(e)	Fictitious instrument [Sec.42]	The payee is a fictitious person.
(f)	Fictitious instrument [Sec.42]	The drawer is a fictitious person.

P.18. State with reasons whether each of the following instruments is an Inchoate Instrument or not:

- **a.** X signs and delivers an unstamped and blank promissory note to Y.
- **b.** X delivers a stamped and blank promissory note to Y without his signature.
- **c.** X signs a stamped and blank promissory note and keeps in his safe.
- **d.** X signs and delivers a stamped and blank promissory note to Y.
- **e.** X signs and delivers a stamped and complete promissory note to Y.

Sol: First write the provisions related to Inchoate instrument (Section 20).

Case	***Decision***	***Reason***
(a)	No	It is not stamped.
(b)	No	It has not been signed by the maker.
(c)	No	It has not been delivered.
(d)	Yes	There is a delivery of a signed, stamped & blank instrument.
(e)	No	It is not incomplete.

P.19. State with reasons whether each of the following instruments is a Time Instrument or Demand Instrument:

- **a.** I promise to pay B Rs 500.
- **b.** I promise to pay B Rs 500 on Demand.
- **c.** Pay Rs 500 at sight.
- **d.** Pay Rs 500 on presentment.
- **e.** I promise to pay B Rs 500 after 3months.
- **f.** I promise to pay B Rs 500 on 1st Jan. 1997.
- **g.** I promise to pay Rs 500 after sight.
- **h.** I promise to pay B Rs 500 after C' s Death.
- **i.** Pay B Rs 500 on or before 1st Jan. 1997.

Sol: First state the provisions related to order instruments and time instruments.

Case	***Decision***	***Reason***
(a)	Demand instrument [Sec.19 & 21]	No time for payment has been specified.
(b)	Demand instrument [Sec.19 & 21]	It is expressed to be so payable.
(c)	Demand instrument [Sec.19 & 21]	The expression 'at sight' means 'on demand'.
(d)	Demand instrument [Sec.19 & 21]	The expression 'on presentment' means 'on demand'.
(e)	Time instrument [Sec.21]	Fixed period has been specified.
(f)	Time instrument [Sec.21]	A particular day has been specified.
(g)	Time instrument [Sec.21]	After sight means after presentment for sight.
(h)	Time instrument [Sec.21]	It is payable on the happening of an event (i.e. death) which is certain to happen.
(i)	Not a negotiable instrument at all	Time is uncertain.

P.20. X accepts a bill for the accommodation of A (drawer). A transfers it to B, without consideration. B transfers it to C without consideration. C transfers it to D for value. D transfers it to E, without consideration. On the due date, the bill dishonored by X. Discusse the rights of A, B, C, D and E.

Sol:

a. E cannot recover from D, C cannot recover from B, B cannot recover from A, and A cannot recover from X because a negotiable instrument without consideration creates no obligation of payment between the parties to the transaction.

b. D and E can recover from X, A, B and C because any holder for consideration (D), and every subsequent holder deriving title from him (E) can recover the amount due from the transferor for consideration or any prior party thereto.

P.21. X accepts a bill for the accommodation of A (drawer), A transfers it to B for value. The bill is dishonoured by X on the due date. B collects the amount from A. Can A sue X for the recovery of the amount?

Sol: In general, accommodating parties are liable on the bill to the same extent as that of an ordinary bill. However, they are not liable to the accommodated party - the person for whose benefit they signed the instrument. So, A cannot sue X for the recovery of the amount in view of the specific provision to that effect provided in Explanation I to section 43.

P.22. X accepts a bill for the accommodation of A (drawer). A transfers it to B for value after maturity. B becomes the holder in good faith. Discuss the rights of A and B.

- **a.** A cannot recover from X because an instrument without consideration creates no obligation between the parties to the transaction as per the provisions of Section 43.
- **b.** B can recover from X and A, because a bonafide holder for value can recover from any prior party even though he acquires the instrument after maturity as per the provisions of Proviso to Sec.59.

P.23. A owes money to B. A makes a promissory note for the amount in favour of B. For safety of transmission he cuts the note in two halves and posts one half to B. He then changes his mind and calls upon B to return the half of the note which he had sent. B requires A to send the other half of the promissory note. Decides as to how the rights of the parties are to be adjusted.

Sol: The relevant question in the given situation is whether the making of the promissory note is complete when one half of the note was delivered to B. Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note is completed by delivery, actual or constructive. Delivery, of course, refers to the delivery of the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. Therefore, the claim of B to have the other half of the Promissory note sent to him is not maintainable. Thus A is justified in demanding the return of the first half sent by him.

P.24. X needs Rs.10,000 but cannot raise this amount because his credit is not good enough. Y whose credit is good, accomodates X by giving him a pronote made out in favour of X, though Y owes no money to X. X endorses the pronote to Z for value received. Z who is a holder in due course, demands payment from Y. Can Y refuse and plead the arrangement between him and X?

Sol: According to Section 120 of the Negotiable Instruments Act, in a suit by holder in due course, maker of a promissory note and no drawer of a bill of exchange or cheque are not permitted to deny the validity of the instrument, as originally made or drawn. Thus, Z is entitled to receive payment on the instrument.

P.25. What is meant by "Payment of Due Course" in respect of a negotiable instrument? A cheque originally expressed payable to bearer is subsequently made payable to order by endorsement in full. Is it in order for the drawee bank to pay the amount to the bearer of the cheque?

Sol: In the cases of an instrument payable to order the drawee of a bill or maker of a note is discharged by payment in due course if it is indorsed by or on behalf of the payee. But, in the case of a cheque there is an exception. The rule is once a bearer instrument is always a bearer instrument. Hence the banker will be discharged by payment in due course to the bearer of a cheque which was originally expressed payable to bearer even though it was subsequently endorsed in full [Section 85(2)].

P.26. A cheque originally expressed payable to bearer is subsequently made payable to order by endorsement in full. Is it an order for drawee bank to pay the amount to bearer of the cheque?

Or

Comment on the following statement with reference to provisions of Negotiable Instruments Act – 'Once a bearer instruments always a bearer instrument'.

Sol: A bearer instrument is one, which can change hands by mere delivery of the instrument. The instrument may be a promissory note or a bill of exchange, or a cheque. It should be expressed to be so payable or on which the last endorsement is in blank. (Explanation 2 to Section 13 of the Negotiable Instrument Act 1881).
Under Section 46 where an instrument is made payable to bearer, it is transferable merely by delivery, i.e. without any further endorsement thereon. But this character of the instrument can be subsequently altered. Section 49 provides that a holder of negotiable instrument endorsed in blank (i.e. bearer) may, without signing his own name, by writing above the endorser's signature, direct that the payment of the instrument be made to another person. Thus the character of the instrument is changed and the instrument cannot be negotiated by mere delivery.

But in the case of a Cheque, however, the law is a little different from the one stated above. According to the provisions of Section 85 (2) where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, despite any endorsement whether in blank or full appearing thereon not with standing that any such instrument purported to restrict or exclude further negotiation. In other words, the original character of the cheque is not altered so far as the paying bank is concerned, provided the payment is made in due course. Hence the proposition that once a bearer instrument always a bearer instrument.

P.27. A of Calcutta drew a bill of exchange on B of Honkong payable sixty days after sight. The holder C kept the bill with him for five months and then presents it for acceptance before B. B in the meanwhile becomes insolvent. C sues A for payment. Will he succeed?

Sol: In the given case, the bill is payable 60 days after sight. First the holder C has to present the instrument for reckoning 60 days within reasonable time. In the given case there is unreasonable delay in presenting the instrument for sight. So, C can't succeed in receiving the payment.

P.28. Ascertain the date of maturity of a bill payable 100 days after sight and which is presented for sight on 4th May, 2000.

Sol: In case of bill payable after a certain period after sight, the date of maturity is calculated by adding three days of grace to the period after which the bill is payable. In case of bills payable after sight, the period is calculated from the date when the bill is presented for sight. In case the date of maturity happens to be a public holiday including Sunday, the bill falls due for payment on the day preceding the public holiday. In the given case, the bill is made payable 100 days after sight and the same was sighted on 4th May, 2000. 100 days from 4th of May, 2000 works out to 12th of August, 2000, adding three days of grace makes the bill due for payment on 15th of August, 2000 which happens to be a public holiday. Thus, the date of maturity of the bill shall be 14th of August, 2000 unless the same is also a public holiday (including Sunday).

P.29. A promissory note, executed on 31stJuly, 1997, is made payable 'One month after date. When does the note become payable?

Sol: 3rd September, 1997. It is calculated in the following manner: Date of Execution-31st July, 1997. Date of maturity-31st August + 3 days of grace = 3rd September, 1997.

P.30. Promissory Note dated 1st February 2001 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of maturity?

Sol: The date of maturity is 4th April, 2001 (1-4-2001 plus three days of grace).

P.31. Find out date of maturity in the following cases:

- **a.** A bill dated 1st January 1993 is made payable four months after date.

b. A bill, dated 30th January 1993, is made payable one month after date.
c. A bill, dated 31st July, 1993, is made payable two months after date.
d. A bill dated 1st January 1993 is payable 60 days after date.
e. A bill is payable on 28th February 1993.
f. A bill is payable thirty days after sight is presented for sight on 1st March, 1993.
g. A bill, dated 15 January, 1993, is payable three months after date.

Sol:
a. It falls due on 4th May, 1993.
b. The date of maturity falls on 3rd March, 1993.
c. The bill is at maturity on 3rd October, 1993.
d. It falls due on 5th March, 1993.
e. It falls due on 3rd March, 1993.
f. It falls due on 3rd April, 1993.
g. It falls due on 18th April, 1993 which happens to be a Sunday. As such it will fall due on 17th April, 1993, i.e., the preceding business day.

P.32. What will be the due dates of following instruments:
a. A Bill of Exchange dated 10th November 1992, payable 4 months after date.
b. A Promissory Note dated 27th November 1992, payable 60 days after date without grace.
c. A Bill of Exchange dated 28th August 1992, payable 180 days after date.
d. A Bill of Exchange dated 1st February 1992, payable 45 days after sight. The Bill was accepted on 6th February 1992.

Sol: (i) March 24, 1993.
(ii) 25th January, 1992.
(iii) 27th February, 1993
(iv) 25th March, 1993.

P.33. Promissory note dated 1st February, 2001 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of Maturity? Explain with reference to the relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reasons of such delay.

Sol: If a promissory role is made payable a stated number of months after date, it becomes payable three days after the corresponding date of months after the stated number of months (Section 23 read with Section 22 Negotiable Instruments Act, 1881). Therefore, in this case the date of maturity of the promissory note is 4th April, 2001.

In this case the promissory note was presented for payment 10 days after maturity. According to Section 64 of Negotiable Instruments Act read with Section 66, a promissory note must be presented for payment at maturity by on behalf of the holder. In default of such presentment, the other parties the instrument (that is, parties other than the parties primarily liable) are not liable to such holder. The endorser is discharged by the delayed presentment for payment. But the maker being the primary party liable on the instrument continues to be liable.

P.34. A cheque is drawn upon Dena Bank. It is stolen by X who hands it over to Y who takes in good faith for valuable consideration. Y deposits the cheque into his own account in Canara Bank who presents it and obtains payment from Dena Bank. Discuss the legal position of paying banker, collecting banker, Y and true owner in each of the following alternative cases:
a. If the cheque is payable to bearer.
b. If the cheque is payable to bearer and is crossed generally.
c. If the cheque is payable to bearer and is crossed generally with words 'not negotiable'.
d. If the cheque is payable to bearer and is crossed specially with words 'Canara Bank'.
e. If the cheque is payable to bearer and is crossed specially with words 'Allahabad Bank'.
f. If the cheque is payable to B or order and X forges B's endorsement.

g. If the drawer's signatures were forged.

Case	***Paying banker***	***Collecting banker***	***Y***	***True owner***
(a)	Drawer is discharged by payment in due course(Sec 85(2)]	Collecting banker does not incur any liability to the true owner [Section 131]	He is not liable to true owner.	He can recover from X and not from Y.
(b)	- do -	- do -	- do -	- do -
(c)	- do -	- do -	He is liable to true owner because he got a defective title.	He can recover from Y and X.
(d)	- do -	- do -	He is liable to true owner.	He can recover from X only.
(e)	Drawee is liable to true owner [Sec.129]	Collecting banker is liable to true owner [Section 131]	He is not liable to true owner.	He can recover from X or paying banker or collecting banker.
(f)	Drawee is discharged by payment in due course [Sec. 85(1)]	Collecting banker does not incur any liability to the true owner [Section 131]	He is not liable to from X true only.	He can recover from X only.
(g)	Drawee is liable to true owner because the payment is not in due course [Section 101]	Collecting banker is liable to the true owner [Section 131]	He is liable to true owner because forgery passes no title at all.	He can recover from paying banker, collecting banker or Y.

P.35. A cheque payable to bearer is crossed generally and is marked "not negotiable". The cheque is lost or stolen and comes into the possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which the cheque is drawn. (a) Can both the bankers, viz., banker paying the cheque and the banker collecting it plead exoneration from their liability. (b) Can B be compelled to refund the money to the true owner of the cheque.

Sol:
(a) Yes; A person who takes a cheque crossed 'not negotiable' has no better title to keep such a cheque than his immediate transferor, and the true owner can always reclaim it or the amount of it. On the other hand both collecting banker and paying banker will be protected under the act, provided the payment and the collection have been made in good faith and without negligence [Sec. 128 & 130].

(b) Yes. B can be compelled to refund the money as he was not entitled to receive payment upon instrument.

P.36. “It would be safer for the drawer to cross a cheque ‘not negotiable’ with the words ‘account payee’ added to it”. Explain, how it is safer for the drawer in such case.

Sol: As per the instructions issued by Reserve Bank of India on 9.9.1992, it would be safer for the drawer to cross a cheque ‘not negotiable’ with the words ‘account payee’ added to it. The effect of the words ‘not

negotiable' on a crossed cheque is that the title of the transferee of such a cheque cannot be better than that of its transferor (Section 130 of Negotiable Instrument Act). The addition of the words 'not negotiable' does not restrict the further transferability of the cheque; it only takes away the main feature of negotiability, which is, that a holder with a defective title can give a good title to subsequent holder, in due course. Any one who takes a cheque marked 'not negotiable' takes it at his own risk. The object of crossing a cheque 'not negotiable' is to afford protection to the drawee or holder of the cheque against miscarriage or dishonesty in the course of transit by making it difficult to get the cheque so crossed cashed, until it reaches its destination.
The words 'Account Payee' on a cheque are a direction to he collecting banker that the amount collected on the cheque is to be credited to the account of the payee. If he credits the proceeds to a different account, he is prima facie guilty of negligence and will be liable to the true owner for the amount of the cheque. But such a crossing does not affect the paying banker who is under no duty to ascertain that the cheque in fact has been collected for the account of the person named as the payee.

Thus the cheque crossed 'not negotiable' with the words 'account payee' added to it protects the drawer of the cheque in two ways. (1) The main feature of negotiability is lost i.e. the holder in due course cannot get a better title than that of the transferor. (2) The collecting banker must take utmost care to inquire into the title of its customer and satisfy itself that there is no defect in the title of the customer presenting such cheque of collection.

P.37. Can an acceptor of a bill avoid his liability against a person who is a holder in due course or who derives his title from a holder in due course, on the following grounds:

- **a.** That the instrument has not been filled in accordance with the authority given by him.
- **b.** That the other parties to the bill were fictitious.
- **c.** That the instrument was drawn without consideration.
- **d.** That the delivery of the instrument was conditional.
- **e.** That the instrument had been lost.
- **f.** That the instrument was obtained from him by means of fraud.
- **g.** That the instrument was obtained from him for an unlawful consideration.
- **h.** That his signature was forged.
- **i.** That payee had no capacity to endorse.

Sol: First state the privileges of holder in due course.

Ground	**Decision**	**Explanation**
(a)	No	Privilege given to holder in due course under Section 20 provided the stamp put on the instrument was sufficient to cover the amount.
(b)	No	Privilege given to a holder in due course u/s 42
(c)	No	Privilege given to a holder in due course u/s 43
(d)	No	Privilege given to a holder in due course u/s 46
(e)	No	Privilege given to a holder in due course u/s 58
(f)	No	Privilege given to a holder in due course u/s 58
(g)	No	Privilege given to a holder in due course u/s 58
(h)	Yes	Forgery passes no title to anyone at all.
(i)	No	Privilege given to a holder in due course u/s 121

Note: The aforesaid decisions also hold good for a holder who derives title from a holder in due course.

P.38. State whether a holder can refuse to take the following acceptance or not:

- **a.** Accepted payable when in funds.
- **b.** Accepted payable when a cargo consigned to me is sold.
- **c.** A bill drawn for Rs 5,000 but accepted for the 4,000 only.
- **d.** Accepted payable at Delhi when no place of payment is specified in the order.
- **e.** Accepted payable at Delhi only when no place of payment is specified in the order.
- **f.** Accepted payable at Delhi when place of payment specified in the order was Bombay.

g. A bill drawn payable three months after date but accepted payable two months after date.
h. A bill drawn on X, Y, and Z (who are not partners) but accepted by X only.
i. A bill drawn on X, Y and Z (who are partners) but accepted by X.

Case	***Decision***	***Reason***
(a)	Can refuse	It is a qualified acceptance because it is conditional acceptance.
(b)	Can refuse	It is a qualified acceptance because it is conditional acceptance.
(c)	Can refuse	It is a qualified acceptance because it is a partial acceptance for a part only.
(d)	Can't refuse	It is a general acceptance and not a qualified acceptance.
(e)	Can refuse	It is a qualified acceptance because of the use of the word 'only'.
(f)	Can refuse	It is a qualified acceptance because it is accepted payable at a place other than specified one.
(g)	Can refuse	It is a qualified acceptance because it is accepted payable at a time other than specified one.
(h)	Can refuse	It is a qualified acceptance because acceptance has not been made by all drawees.
(i)	Can't refuse	It is a general acceptance because acceptance has been made by a partner.

Note: *First state when acceptance is valid.*

P.39. H is the holder in due course of a bill of which A is the acceptor. D, the drawer of the bill, is fictitious. Can A escape from his liability to H?

Sol: Section 42 of the Negotiable Instruments Act provides that where a bill of exchange is drawn by a fictitious person and is payable to his order, the acceptor cannot be relieved from his liability to the holder in due course. Thus, H being holder in due course, A cannot escape liability. However, H shall have to establish that the bill was endorsed by the same hand as drawer's signature.

P.40. A draws a cheque for Rs. 100 and hands it over to B by way of gift. Is B a holder in due course? Explain the nature of his title, interest and rights to receive the proceeds of the cheque.

Sol: One of the requirements of Section 9 of the Negotiable Instruments Act to constitute a holder, as holder in due course is that he must have received the instrument for consideration. There are no exceptions to this condition. Thus B can't be treated as holder in due course. But he is certainly a holder with good title thereto and hence he will have every right to claim payment upon instrument.

P.41. X obtains Y's acceptance to bill by fraud. X endorses it to Z who takes it as holder in due course. Z endorses the bill to F who knows of the fraud. Can F recover from X?

Sol: Yes. When a document reaches the hands of holder in due course it will be cured from all defects. Even an ordinary holder deriving title from such holder in due course will get pure title. In the above case, X's title was defective as it was obtained by fraud. As Z is a holder in due course he gets pure or defective title and instrument will be cured of all defects. Now the instrument reaches the hands of F, who knowingly accepts the instrument. So F becomes holder. But he will also get pure title to the instrument and thus he can recover money from X.

P.42. J purchases some bills amounting to Rs.1,727 for a sum of Rs.200 only. He knows at the time of purchase that both drawer and the acceptor are in embarrassed circumstances but accepts them without enquiry and explanation. The bill proved to have been obtained by fraud. J insists that he is a holder in due course and is therefore entitled to get the full value of the instruments. Will he succeed?

Sol: No. According to Sec.9 of the Act - Holder in due course means any person who, for consideration, became the possessor of a promissory note, bill of exchange or cheque, if payable to the bearer, or the payee or endorsee thereof, if payable to the order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title."

In the given case there are clear grounds of suspicion and J has shown negligence in enquiring the validity of the instrument. So, he can't be considered as holder in due course.

P.43. A sells a radio to M, a minor, who pays for it by cheque. A indorses the cheque to B who takes it in good faith and for value. The cheque is dishonoured on presentation. Can B enforce payment of the cheque against A or M?

Sol: Payment can't be enforced against M as he is a minor. But the instrument can be enforced against A.

P.44. A bill is dishonoured by non-acceptance. The bill is endorsed to 'A'. 'A' endorses it to 'B'. As between 'A' and 'B', the bill is subject to an agreement as to the discharge of 'A'. The bill is afterwards endorsed to 'C', who takes it with notice of dishonour. Decide, with reasons, whether 'C' is entitled to accept the bill in the capacity of a holder in due course.

Sol: Section 59 of the Negotiable Instruments Act, 1881 states that the holder of negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor.

Accordingly where a negotiable instrument has been dishonoured, any person who takes it with notice of dishonour, takes it subject to any defect of title attaching thereto at the time of dishonour. The transferee of a dishonoured instrument takes it subject to any defect of title attaching thereto at the time of dishonour. The transferee of a dishonoured instrument, who takes it with notice of dishonour, cannot acquire a better title to it than that which his transferor had.

In the problem given here, the transferor 'A' has acquired the bill which has already been dishonoured by non-acceptance. Mr. 'A' has indorsed it to B subject to the agreement as to the discharge of 'A'. After endorsement 'C' takes it with notice of dishonour. 'C' who takes it with notice of dishonour cannot acquire a better title to it than that which his transferor 'B' had. 'C' takes the bill subject to the agreement between 'A' and 'B' and not a better title than this.

Further 'C' is also not a holder in due course under Section 9 of the Act because he has not acquired the instrument before it became payable. Although the holder in due course is not affected by the defect in the title of his transferor, but it is not so in the case of a holder who acquires the instrument after dishonour or after maturity. Hence 'C' is not entitled to accept the bill in the capacity of a holder in due course.

P.45. X by inducing Y obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the bill as a Holder-in-due-course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity the bill is dishonoured. X sues Y for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, decide whether X will succeed in the case?

Sol: The problem stated in the question is based on the provisions of the Negotiable Instruments Act as contained in Section 53. The section provides : 'Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some state of its journey. Thus any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Section 53)

Thus applying the above provisions it is quite clear that X who originally induced Y in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as X himself was a party to the fraud.

P.46. X, on attaining the age of majority, makes a fresh promissory note in consideration of a promissory note made by him during his minority. Can a suit be maintained on the fresh promissory note?

Sol: A suit cannot be maintained on the fresh promissory note because the fresh promissory note is void in the absence of consideration. On the other hand a minor can't ratify the transactions entered by him during his minority.

P.47. X sells a TV to M, a minor, who pays for it by his cheque. X endorses the cheque to Y who in turn endorses it in favour of Z. The cheque is dishonoured. Discuss the legal position.
Sol:

a. Y can enforce payment of the cheque against X only and not against M because a minor cannot bind himself.
b. Z can enforce payment of cheque against X and Y.

P.48. A draws a bill payable three months after sight on B. It passes through several hands before X becomes its holder. On presentation by X, B refuses to accept the bill. Discuss the right of X.

Sol: The effect of dishonour of a negotiable instrument, whether by non-acceptance or by non-payment, is to render the drawer and all the endorsers liable to the holder. Thus, in the present case, since the bill is payable certain months (3 months) after sight, acceptance is necessary for fixing its date of maturity. Non-acceptance by drawee (B) amounts to its dishonour. X may, therefore, hold the endorsers as well as the drawer liable thereon. However, their liability can be invoked only if the holder (X) gives them notice of such dishonour. The drawee (B) shall not be liable as he has not accepted the bill. He can be held liable only in the event of non-payment of an accepted bill.

P.49. M draws a cheque in favour of N, a minor. N endorses it in favour of P. The cheque is dishonoured by the banker on the ground of insufficiency of funds? Discuss the rights of P.

Sol: Section 26 of the Negotiable Instruments Act, 1981 provides that a minor may draw, endorse, deliver and negotiate instruments so as to bind all parties except himself. In the given problem, P shall have a right to proceed against M only. N, the minor, cannot be held liable.

P.50. A promissory note duly executed in favour of minor is void. (Correct/Incorrect)

Sol: As per section 26, a minor may draw, indorse, deliver and negotiate any negotiable instrument so as to bind all parties except himself. Hence, the instrument is valid. Minor can even indorse the instrument. He will not be bound by such indorsement, but other parties will be bound. Estoppel is not applicable against him. A minor can deny validity of Bill, even if he himself was drawer [As per section 120, a maker cannot deny validity of instrument as originally made. However, minor can deny the validity of the instrument].

P.51. X, a major, and M, a minor, executed a promissory note in favour of P. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and whether it is binding on X and M.

Sol: Every person competent to contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a promissory note, bill of exchange or cheque (Section 26, para 1, Negotiable Instruments Act, 1881).

As a minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself (Section 26, para 2).

In view of the provisions of Section 26 explained above, the promissory note executed by X and M is valid even though a minor is a party to it. M, being a minor is not liable; but his immunity from liability does not absolve the other joint promisor, namely X from liability [Sulochana v. Pandiyan Bank Ltd., AIR (1975) Mad. 70].

P.52. A bill is addressed to Herbert Morris who is partner in the firm "Perkin and Partner". Herbert Morris accepts the bill in the firm's name. Explain whether he will be personally liable on the bill or not.

Sol: Yes. He is the drawee and has given his acceptance to the instrument. On the other hand a partnership firm has no separate legal identity and the liability of each partner is joint and several.

P.53. Shyam fraudulently encashed the cheque obtained from Kamal, crossed "Not negotiable" at a bank other than the drawee bank. Is the drawee bank liable for conversion? (Not liable) Explain the liability of a drawee of cheque.

Sol: As per section 31, a drawee of cheque (i.e. banker) must make payment of cheque, as long as drawer has sufficient balance in his account in the bank. If bank makes a default, it must compensate the drawer of cheque for any loss or damage caused by such default. Thus, banker is liable only if there is 'default' on his part. The liability is towards drawer and not the holder. Banker is obliged only to compensate for loss or damage. Thus, exemplary damages cannot be awarded, even if banker is found to be negligent. In some cases, bank can refuse to honour a cheque and it will not be considered as default. 'Damage' is to the credit of drawer. Smaller the amount of cheque dishonoured, greater is damage to credit of drawer.

Section 85 specifically provides that banker is discharged if he makes payment in due course, if cheque payable to order is purported to be endorsed by or on behalf of payee. The protection is available only if Bank makes payment in due course. If payment is not in due course', Bank will be liable.

P.54. P, the holder of a bill of exchange, transfers it to Q without consideration. Q also transfers it to R without consideration. R transfers it to X for consideration. X transfers it to Y without consideration. State whether Y can recover the amount of such instrument from X or P.

Sol: As per Section 43, a negotiable instrument made, drawn, accepted, endorsed or transferred without consideration or where consideration fails, creates no obligation for payment between the immediate parties. Of course, holder who has obtained Bill for consideration can recover the consideration paid by him. Section 43 uses the words 'creates no obligation between the parties to the transaction'. Thus, the section applies only to immediate parties to transaction and not other parties.

In the above case, Y cannot recover from X as there is no consideration and X is 'immediate party'. However, Y can sue P, Q or P. The reason is Y holder, who is deriving title from X who is a holder in due course. He has all rights what X has.

P.55. B signs the following endorsements on different negotiable instruments payable to bearer. Classify the endorsements with reasons as Blank Endorsement or Full Endorsement or Restrictive Endorsement or Partial Endorsement or Conditional Endorsement. Also, state whether the following Endorsements are valid or invalid.

- **a.** No other words except B's signature.
- **b.** Pay C.
- **c.** Pay C or order.
- **d.** Pay C only.
- **e.** Pay C or order for the account of B.
- **f.** Pay C or order Rs 500 out of Rs.1,000.
- **g.** Pay C or order being the unpaid residue of the bill.
- **h.** Pay C or order on safe receipt of goods.
- **i.** Pay C sans Recourse.
- **j.** Pay C sans Frais.
- **k.** Pay C, notice of dishonour dispensed with.

Sol:

Case	Decision	Validity	Reason
(a)	Blank endorsement	Valid	No other words have been used.
(b)	Full endorsement	Valid	The use of word C.
(c)	Full endorsement	Valid	The use of word ‘C or order’.
(d)	Restrictive endorsement	Valid	The use of word ‘only’.
(e)	Restrictive endorsement	Valid	The use of word ‘for the account of B’.
(f)	Partial endorsement	Invalid	The endorsement purports to transfer only a part of the amount due on instrument.
(g)	Partial endorsement	Valid	The endorsement is for the unpaid balance.
(h)	Conditional endorsement	Valid	Use of the words ‘on safe receipt of goods’.
(i)	Conditional endorsement	Valid	The use of the words ‘Sans Recourse’.
(j)	Conditional endorsement	Valid	The use of words the ‘Sans Faris’.
(k)	Conditional endorsement	Valid	The use of words ‘Notice of dishonour dispensed with’.

P.56. B signs the following endorsements on different negotiable instruments payable to bearer. State whether each of these alternative endorsement excludes the right of further negotiation by C or not:

- **a.** "Pay the contents to C only"
- **b.** "Pay C for my use"
- **c.** "Pay C or order for the account of B"
- **d.** "The within must be credited to C"
- **e.** "Pay C "
- **f.** "Pay C value in account with the State Bank "
- **g.** "Pay the contents to C, being part of the consideration in certain deed of assignment executed by the endorser and other".

Sol: Section 50 of the Negotiable Instruments Act, 1881 provides that the endorsement of a negotiable instrument followed by delivery, will transfer the property therein to the endorsee with the right of further negotiation. But the endorsement may, by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to indorse the instrument, or to receive its contents for the endorser, or for some other specified person.

(a)	Yes	The use of the word 'only' excludes the right of further negotiation.
(b)	Yes	The use of the words 'for my use', excludes the right of the further negotiation.
(c)	Yes	The use of words 'or order for the account of B' excludes right of further negotiation
(d)	Yes	The use of the words 'must be credited to C' excludes the right of further negotiation.
(e)	No	The endorsement does not contain words excluding the right or further negotiation.
(f)	No	The endorsement does not contain words excluding the right of further negotiation.
(g)	No	The use of the words 'others' gives the right of further negotiation.

P.57. B accepts a bill drawn upon by A who endorses it to C who in turn endorses it to D, who in turn endorses it to A. Discuss the legal position of A.

Sol: This is clearly a case of Negotiation back. In case of negotiation back, if any endorser subsequently becomes holder of the instrument then all intermediary parties are discharged from their liability. This is to avoid circuitry of action. In the given case A can sue B only because B is a prior party to his original endorsement. A cannot sue C or D because it will lead to circuitry of action (i.e., if A is allowed to sue C or D, then C or D in turn can sue A because A is a prior party).

P.58. B accepts a bill drawn upon A who endorses it with words 'Sans Recourse' to C, who in turn endorses it to D, who in turn endorses it to A. Discuss the legal position of A.

Sol: The holder of a bill may indorse it in such a way that he does not incur the liability of an endorser to the endorsee. He can do so by adding the words 'sans recourse' (without recourse) to the endorsement. *Examples of such endorsement are 'Pay A or order without recourse to me' or 'Pay A or order sans recourse' or 'Pay A or order at his own risk'.*

If the instrument is dishonoured the subsequent holder or endorsee can't claim the endorser for payment of the same. In the given case A can sue B, C or D because it will not lead to circuitry of action as A at the time of first endorsement, expressly excludes his liability by using the words' Sans recourse'.

P.59. P, the holder of a Bill of Exchange, transfers it to Q without consideration. Q also transfers it to R without consideration. R transfers it to X for consideration. X transfers it to Y without consideration. State giving reasons whether Y can recover the amount on such instrument from X or P.

Sol: In this case the bill of exchange has been transferred without consideration. Section 43 deals with rights of the parties in such a case. Section 43 lays down the following two rules regarding absence of consideration in negotiable instruments.

a. As between immediate parties: If a negotiable instrument is made, accepted endorsed or transferred without consideration or for a consideration which faces, it create no obligation of payment between the parties to the transaction. As between the immediate parties the defendant can plead absence of consideration and avoid liability.

b. As between remote parties: If a holder acquires a negotiable instrument for consideration, every subsequent holder desiring title from him with or without consideration may recover the amount due on such instrument from the transferor for consideration or from any other party thereto. This means that once the instrument gets into the hands of a holder in due course, he or any subsequent holder deriving title from him can recover the amount from any or all of the prior parties thereto.
Here X and Y are immediate parties and no consideration passed from Y to X. Hence first rule applies and Y has no rights against X.

X is the holder for value. Hence X and every subsequent holder deriving title from him may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. The second rule applies. Hence Y can recover the amount from P.

P.60. B accepts a bill drawn upon A who endorses it to C without consideration, and C endorses it to D in good faith for valuable consideration and D, in turn endorses it to E as a gift. E endorses it to A. Discuss the legal position of A.

Sol: A can sue B because B is a prior party to his original endorsement. A can sue C because A was not liable to C as the endorsement was without consideration [Section 43]. A cannot sue D or E because it will lead to circuitry of action.

P.61. A bill is payable to X or order, X endorses the bill in blank. The bill is there after lost and comes into the hands of Y. Discuss the legal position in each of the following alternative cases:

- **a.** If Y receives the payment of the bill.
- **b.** If Y passes the bill by simple delivery to Z as a gift.
- **c.** If Y passes the bill after maturity by simple delivery to Z who takes the bill in good faith for valuable consideration.
- **d.** If Y passes the bill before maturity by simple delivery to Z who takes the bill in good faith for valuable consideration.

Sol:

a. The true owner can recover the amount from Y because Y had no title to bill.

b. The true owner can recover the amount from Y and Z because Y and Z (not being holders in due course) had no title to bill.

c. The true owner can recover the amount from Y and Z because Y and Z (not being holders in due course) had no title to bill.

d. The true owner can recover the amount from Y and not from Z because Z being a holder in due course had a good title to bill.

P.62. A bill is payable to X or order. The bill is thereafter lost and comes into the hands of Y, who forges X's signature to affect an endorsement in blank. Discuss the legal position in each of the following alternative cases:

- **a.** If Y passes the bill by simple delivery to Z as a gift.
- **b.** If Y passes the delivery before maturity by simple delivery to Z who takes the bill in good faith for valuable consideration.

Sol: In both the cases, the true owner can recover from Y and Z because under forged endorsement no person, whether he is a holder in due course or not, acquires any legal title to the bill.

P.63. A bill is payable to X or order, X endorses the bill in blank. It comes into the hands of Y who passes it on by simple delivery to Z, who forges Y's signature and transfers it to W. Can W sue any of the parties to the bill?

Sol: W can sue all the prior parties because he derives his title through genuine endorsement by X and not through forged endorsement by Z.

P.64. X obtains Y's acceptance to a bill by fraud. X endorses it to Z who takes it in good faith for valuable consideration. Z endorses the bill to F who knows of the fraud. Discuss the rights of X, Y and Z.

Sol:

- **a.** X cannot recover from Y because X is not a holder in due course.
- **b.** Z can recover from X or Y because Z is a holder in due course. [Section 58].
- **c.** F can recover from X, Y and Z because F derives the title from Z who is a holder in due course and at the same time Z is not a party to fraud. [Section 53]

P.65. A draws a bill in favour of B upon X, B endorses it to C who, in turn endorses it to D who, in turn, endorses it to E who, in turn, endorse to F. On presentment for acceptance, X refuses to accept the bill. Who has a right of action against whom in each of the following alternative cases:

a. If F gives no notice of dishonour.
b. If F gives notice of dishonour only to E.
c. If F gives notice of dishonour only to E and A.

Sol: *First state the provisions relating to Notice of dishonour.*

Case	***Decision***
(a)	F has no right of action against any prior party because all prior parties who do not receive the notice of dishonour are discharged. [Section 93]
(b)	F has right of action against E only and not against A, B, C or D.
(c)	F has right of action against E and A only and not against B, C or D. [Section 93]

P.66. C, the payee of a bill, endorses it in blank and delivers it to D, who specially endorses it to E or order. E transfers the bill to F without endorsement. Discuss the rights of F in case of dishonour of the bill.

Sol: In the given problem, C has endorsed the bill to D in blank. In other words, just placed his signature on the back, leaving the name of endorsee D to be recorded. D endorses it specially to E. Thus, D would have written 'Pay E or order' above the signature of C. Thus, D's name or signature does not figure anywhere. E then transfers to F without endorsement. On dishonour, therefore, F can hold the immediate transferor E liable who shall be entitled to hold C, who in turn can make the drawer liable. F, if he is a holder in due course, can hold C and the drawer liable directly also.

P.67. A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement 'without recourse' he transfers the instrument to B, indorses it to C, who indorses it to A. State who is liable to A.

Sol: Section 52 of the Negotiable Instruments Act, 1881 specifically provides that where an endorser excludes his liability and afterwards becomes the holder of the instrument, all intermediate endorsers are liable to holder. Thus, in the given case, C as well as B shall be liable to A.

P.68. A is a payee holder of a bill of exchange. He endorses it in blank and delivers, it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. State giving reasons whether D as bearer of the bill of exchange is entitled to recover the payment from A or B or C.

Sol: Under Section 55 of the Negotiable Instrument Act, if an instrument after having been endorsed in blank is endorsed in full, the endorsee in full does not incur the liability of an endorser, so the amount of it cannot be claimed from him. It means if an endorsement in blank is followed by an endorsement in full, the instrument still remains payable to bear and negotiable by delivery as against all parties prior to the endorse in full, though the endorser in full is only liable to a holder who made title directly through his endorsement and the person deriving title through such holder. In the ensuing case, in view of section 55, D as the bearer of the instrument can receive payment of sue the drawer, acceptor, or A who endorsed the bill in blank; but he cannot sue B or C. But there is an exception to the above rule contained in Section 55. The person to whom it has been endorsed in full, or any one who derives little through him, can claim the amount from the endorser in full.

P.69. A cheque is drawn payable to 'B or order' and delivered to B in payment of a debt. B's agent without having any authority to endorse, endorses the cheque 'Per Pro' for B and obtains payment of the money and misappropriates it. Is the banker discharged by payment in due course?

Sol: Section 27 lays down that every person capable of binding himself or of being bound may so bind by himself or be bound by a duly authorised agent acting in his name.

But, it is essential that at the time of putting his signature to the instrument, the agent must have express or implied authority. A signature by procuration (per pro) operates as a notice that the agent has only a limited authority to sign and that the principal will only be bound if the agent is acting within the actual limits of his authority. The utmost care and caution is required in dealing with person who profess to act as agent on behalf of the principal. A prudent man will always call for proof that the alleged authority has been given. Hence, a person who takes or deals with bill or cheque signed per pro must take or deal with the greatest caution, and should satisfy himself that the authority really exists [Attwood vs. Munnings]. If an agent endorses without authority a bill (or cheque) on behalf of his principal, the endorsement conveys no title to the person taking it (endorsee) [The Bank of Bengal vs. Fagan].

Accordingly, in the given case the paying bank will not be entitled to any protection under Section 85 under which a banker is protected against forgery of endorsements if the payment is made in due course. In fact, the payment cannot be considered as a payment in due course.

P.70. A is holder of a Bill indorsed by B in blank. A writes over B's signature the words 'Pay to X or order'. On the dishonour of the Bill, X sues A as the endorser to recover the amount of Bill. Can A succeed?

Sol: As per section 49, the holder of a negotiable instrument indorsed in blank may simply write above the endorser's signature a direction to pay to any other person as endorsee. He will do so without signing his own name. This will convert the endorsement in blank into an endorsement in full. In such a case, the holder does not become endorser and does not incur the liability of an endorser. In this case, A has only written the words 'Pay X or order'. He has not signed the instrument. Hence, he is not endorser of Bill and is not liable.

P.71. A endorsed a bill to B, B to C, C to D and D to E. Lastly E endorsed it to A. Can A hold E liable if the bill is dishonoured.

Sol: As a general rule, each party to the instrument is liable to prior parties. e.g., A draws a Bill on B making it payable to C. Once the Bill is accepted by B, he becomes primarily liable. If C endorses to D, D to E and E to F, then 'D' is liable to E and F while previous parties A, Band C are liable to D. All parties i.e. A to E are liable to F, but F is liable to no one. Now, let us assume that F endorses the Bill to D. Thus, D who was an endorsee becomes a holder. This is termed as 'Negotiation Bank'. In such a case, D cannot hold prior endorsee i.e. E and F liable. The reason is that even if he holds so, the liability will come back to him, as E and F will in turn hold D liable as he was prior endorsee. Thus, liability will move in an endless circle. Hence, if a document is negotiated back, the holder cannot sue intermediate parties. This is an exception to the rule that a holder can sue all parties prior to the transaction. Of course, D can sue A, B and C.

However, if D had made first endorsement as a conditional endorsement, 'san recourse' (i.e. without liability), he can sue E and F and the liability will not come back to him as circle cannot be completed due to the conditional endorsement of 'san recourse'.

P.72. A bill of exchange is drawn payable to X or order. X endorses it to Y, Y to Z, Z to A, A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally endorsed the bill to Y by adding the words 'Sans Recourse'.

Sol: The endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon. If the endorser writes the words 'sans recourse' or' sans recourse', he excludes his liability on the instrument. Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate endorsers are liable to him [Section 52]. If endorser excludes his liability, further negotiation is not prohibited. It only excludes liability of endorser.

In the above case, normally, X cannot hold Y, Z, A and B, as if X holds them responsible, the responsibility will come back to him by circuitry of action. However, in this case, X had endorsed 'without recourse'. Hence, Y, Z, A and B cannot hold X liable and hence circle does not get complete. On the other hand, X is holder after Y, Z, A and B and can hold them liable, as provided in Section 52.

P.73. A is a payee of bill of exchange. He endorses it in blank and delivers it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. State giving reasons whether D as bearer of the bill of exchange is entitled to recover the payment from A or B or C.

Sol: As per explanation (ii) to section 13, a bearer instrument is one
(a) which is expressed to be payable to bearer or
(b) on which the only or last endorsement is in blank.

In the given case, the original instrument was payable to a particular person (A) and not to bearer. The instrument was converted into blank instrument by A. The blank instrument was converted into full by B and delivered to C. Thus, instrument is no more a blank instrument. Hence, C cannot transfer the instrument to another without endorsement. Thus, D has no title to the instrument and cannot sue anyone. D would get title only if C signs i.e. endorses in blank and delivers instrument to D.

However, if originally instrument was drawn as payable to bearer, it continues to be payable to bearer, irrespective of any subsequent endorsement. In that case, even if B has endorsed in full, the instrument is still payable to bearer. Hence, even if C had not made any endorsement, D will have title to instrument and can recover the amount from B or C.

P.74. A is the holder of a bill of exchange made payable to the order of 'B'. The bill of exchange contains the following endorsements in the blank. First endorsement 'B', second endorsement 'C', third endorsement 'D', fourth endorsement 'E'. - - 'A' strikes out, without E's consent, the endorsement by 'C' and 'D'. Decide with reasons whether 'A' is entitled to recover anything from 'E'.

Sol: Every endorser is entitled to recover amount of Bill from prior endorsers. Hence, Section 40 provides that if a holder of a negotiable instrument destroys or impairs the endorser's remedy against a prior party (without the consent of the endorser), the endorser is discharged from liability to the holder as if the instrument had been paid at maturity.

In the above case, A is a holder who has cancelled endorsement of C and D without consent of E. This has destroyed remedy which E had against C and D. Hence, E gets discharged from his liability towards A, as provided in section 40.

P.75. X is a holder of a bill of exchange made payable to the order of Y which contains the following endorsements in blank:

First endorsement	:	"Y"
Second endorsement	:	"G.T.Krishan"
Third endorsement	:	"T.P.Mathew"
Fourth endorsement	:	"K.L.Abdul."

On dishonour, the holder X puts in suit against K.L. Abdul and strikes out without K.L. Abdul's consent the endorsements of G.T.Krishan and T.P. Mathew. Is X entitled to recover anything from K.L.Abdul. State reasons for your answer.

Sol: No. This is so because X has destroyed Abdul's remedy against prior parties by deleting the endorsements of G.T.Krishnan and T.P.Mathew.

P.76. A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value, Decide –
(i) Whether D can sue the prior parties of the bill, and
(ii) Whether the prior parties other than D have any right of action intense?
Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

Sol: Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.

(ii) As regards to the second part of the problem, the prior parties before D i.e., A, B and C have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

P.77. State whether the following alterations are material or not:

- **a.** A bill dated 1st April 1999 is changed to a bill dated 1st May 1999.
- **b.** A bill payable 3 months after date is changed to a bill payable 3 months after sight.
- **c.** A bill payable at Delhi is changed to bill payable at Bombay.
- **d.** A bill for Rs.1,000 is changed into a bill for Rs.2,000.
- **e.** A bill is accepted payable at Dena Bank is changed to a bill accepted payable at Canara Bank.
- **f.** A bill payable to P is changed into a bill payable to P and Q.
- **g.** A bill was endorsed in blank and handed over to Y, who endorsed as 'Pay to Z or order'.
- **h.** The holder of a bill inserts the words 'or order'.
- **i.** A bill was dated 1989 instead of 1999 & subsequently the agent of the drawer corrected the mistake.
- **j.** A cheque payable to bearer was converted into a cheque payable to order.
- **k.** Crossing a cheque.

Sol: *First write the provisions related to 'Material Alteration'*

Cases (a) to (g): Material alterations.

Cases (h) to (j): Non-material alterations.

Case (k): Material alteration authorised by the Act without any authentication.

P.78. X draws a cheque for Rs 2,000 and Y, a holder without the consent of X alters the figure of Rs 2,000 to Rs 20,000 and makes the instrument look like a cheque drawn for Rs 20,000. The banker pays the cheque in due course. Discuss the legal position of the banker.

Sol: *First write the provisions related to 'Protection given to paying banker'*

The banker is discharged from all liabilities since the banker made the payment in due course and alteration was not apparent. The banker also gets protection under the act if he pays the cheque with due diligence and without any negligence. Master Minds.

P.79. A promissory note was made without mentioning any time for payment. The holder added the words 'on demand' on the face of the instrument. State whether it amounted to material alteration and explain the effect of such alteration.

Sol: In the given problem, addition of the words 'on demand' does not amount to material alteration since according to Section 19 of the Negotiable Instruments Act, a promissory note, in which no time for payment is specified, is payable on demand. Thus, since the instrument even without use of the words 'on demand', was nevertheless payable on demand; the addition of these words does not amount to change of its tenor and hence it is not material alteration. The expression 'material alteration' is described to mean alteration which tends to speak a language different from the one intended originally.

Effect of material alteration: Section 87 of the Negotiable Instruments Act states that any material alteration of a negotiable instrument renders the same void as against anyone who is party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. Further, any such alteration, if made by endorsee, discharges his endorser from all liability to him in respect of the consideration thereof.

P.80. Do the following alterations of a negotiable instrument render the instrument void?

(a) The holder of a bill alters the date of the instrument to accelerate or postpone the

(b) The drawer of a negotiable instrument draws a bill but forgets to write the words

(c) A bill payable three months after date is altered into a bill payable three months

(d) A bill was dated 1992 instead of 1993 and' subsequently the agent of the drawer

(e) A bill is accepted payable at the Union Bank, and the holder, without the consent

Sol: (a) Yes. (b) No. (c) Yes. (d) No. (e) Yes.

According to Section 87 of the N.I. Act, 1881 any material alteration of a Negotiable Instrument renders the same void as against anyone who is party there to at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. If any such alteration is made by an endorsee, the endorser his discharged from all liability to him in respect of the consideration thereof. The alteration must be so material that it alters the character of the instrument, to a great extent. Generally, alteration of the date, amount payable, time, place of payment is regarded as material alteration.

P.81. When is an alteration made in negotiable instrument called 'Material Alteration'? State with reasons whether there is any 'Material Alteration' in the following cases:
(i) the holder of a bill of exchange alters the date of the instrument to accelerate or prepone the time of payment;
(ii) the drawer of a bill exchange forgets to write the words, 'or order' on the bill. Subsequently, the holder of the bill of exchange inserts these words on the bill.

Sol: After considering the given cases with respect to material alteration, the following conclusions can be drawn:
(i) Yes, there is material alteration, since alteration in the date and time of payment is treated as material alteration in the eye of law. (A. Subba Reddy vs. N. Ramana Reddy, AIR, 1966 A.P. 267).
(ii) No, there is no material alteration. Addition of he words 'or order' do not in any way affect the validity of the instrument. (Eyron vs. Thompson (1839), 11 A. & E. 31)

P.82. State with reasons whether there is any 'material alteration' in following cases and whether to invalidates the instrument – Master Minds.

- **a.** D, in possession of an inchoate instrument where the amount has not been written on the instrument, writes himself the amount
- **b.** K, in possession of an uncrossed cheque received from A writes 'Payee's Account Only' on the face of instrument.

Sol:

- **a.** Such filling in is permitted u/s 20 of the Act and hence is not 'material alteration'
- **b.** Crossing of uncrossed cheque or converting general crossing to special crossing is permitted u/s 125. This is not material alteration. Thus, in both cases, instrument is valid and enforceable.

P.83. L had two promissory notes of Rs.500 each issued by S Banking Corporation. He placed them in the pocket of his coat and having forgotten, he washed, dried and starched the coat. He remembered of the notes while he was ironing his coat. He searched for them in the pocket of his coat and could find them in spoiled condition. The identity of the notes was rested to a certain extent except its numbers. Can he recover the money from the bank.

Sol: Yes. The principle of material alteration does not apply to mere accidents. L can prove his right of receiving payment through any other evidence and obtain payment on it.

P.84. A promissory note did not contain the rate of interest in the space provided for the purpose. The creditor puts in the rate. The debtor contends that it is a material alteration and, therefore, he is not liable to pay. Decide.

Sol: It amounts to material alteration. So, Debtor's contention is correct.

P.85. State with reasons whether the following shall amount to material alteration and invalidate the instrument.

- **a.** D, in possession of an inchoate instrument where the amount has not been written on the instrument, writes himself the amount.
- **b.** K, in possession of an uncrossed cheque received from A, write "Payee's A/C only" on the face of the instrument.

Sol:

- **a.** No material alteration as sec. 20 permits and
- **b.** No material alteration as section 125 permits it.

P.86. A draws a cheque in favour of B. A's clerk forges B's endorsement and negotiates the cheque to C, who takes it in good faith and for value. C receives payment on the cheque. Discuss the rights of A and C.

Sol: In the given problem, issues involved are:
Can A claim the reimbursement of the payment from his bank for the payment having been made to a person under forged endorsement?
C having received the payment, does he enjoy the right of retaining the amount?

Regarding the first issue i.e., right of A, it may be stated that a paying banker is not expected to know the signature of the payee or endorsers. Therefore, if it makes the payment in due course and without negligence, Section 85 of the Negotiable Instruments Act offers the bank protection against any action for wrongful payment. Thus, A may have no claim unless negligence or connivance of the banker's staff can be established.

Regarding C's right, since it is stated that he took the cheque in good faith and for value, he is a holder in due course and he can get better title than that of transferor of the instrument. Therefore, he will have lawful right to retain the amount.

P.87. H is the holder in due course of a bill of which A is the acceptor. 0, the drawer of the bill is fictitious. Can A escape from his liability to H?

Sol: Section 42 of the Negotiable Instruments Act provides that, where a bill of exchange is drawn by a fictitious person and is payable to his order, the acceptor cannot be relieved from his liability to the holder in due course. Thus, H being holder in due course, A cannot escape liability. However, H should establish that the bill was endorsed by the same hand as drawer's signature.

P.88. A cheque is payable to M or order. It is stolen and the thief forges M's signature and presents it to the banker who makes the payment in due course. Can M recover the amount from the banker?

Sol: M being the payee need not be a customer of the paying bank. The paying bank, therefore, is not expected to know M's signature. Section 85 of the Negotiable Instruments Act, therefore, grants protection to paying bankers in case of forged endorsements. The section provides that if a cheque payable to order purports to be indorsed by or on behalf of the payee, and the banker on whom it is drawn pays it in due course, the banker is discharged, even though the endorsement of the payee might turn out to be a forgery. However, to claim protection, the banker has to prove that the payment was a payment in due course.

P.89. B obtains A's acceptance to a bill by fraud. B indorses it to C who takes it as a holder in due course. C endorses the bill to D who knows the fraud. Can D recover from A?

Sol: Yes; D can recover the amount from A as he derived the title from C who is a holder in due course. Moreover, D is not a party to the fraud. Once, the title has been cleansed of the defect, notwithstanding notice of the fraud, D shall get a good title. According to Section 53 of the Negotiable Instruments Act, 1881 any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the previous defect provided he himself is not a party to the fraud.

P.90. Mr. Clever obtains fraudulently from J a cheque crossed 'Not Negotiable'. He later transfers the cheque to D, who gets the cheque encashed from ABC Bank, which is not the Drawee Bank. J, on coming to know about the fraudulent act of Clever, sues ABC Bank for the recovery of money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether J will be successful in his claim. Would your answer be still the same in case Clever does not transfer the cheque and get the cheque encashed from ABC Bank himself?

Sol: According to Section 130 of the Negotiable Instruments Act, 1881 a person taking cheque crossed generally or specially bearing in the words 'Not Negotiable' can't get a better title than that of transferor. Thus, if the title of the transferor is defective, the title of the transferee will also be defective.

Basing on above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title, but if the transferor has a defective title, the transferee is affected by such defects, and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value.

In the given case Mr. Clever had obtained the cheque fraudulently. As his title is defective, he could not give good title to D and ABC Bank would be liable for the amount of the cheque for encashment. (Great Western Railway Co. vs. London and County Banking Co.)

The answer in the second case would not change and shall remain the same for the reasons given above. Thus in both cases, J will be successful in his claim from ABC Bank.

P.91. The drawer, 'D' is induced by 'A' to draw a cheque in favour of P, who is an existing person. 'A' instead of sending the cheque to 'P', forges his name and pays the cheque into his own bank. Whether 'D' can recover the amount of the cheque from 'A's banker. Decide.

Sol: As per section 131, if banker receives payment for a customer of a cheque crossed generally or specially in the name of that banker in good faith and without negligence, he shall not incur any liability to the true owner of the cheque just because he (i.e. bank) has received payment for customer. This would be so even if the title to the cheque was defective. Thus, Banker will not be liable if it has only collected the payment.

P.92. On a Bill of Exchange for Rs.10,000, X's acceptance to the Bill is forged. A takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether A can be considered as a 'holder in due course' and whether A can receive the amount of Bill from X.

Sol: The Negotiable Instruments Act makes no specific provision in respect of forgery. Hence, common law provisions apply. As per common law, a forgery is nullity of law and it passes no title to holder. It is not a mere defect in title but complete absence of title, which cannot be cured. Section 58 of Negotiable Instruments Act does not give protection against forgery, though it gives protection against offence or fraud. Hence, a person does not get good title even if he obtains Bill bona fide and for value, if the signature was forged. Hence, A is not holder in due course and cannot get amount from X.

P.93. X, by inducing Y, obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the Bill as a holder in due course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity, the bill is dishonoured. X sues Y for recovery of money. With reference to the provisions of Negotiable Instruments Act, decide whether X will succeed in the case.

Sol: Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, possessor or endorsee cannot receive the amount of Instrument. Hence, normally, X would not be entitled to sue Y as X has obtained instrument through fraud.

However, as per section 53, a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z (who is a holder in due course), X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence, X will succeed.

P.94. State whether the following shall amount to a valid acceptance:

- **a.** An oral acceptance;
- **b.** Acceptance by mere signature of the drawee without the addition of the word 'Accepted' on the negotiable instrument.

Sol:

- **a.** It is one of the essential elements of a valid acceptance that the acceptance must be written on the bill and signed by the drawee. An oral acceptance is not sufficient in law. Therefore, an oral acceptance does not stand to be a valid acceptance.
- **b.** The usual form in which the drawee accepts the instrument is by writing the work "accepted" across the face of the bill and signing his name underneath. The mere signature of the drawee without the addition of the words 'accepted' is a valid acceptance.

As the law prescribes no particular form for acceptance, there can be no difficulty in construing an acknowledgement as an acceptance but it must satisfy the requirements of Section 7 of Negotiable Instrument Act i.e. it must appear on the bill and must be signed by the drawee (Manackchand v. Chartered Bank, AIR 1961 and 653). Master Minds.

P.95. An acceptor accepts a "Bill of Exchange" but write on it "Accepted but payment will be made when goods delivered to me is sold." Decide the validity.

Sol: Acceptance may be either general or qualified. An acceptance is said to be general when the drawee assents without qualification order of the drawer. The qualification may relate to an event, amount, place, time etc. (Explanation to Section 86 of the Negotiable Instruments Act 1881). In the given case, the acceptance is a qualified acceptance since a condition has been attached declaring the payment to be dependent on the happening of an event therein stated.

As a rule, acceptance must be general acceptance and therefore, the holder is at liberty to refuse to take a qualified acceptance. Where, he refuse to take it, the bill shall be dishonoured by non-acceptance. But, if he accepts the qualified acceptance, even then it binds only him and the acceptor and not the other parties who do not consent thereto. (Section 86)

P.96. State whether a bill can be said to have accepted by B in each of the following cases:

- **a.** B delivers the bill confirming orally that he has accepted the bill.
- **b.** B delivers the bill after writing the words 'accepted' only.
- **c.** B delivers the bill without writing words 'accepted' but after putting his signature on the face of the bill.
- **d.** B delivers the bill without writing the words 'accepted' but after putting his signatures on the back of the bill.
- **e.** B's agent delivers the bill after putting his signature as an agent of the bill.
- **f.** B puts his signature on the bill and dies. Subsequently, the bill was delivered by B's heirs.
- **g.** B puts his signatures on the bill and informs the drawer that he has accepted the bill but does not deliver the bill to the drawer.

Case	***Decision***	***Reason***
(a)	No	The acceptance must be in writing.
(b)	No	The acceptance has not been signed by the drawee.
(c)	Yes	The acceptance has been signed by the drawee. The use of the word 'accepted' is not compulsory.
(d)	Yes	The acceptance is on the bill. It is immaterial whether the acceptance is on the face or back of the bill.
(e)	Yes [Sec. 27]	The acceptance may also be signed by a duly authorised agent.
(f)	No [Sec. 46]	The acceptance would not complete until there is delivery thereof.
(g)	Yes [Sec. 46]	The acceptance has completed on giving notice of acceptance.

P.97. State whether presentment for acceptance is necessary in each of the following cases:

- **a.** A bill payable on demand. Master Minds.
- **b.** A bill payable 30 days after date.
- **c.** A bill payable on 1st Jan. 1997.
- **d.** A bill payable 3 months after sight.
- **e.** A bill payable 3 months after presentment.
- **f.** A bill in which there is an express provision that it shall be presented for acceptance before it is presented for payment.
- **g.** Where the drawee cannot after reasonable search be found.
- **h.** Where the drawee is a fictitious person.
- **i.** Where the drawee is a person incapable of contracting.

Sol: *First state the provisions relating to 'presentment for acceptance.'*
Presentment is necessary in: (d), (e), (f).
Presentment is not necessary in: (a), (b), (c), (g), (h), (i).

P.98. State whether presentment for payment is necessary to charge the drawer of instrument in each of the following alternative cases:

- **a.** A promissory note payable on demand and is not payable at a specified place.

b. A promissory note or bill of exchange payable at a specified period after date of sight thereof.
c. A bill is not payable at a specified place and the acceptor cannot after due search be found.
d. A bill is payable at a specified place and neither the acceptor *nor* any person authorised to pay is present at such place during the usual business hours.
e. If the drawer cannot suffer any damage for want of presentment.

Sol: *First state the provisions relating to 'presentment for acceptance.'*
Presentment is necessary: (b).
Presentment is not necessary: (a), (c), (d), (e).

P.99. A signs a blank stamped paper and places it in his drawer from where it was stolen, completed and negotiated. Is A liable to a holder in due course of such instrument?
Sol: A person cannot be held liable on an instrument for merely having signed the same unless it is accompanied by its delivery. To constitute and create any obligation, delivery of the instrument is a must. Therefore, A will not be liable to the holder in due course of such instrument.

P.100. A bill is dishonoured by non-acceptance. The bill is endorsed to 'A'. 'A' endorses it to 'B'. As between 'A' and 'B', the bill is subject to an agreement as to the discharge of 'A'. The bill is afterwards endorsed to 'C', who takes it with notice of dishonour. Decide, with reasons, whether 'C' is entitled to accept the bill in the capacity of a holder in due course.

Sol: To constitute a holder in due course, Section 9 of the Negotiable Instruments Act requires the holder to have obtained the instrument in good faith.

However, Section 53 provides that a holder of a negotiable instrument, who derives title from a holder in due course, will also acquire the status of holder in due course.

If a document reaches the hands of holder in due course, it will be cleansed of all defects and it remains good even if the subsequent holder has the notice past defects provided that he was not a party to them. Thus, 'E' shall get a good title to the bill.

P.101. A draws a bill of exchange on B for Rs.1,000 payable to the order of A. B accepts the bill but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs.500 and as an accommodation to the plaintiff as to the residue. Can A recover Rs.1,000?

Sol: No. Consideration absent in part. Can recover only Rs.500.

P.102. A issues a cheque for Rs.25,000/- in favour of B. A has sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank, in the meantime, became bankrupt. Decide under the provisions of Negotiable Instruments Act, 1881, whether B can recover the money from A?

Sol: Section 84(1) provides that cheque should be presented to Bank within reasonable time. If cheque is not presented within reasonable time, meanwhile the drawer suffers actual damage, the drawer is discharged to the extent of such actual damage. This would be so if the cheque would have been passed if it was presented within reasonable time. As per

section 84(2), in determining what is reasonable time, regard shall be had to (a) the nature of the instrument (b) the usage of trade and of bankers, and (c) facts of the particular case. The drawer will get discharge, but the holder of the cheque will be treated as creditor of the bank, in place of drawer. He "Will be entitled to recover the amount from Bank. I [section 84(3)].
In the above case drawer i.e. A has suffered damage as cheque was not presented by B within reasonable time. Hence, A will get discharged but B will be the creditor of bank for amount of cheque and can recover the amount from bank.

P.103. Problem 3: C issues a cheque for Rs.15 without writing the word 'only' and gives it to D. D adds the words 'hundred only' after fifteen and adds two zeros after figure 15 as there is sufficient space for making these additions. The bank pays Rs. 1,500 to D who absconds. Is the bank liable to C for excess payment. Master Minds.

Sol: The problem relates to material alteration. In this regard, Section 87 of the Negotiable Instrument Act provides that "any material alteration of a negotiable instrument renders the same void as against anyone who is party thereto at the time of making such alteration and does not consent thereto". So, when a cheque is altered, as in the present case, a banker who makes the payment cannot debit the customer's account. However, Section 89 grants protection to a paying banker where the alteration is apparently not noticeable (similar to the given case) and the payment is made in due course as per Section 10. Thus, assuming that the bank made the payment in due course, it will enjoy protection under Section 89 and will not be liable to the customer (i.e. C).

P.104. A cheque was drawn by a customer on his Bank, marked 'Payee's Account only'. The cheque on the face of it was tampered by some one and converted into a bearer cheque. The bank was negligent in making payment to a bearer instead of payee. State with reference to provisions of Negotiable Instruments Act whether the Bank is liable to pay the amount to the customer.

Sol: Section 85 of Negotiable Instruments Act provides that banker is discharged if he makes payment in due course, if cheque payable to order is purported to be endorsed by or on behalf of payee. However, if there is obvious discrepancy between name of payee and his endorsement, bank will not be protected. Paying bank gets protection only when payment is 'in due course' and in accordance with apparent tenor of the cheque.

In this case, it is clear that payment made by Bank was not in due course in accordance with apparent tenor. Bank was negligent and will be liable to compensate the customer.

P.105. J stole a number of cheques belonging to G, indorsed them to himself and paid them into his account with C Bank. In each case, the money was immediately credited to his account and he was either allowed to withdraw the money or his overdrafts wiped out before the cheques could be cleared. G sues the bank for wrongful conversion of funds. Will he succeed?

Sol: Yes. The circumstances show that the banker was working as a holder and not as an agent. So bank is guilty of mistake and protection under the act will no be available.

P.106. A was a managing director and shareholder of a company. The cheque payable to the company were endorsed by him to himself in the capacity as managing director and deposited in personal account with B Bank. The bank collected the money and allowed him to withdraw. The company soon went into liquidation and the liquidator sues the bank for recovery of the money of the cheques payable to the company but credited to the account of A. Will he succeed?

Sol: Yes. Bank is guilty of negligence.

P.107. The drawer, 'D' is induced by 'A' to draw a cheque in favour of P, who is an existing person. 'A' instead of sending the cheque to 'P', forgoes his name and pays the cheque into his own bank. Whether 'D' can recover the amount of the cheque form 'A's banker. Decide.

Sol: The problem is based upon the privileges of a 'holder in due course'. Section 42 of the Negotiable Instrument Act, 1881, states that an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relived from liability to any holder in due cause claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer. In this problem, P is not a fictitious payee and D, the drawer can recover the amount of the cheque from A's bankers [North and South Wales Bank B. Macketh (1908); Town and Country Advance Co. B, Provincial Bank].

P.108. A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his Bankers. B the drawer wants to recover the amount from C's Bankers. Decide in the light of the provisions of Negotiable Instruments Act, 1881-

- **a.** Whether B the drawer, can recover the amount of the cheque from C's Bankers?
- **b.** Whether C is the Fictitious Payee?
- **c.** Would your answer be still the same in case C is a fictitious person?

Sol: According to Section 42 of the Negotiable Instruments Act, 1881 an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an instrument by the same hand as the drawer's signature, and purporting to be made by the drawer.
The word 'fictitious payee' means a person who is not in existence or being in existence, was never intended by the drawer to have the payment. Where drawer intends the payee to have the payment, then he is not a fictitious payee and the forgery of his signature will affect the validity of the cheque.
Applying the above, answers to the questions asked can be as under:

- **a.** In this case B, the drawer can recover the amount of the cheque from C's bankers because C's title was derived through forged endorsement.
- **b.** Here C is not a fictitious payee because the drawer intended him to receive payment.
- **c.** The result would be different if C is not a real person or is a fictitious person or was not intended to have the payment.

P.109. A cheque was dishonored at the first instance and the payee did not initiate action. The cheque was presented for payment for the second time and again it was dishonoured. State in this connection whether the payee can subsequently initiate prosecution for dishonour of cheque.

Sol: Supreme Court in Sadanandan Bhadran Vs. Madhavan Sunil Kumar case held that on a careful analysis of Section 138 of the Negotiable Instruments Act, 1981 it is seen that a cheque is said to be dishonoured when it is returned by the bank unpaid for any of the reasons mentioned therein. The said proviso lays down three conditions for the applicability of the above section. They are:

a. the cheque should have been presented to the bank within six months of its issue or within the period of its validity whichever is earlier;
b. the payee should have made a demand for payment by registered notice after the cheque is returned unpaid (within 30 days of receiving information that cheque was dishonoured); and
c. the drawer should have failed to pay the amount within 15 days of the receipt of notice.

Prosecution under section 138 can be launched only when all the 3 conditions are satisfied. So far as the first condition is concerned, clause (a) of the proviso to Section 138 does not put any restriction upon the payee to successively present a dishonoured cheque during the period of validity. It is common for a cheque being presented again and again within its validity period in the expectation that it would be encashed. The question whether dishonour of the cheque on each occasion of its presentation gives rise to a fresh cause of action, the following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138:

a. that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;
b. that the cheque was presented within the prescribed period; Master Minds.
c. that the payee made demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and
d. that the drawer failed to make the payment within 15 days of the receipt of the notice.

If one has to proceed on the basis of the generic meaning of the term' cause of action', certainly each of the above facts would constitute a part of the cause of action, but it is significant to note that clause (b) of Section 142 gives a restrictive meaning in that it refers to only one fact which will give rise to the cause of action and that is failure to make the payment within 15 days from the date of receipt of the notice.

Therefore, the holder / payee of a cheque can initiate prosecution for an offence under Section 138 for its dishonour for the second time, if he had not initiated such prosecution on the earlier cause of action.

P.110. A finance company after having issued a cheque in favour of a depositor informs the depositor not to deposit cheque as well as informs the bank to stop payment. Examine with reference to the provisions of Negotiable instruments Act whether it is an offence under the Act.

Sol: Section 138 of Negotiable Instruments Act provides for penalty of imprisonment and fine if cheque issued by him bounces for insufficiency of funds.

After issue of cheque, drawee can give instructions to bank to stop payment of a cheque. This is termed as countermanding of payment. In such case, it was argued that there is no offence. This would have provided an escape route to unscrupulous people and made the section 138 a 'dead letter'.

Hence, in Modi Cements Ltd. Vs. Kuchil Kumar Nandi case, it was held that the drawer will be liable even if he issues 'stop payment' instructions after issue of cheque.

In Goa Plast Pvt. Ltd. Vs. Chico Ursula D'Souza, it was held that the drawee will be liable even if 'Stop Payment' instructions to Bank are issued before the cheque was due for payment.

P.111. Describe, in brief, the main amendments incorporated by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 in Sections 138, 141 and 142 of the Principal Act i.e. the Negotiable Instruments Act, 1881.

Sol: Amendments in the Negotiable Instruments Act, 1881

The main amendments made through the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 in Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 are as follows:

Section 138:

- **a.** To increase the punishment as prescribed under the Act from one year to two years.
- **b.** To increase the period for issue of notice by the payee to the drawer from 15 days to 30 days [Proviso(b) to Section 138].

Section 141: To exempt those directors from prosecution under Section 141 of the Act who are nominated as directors of a company by virtue of their holding any office or employment in the Central Government or State Government or a Financial Corporation owned or controlled by the Central Government, or the State Government, as the case may be [Proviso to Section 141(I)].

Section 142: To provide discretion to the court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act [Proviso to Section 142(b)].

<u>Practical Questions in Corporate & Other Laws</u>

Q.No.1. Both the shareholders of the Private Company died in a car accident. Decide whether Company's existence also comes to an end.

Sol.: The Company's existence is not affected by the death of its shareholders, since the Company has separate legal entity. This is clearly established in Salomon Vs. Salomon & Co. Ltd, Lee Vs. Lee Air farming Ltd & Kandoli tea Co. Ltd. cases. Further the Company has having perpetual succession.

Q.No.2. In a private Company, after the death of Mr.X entire capital of the company is held by his son Y. Decide, whether Y can continue business of the co. with single shareholder.

Sol.: In such a situation, Y can continue to carry on the business of the Company but, in accordance with the provisions of Sec.45 of the Act, if the same position continues for more than six months, then y will become personally liable for all the liabilities of the Company contracted after six months from the date he becomes only shareholder.

Q.No.3. The number of members in a public Company became reduced to six on the 10th September, 1988, the Company incurs trade debts on 11th September, 1988, 2nd February, 1989 and 17th March, 1989. How far are the remaining six members liable for the debts?

Sol.: The remaining six members are liable for the debts incurred after 6 months of the reduction in the number of members below the statutory minimum specified in Sec. 45 of the Companies Act, 1956 i.e., for debt contracted on 17th March, 1989.

Q.No.4. A public limited Company has only seven shareholders, all the shares being paid in full. All the shares of one such shareholder are sold by the court in an auction and purchased by another shareholder. The Company continues to carry on its business thereafter. Discuss the liabilities of the shareholders of the Company.

Sol.: The problem in question relates to reduction of membership below the statutory minimum. Section 12 of the Companies Act requires a public Company to have a minimum of seven members. If at any time the membership of a public Company falls below seven and it continues' for more than six months, then according to Section 45 of the Companies Act, 1956, every such member who was aware of this fact, would be individually (personally) liable for the debts contracted after six months.
Thus, in the above problem the remaining members shall incur personal liability for the debts contracted by the Company:

- **a.** If they continued to carry on the business of the Company with that reduced membership (i.e., 6) beyond six months period.
- **b.** Only those members who knew this fact of reduced membership shall be liable, for instance, one of the members who was abroad and thus not aware of these developments, shall not be liable.
- **c.** The liability shall extend only to the debts contracted after six months from the date of auction of that member's shares.

Q.No.5. In a private limited Company it is discovered that there are, in fact, 54members. On an enquiry, it is ascertained that 6 of such members have been employees of the Company in the recent past and that they acquired their shares while they were still employees of the Company. Is it necessary to convert the Company into a public limited Company?

Sol.: As per Section 3(1)(iii), a Company to be registered as a private Company must restrict its membership to 50 only. But, however, in counting this number of 50 members, employee members and ex-employee members (i.e., those who become members while in the employment of the Company but now having retired still continue to retain membership) are to be excluded. Thus, in the given case, the Company shall continue to be a private Company. There is no need for conversion.

Q.No.6. BS & Co. Ltd. is registered as a Public Limited Company. The shareholding pattern of the Company is under.

Category	

Directors & their relatives	36
Employees	18
Ex-employees (shares were allotted when they were employees)	09
Six couples holding shares jointly in the names of husband and wife (6 x 2)	12
Others	06
Total:	***81***

The Board of directors of the Company proposes to convert it into a private Company. Advise the Board of directors about the steps to be taken for its conversion into a private Company including reduction in the numbers of members, if necessary.

Sol.: A public limited Company may be converted into private limited Company only if the number of members is limited to 50 excluding Sec.3(1)(iii):

a. Persons who are in the employment of the Company

b. Persons who became members during the course of their employment & continue to be members even after their employment ceases.

c. Further if two or more members hold shares in a Company jointly they shall be treated as a single member.

The number of members is only 48 for this purpose as noted below:

Directors and their relatives	36
Joint holding treated as single	6
Others	6
	48

Hence the Company can be converted into private limited Company.

Q.No.7. The paid up share capital of Advanced Castings Pvt. Ltd is Rs.1,00,00,000 consisting of 8,00,000 Equity shares of Rs.10 each fully paid up and 2,00,000 cumulative Preference shares of Rs.10 each fully paid up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 3,00,000 Equity shares and 1,50,000 Equity shares respectively in Advanced Castings Pvt. Ltd. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd are the subsidiaries of Unique Machineries Pvt. Ltd. Examine whether Advanced Castings Pvt. Ltd. is a subsidiary of Unique Machineries Pvt. Ltd. Will your answer be different, if Unique Machineries Pvt. Ltd. controls composition of Board of Directors of Advanced Casting Pvt. Ltd.?

Sol.: Holding & Subsidiary Co.'s. According to section 4 of the Companies Act, a Company (Assume S Ltd.) shall be deemed to be a subsidiary of another Company (Assume H Ltd.), if & only if:

1. ***Control on BOD.*** That the H Ltd. controls the composition of Board of directors of S Ltd. Or
2. ***Control by ownership.***
   a. Where S Ltd. is an existing Company in which the preference shareholders are having voting rights, H Ltd. controls more than half of the total voting power of S Ltd. (E + P)
   b. Where S Ltd. is a newly formed Company, H Ltd. holds more than half in the nominal value of S Ltd. equity share capital (Only E) Or
3. ***Chain relation.*** If S Ltd. is a subsidiary of A Ltd. which is subsidiary of H Ltd., then the Company S Ltd. is subsidiary of H Ltd.

Further shares held by any person as a nominee for the Co. shall be treated as being held by the said Co. Thus, the shares held by a subsidiary shall be treated as held by the Holding Co. In this case, the equity share capital of Advance Castings Private Ltd. is Rs.80,00,000 consisting of 8,00,000 Equity shares of Rs.10 each fully paid up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 4,50,000 (3,00,000+1,50,000) Equity shares in Advance Castings Pvt. Ltd. As these two Companies are the subsidiaries of Unique Machineries Pvt. Ltd., it will be treated as holding more than half in nominal value of the Equity share capital of Advance Castings Pvt. Ltd. and hence Advance Castings Pvt. Ltd. is a subsidiary of Unique Machineries Pvt. Ltd.
If Unique Machineries Pvt. Ltd. control the composition of the Board of Directors of Advance Castings Pvt. Ltd., it will also be treated as holding Company by virtue of Sec.4. Hence the answer will not be different.

Q.No.8. The paid-up share capital of XYZ (Private) Co. Limited is Rs.20 lakhs consisting of 2,00,000 Equity Shares of Rs.10 each fully paid up. ABC (Private) Limited and its subsidiary DEF (Private) Limited are holding 60,000 and 50,000 shares respectively in XYZ (Private) Co. Limited. Examine with reference to the provisions of the Companies Act, 1956, whether XYZ (Private) Limited is subsidiary of ABC (Private) Limited. Would your answer be difference if DEF (Private) Limited is holding 1,10,000 shares in XYZ (Private) Co. Limited and no shares are held by ABC (Private) Limited in XYZ (Private) Co. Limited?
Sol.: Write about Holding & Subsidiary Companies in the above Question.
Further shares held by any person as a nominee for the Company shall be treated as being held by the said Company. Thus, the shares held by a subsidiary shall be treated as held by the holding Company.
Here ABC Private Limited is holding 60,000 shares in XYZ Private Limited and 50,000 shares held by DEF private limited. Therefore, ABC Limited will be deemed to be holding 1,10,000 Equity shares in XYZ Limited i.e. more than half in nominal value of the Equity Share Capital of XYZ Private Ltd. Hence XYZ Private Limited is subsidiary of ABC Private Limited.
The answer will remain the same in the second case but holding-subsidiary relationship is established by virtue of Chain relationship i.e. a subsidiary of one Company's subsidiary will also be considered as the subsidiary of the second mentioned Company.

Q.No.9. Due to oversight some of the share transfers were registered in the Company due to which the number of members in a private Company increased from 28 to 52. What is the effect of such transfers and what is the remedy available to the Company.

Sol.: In that case, since the number of shareholder's has crossed 50, the Company will be named as public Company. However the NCLT, on being satisfied that the failure to comply with the conditions laid down by Sec.3 was accidental or un intentional and it is just and equitable to grant relief, may, on the application of the Company or any other person interested and on such conditions as seem to the NCLT reasonable, order that the Company be relieved from such consequences as aforesaid.

Q.No.10. On acceptance of deposits a private Company becomes a Public Company.

Sol.: False. A private Company becomes a public Co. on acceptance of deposits from public through issue of advertisement. However the private Co. can accept the deposit from its shareholders, directors, from their relatives and even then the private Co. does not become a public Co. (Sec.3)

Q.No.11. By obtaining the license from the Central Government under section 25 of the Act a Company shall dispense with the word “limited” or “private limited” from its name.

Sol.: False. Under section 25, it is not compulsory to dispense with the word Limited or a Private Limited, but it is only an optional at the wish of the Company. Because, the object of registration of a Company u/s 25 is not only to dispense the use of words Limited or Private Limited as a part of its name but to avail the exemption which may be granted to such Companies from the provisions of this Act by the Central Government.

Q.No.12. A firm can also become member of a Company which has been granted license under Section 25 of the Act.
Sol.: Yes, Sec.25 of the Companies Act permits a firm to be a member of any association or Company licensed under this section. Infact this is the only one case which permits the partnership firm to become a member of a Company.

Q.No.13. On revocation of License granted by the Central Government under section 25 the Company may continue to carry on the same Activities which were being carried on by it prior to such revocation.

Sol.: True. On revocation of license granted by the Central Government under Sec.25, the association or the Company may continue to carry on the same activities which were being carried on by it prior to such revocation. The impact of the revocation of license is:

- **a.** The Company will have to add a word ‘Limited’ or ‘Private Limited’ at the end of its name.
- **b.** It will cease to enjoy the exemptions granted by the Central Government to such Companies.

Q.No.14. Two joint Hindu families carry on a business as joint-owners. The first family consists of 3 brothers and their respective sons being 12 in number. The second family consists of the father, 4 major sons and 2 minor sons. Is the association illegal?

Sol.: Sec.11 of the Companies Act, 1956, provides that no firm, association or Company consisting of more than 20 persons for doing any business (10 in case of banking business) shall be formed unless it is registered as a Company under the Companies Act. An association formed in violation of the above provision of the Companies Act is termed as an illegal association and does not have any legal existence and recognition. However, in computing the aforesaid number of members, viz., 10 in case of a banking business and 20 in case of any other business, minor members of the families constituting the association are not taken into account. Accordingly, in the given problem, the first family consists of 15 members (3 brothers + 12 sons) and the second family that of 5 members (1 father + 4 sons and ignoring 2 minor sons). The total number of the members of the two families constituting the association thus comes to 20. The association is not an illegal Association.

Q.No.15. The Registrar of Companies issued a Certificate of Incorporation Actually on 8th January, 1999. However, by mistake, the certificate was dated “5th January, 1999”. An allotment of shares was made before the Company was incorporated?

Sol.: The allotment of shares is valid. Sec.35 of the Companies Act, 1956 provides that a certificate of incorporation issued by the Registrar in respect of any association shall be conclusive evidence of the fact that all the requirements of the Act have been compiled within respect of registration, and that the association is a Company authorised to be registered and duly registered under the Act.

Jubilee cotton mills ltd..

- **a.** The registrar issued a certificate of incorporation on Jan 8th but dated it Jan 6th which was the date he received the documents.
- **b.** On Jan 6th, the Company made an allotment of shares to Lewis.

Held, that the certificate was conclusive evidence of incorporation on Jan 6th and that the allotment was not void on the ground that it was made before the Company was incorporated.

Q.No.16. A Limited Company is formed with its articles stating that one Mr. Srivastava shall be the solicitor for the Company, and that he shall not be removed except on the ground of misconduct. Can the Company remove Mr. Srivastava from the position even though he is not guilty of misconduct?

Sol.: As between outsiders and the Company, Articles do not give any right to outsiders against the Company, even though their names might have been mentioned in the Articles. An outsider cannot take advantage of the Articles to form a claim thereon against the Company. Thus, in the given case, Company shall succeed in removing Mr.Srivastava as the solicitor of the Company without incurring any obligations.

Q.No.17. A Company, in which the directors hold majority of the shares, altered its articles so as to give power to directors to acquire shares of any shareholder, who competed with the Company's business, to transfer his shares, at their full value, to any nominee of the directors. S had some shares in the Company, and he was in competition with the Company. Is S bound by the alteration?

Sol.: The power of the members to effect alteration in the Articles by passing special resolution is limited in as much as the alteration must be bonafide and in the interest of the Company. In the given case, alteration requires taking over the shares of only those who competed with the Company's business. Therefore, empowering the directors to take over shares of such members seems to be in the general interest of the Company as a whole and hence shall be valid. S shall be held bound by the alteration.

Q.No.18. Advise Asiatic Government Security Life insurance Co. Ltd. Whether it can seek an injunction against 'The New Asiatic Insurance Co. Ltd.' Which was subsequently formed restraining it from having in its name the word 'Asiatic' on the ground that it has caused confusion and can deceive the public.

Sol.: The Companies Act, 1956 permits the promoters of a Company to choose any suitable name for the Company provided the name chosen is not undesirable.
A name may be considered undesirable where it is too similar to the name of an already existing Company. In the present problem since the two Companies are in insurance business, it may lead to a natural inference on the part of the public that the two are interrelated because of the word 'Asiatic' which is quite an imaginary word and does not mean anything. Mere addition of the word 'New' is not likely to give an otherwise impression. Therefore, on a suit by Asiatic Government Security Life Insurance Co. Ltd., Court is likely to advise the New Asiatic Insurance Co. Ltd. to change its name.

Q.No.19. The Articles of a Company provided that the shares of a member who became bankrupt would be offered for sale to other shareholders at a certain price. Is the provision binding on the shareholders?

Sol.: The facts of the given problem are based on the decided case of Bore land Trustee vs. Steel Bros. & Co. Ltd., in which case, the provisions in the Articles were held to binding on the members. It was held that 'Shares having been purchased on these terms and conditions, it is impossible to say that those terms and conditions are not to be observed". Thus, since Articles constitute a binding contract between the Company and its members, the shareholders shall be held bound by the stated provision in the Articles.

Q.No.20. The plaintiffs contracted with a director of the defendant Company and gave him a cheque under the contract. The Director could have been authorised under the Company's articles, but was not in fact so authorized. The plaintiff had not seen the Articles. The Director misappropriated the cheque and the plaintiffs sued the Co. Is the Company liable?

Sol.: The problem relates to the protection that the outsider may claim against lack of authority on the part of the officers of the Company. The rule commonly known as the Doctrine of Indoor Management was first laid down in the case of The Royal British Bank vs. Turquand. However, it has been held that the rule of indoor management cannot be invoked in favour of a person who had no knowledge of the Articles of the Company. It is because; in such a case the person cannot assume that the power (of which he has no knowledge) has been exercised.

Thus, in the present case, Company shall not be held liable by the Act of the director who has transacted beyond the scope of his authority. A principal can be held liable for the frauds of his agent only to extent they are committed within the scope of the authority conferred upon him.

Q.No.21. A Company issued a bond under its common seal signed by two Directors. The Articles provided that the directors might borrow on bond such sums as they should be authorized by an ordinary resolution of the Company. No such resolution was passed. Is the Co. liable on the bond?
Sol.: Yes. The Company is liable on the bond. The outsiders dealing with the Company are entitled to assume that as far as the internal proceedings of the Company are concerned, everything has been regularly done. They are bound to read the registered document and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more; they need not inquire into the regularity of the internal proceedings as required by the Memorandum or Articles. (Royal British Bank vs. Turquand). The gist of the rule is that persons dealing with limited liability Companies are not bound to inquire into their indoor management and will not be affected by irregularities of which they had no notice. The rule is based on public convenience and justice.

Q.No.22. The Memorandum of Association of a Company was signed by two adult members and by a guardian of the other five minor members, the guardian signing separately for each minor member. The Registrar registered the Company and issued under his hand a certificate of incorporation. The plaintiff contended that

a. Conditions of registration were not duly complied with, and
b. That there were no seven subscribers to the Memorandum. Will the Court uphold his contention?

Sol.: The Certificate of incorporation is conclusive for all purposes. According to Section 35 of the Companies Act, 1956, a certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters incidental thereto, and therefore the association will be considered as a company duly registered under this Act.

Q.No.23. The authorised signatory of a Co. issued a share certificate in favour of X, which apparently complied with the Company's articles as it was purported to be signed by two directors and the secretary and it had the Company's common seal affixed to it. Infact, the secretary had forged the signatures of the Directors and affixed the seal without any authority. Will the certificate be binding upon the Company?

Sol.: According to the doctrine of Indoor management, persons dealing with the Company are presumed to have read the registered documents and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more i.e. they need not enquire into the regularity of internal proceedings as required by M&A.
But, this rule cannot be applied to forgery. In the case of forgeries, the Acts done in the name of the Company are void abinitio. A Co. can never be held bound by forgeries committed by its officers.
Ruban Vs. Great Fingual Ltd.:

- The plaintiff was the transferee of a share certificate issued by the defendant co. under its seal.
- The certificate was issued by the Company's secretary, who affixed the seal and forged the signature of two directors.
- The certificate was held to be void.

Hence, it can be concluded that in the instant case, the certificate issued by the secretary by having forged the signatures of the directors and affixed the seal without any authority will not be binding upon the Company.

Q.No.24. ABC (Pvt.) Ltd. was incorporated in 10th June, 1996. A similar Company with identical name and same objects was also incorporated on 10th June1997. ABC (PVT.) Ltd. came to know about this and filed a petition on 10th January, 1998. Explain remedies available to the first Co.

Sol.: If a Company is inadvertently registered with a name which in the opinion of the Central Government, is identical with or too nearly resembles, the name by which a Company in existence has been previously registered, the Company registered later (Sec.22):

a. <u>May</u> change its name, by ordinary resolution and with the previous approval of the Central Government Or

b. The change <u>Shall</u> also be carried out if a direction is received from the Regional director. When so directed by the Regional director the Company shall, by ordinary resolution and with the previous approval of the Central Government, change its name within a period of 3 months or the extended period.

In the given case ABC (Pvt.) Ltd. can complain to the Regional director to issue suitable directions to the Company incorporated on 10th June, 1997 for change of its name. In this case, the Company filed a petition on 10.1.1998 within 12 months of date of registration of second Company and so the complaint shall be accepted.

Q.No.25. Eight signatories to the memorandum out of total ten were subsequently found to be forged. The memorandum was presented for registration and of registration was issued. The existence of the Company was disputed that the registration of the Company is void. Decide?

Sol.: The Company's registration cannot be void because, under Section 35 of the Act, a certificate of incorporation is a conclusive evidence of the fact that all the statutory requirements of the Act in relation to registration of the Company have been complied with.

Q.No.26. The registered office clause of the memorandum of association of A ltd. does not contained name of the city. Because of this registrar of Companies refused to registered the memorandum of association. Is it Correct?

Sol.: No., Sec.13 states that the registered office clause shall contain the name of the State in which the registered office of the Company is situated. Further, it may be noted that the address of the registered office is not stated in the memorandum of association. If this was done, every change there in would require the amendment of the memorandum, which is a difficult procedure. Therefore the address is stated in AOA.

Q.No.27. A Company filed a petition before the NCLT for shifting its registered office to another state. The S.G. objected against such shifting on the ground that it would adversely effect the government revenues and employment. Decide whether objection of the State Government is tenable.

Sol.: The objection of the State Government is not tenable. In Minerva Mills Ltd. Vs. Government of Maharashtra the court refused to accept the contention of the State on the ground of loss of revenue.

Q.No.28. It is not necessary to present a copy of Articles of Association to the Registrar of the Companies at the time of incorporation of the Public Company limited by shares.

Sol.: Sec.26 provides that the Companies limited by guarantee, private limited Companies, and unlimited Companies must have their own articles of association, while a public Company limited by shares may or may not have its own articles. Since in this case it is a public company limited by shares it is not necessary to present a copy of articles of association to ROC and in such a case Table A of Schedule I (Model articles) shall be deemed to be the Company's articles.

Q.No.29. The promoters of your Company, incorporated on 9th April, 1996, had entered into a contract with M on 8th March, 1996 for supply of goods. After incorporation, your Company does not want to proceed with the contract. As a Company secretary, advise the management.

Sol.: Pre-incorporation contracts in general are void and hence not binding on the Company. However, as per the Specific Relief Act, 1963 the party to the contract can enforce the contract against the Company if: (i) the Company had adopted the same after incorporation; and (ii) the contract is warranted by the terms of incorporation. Thus, unless the Company adopts the contract, the other party cannot enforce the same against the Co. But, promoters can be held liable.

Q.No.30. Promoters made an application for registration of a Company in the name of MCN Association. At the time of application, another Company was already registered with the similar name but it was defunct for more than 10 year. Decide whether new Company can be registered in a name which is similar to any other existing Company's name.
Sol.: A new Company cannot be registered with a name which is quite similar to any other existing Company's name. But in the opinion of department of Company affairs it is possible if the exiting Company is a defunct Company (Non operational) for a long time.

Q.No.31. XYZ Co. Ltd. was in the process of incorporation. Promoters of the Company signed an agreement for the purchase of certain furniture for the Company and payment was to be made to the suppliers of furniture by the Company after incorporation. The Company was incorporated and the furniture was used by it. Shortly after incorporation, the Company went into liquidation and the debt could not be paid by the Company for the purchase of above furniture. As a result suppliers sued the promoters of the Company for the recovery of money. Examine whether promoters can be held liable for payment in the following cases:

- **a.** When the Company has already adopted the contract after incorporation?
- **b.** When the Company makes a fresh contract with the suppliers in terms of pre-incorporation contract?

Sol.: The promoters remain personally liable on a contract made on behalf of a Company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the Company's name, even though the contract expressly provided that only the Company shall be answerable for performance.
Further, a Company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. The Company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters.
It is, therefore, safer for the promoters Acting on behalf of the Company about to be formed to provide in the contract that: (a) if the Company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the Company does not make a fresh contract within a limited time, either of the parties may rescind the contract.
Thus applying the above principles, the answers to the questions can be:

- **a.** The promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the Company. Therefore, promoters continue to be held liable in this case for the reasons given above.
- **b.** In the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms at that of pre-incorporation contract.

Q.No.32. X Co. Ltd, intended to buy a rubber in Peru. Its prospectus contained extracts from an experts' report giving the number of rubber trees in the estate. The report was inaccurate. Will any shareholder buying the shares of the Co. on the basis of the above representation have any remedy against the Co.? Can the persons authorising the issue of prospectus escape from their liability?

Sol.: In the event of any mis-statement in a prospectus, the allottees have certain remedies against the Company as well as those responsible for the issue of the prospectus. Thus, in the present case, the allottee shall have the right to claim compensation from the Company for any loss that he might have sustained in terms of the value of shares. But, his claim against those responsible for issue of prospectus shall not succeed since they made the statement on the basis of the report of an expert whom they believed to be competent. However, expert can be proceeded against.

Q.No.33. X a furniture dealer, entered into a contract with the Company for furnishing the Company's office before it could obtain certificate of commencement of business. Can X recover the price of the furniture?

Sol.: A contract made by a public Company after incorporation but before it is entitled to commence business is provisional only, and is not binding on the Company. But as soon as the certificate to commence business is obtained the contract becomes binding on the Company automatically. In this case, X can enforce the contract and recover the price of the furniture from the Company after it obtains the certificate of commencement of business.

Q.No.34. A applied for 200 shares on the basis of a prospectus which contains some mis-statement. The shares are allotted to him. A afterwards transfers the shares to B. Can B bring an Action for a rescission on the ground of mis-statement?

Sol.: If there is a mis-statement of material information in a prospectus and if it has induced any shareholder to purchase shares, he can rescind the contract and claim damages from the Company. However, to claim relief, privity of contract is necessary. Thus, whereas 'A' could have obtained the aforesaid relief, 'B' who has purchased shares from 'A' and not from the Company cannot proceed against the Company (Peek Vs. Gurney).

Q.No.35. Amar subscribed shares issued by F Ltd. The prospectus of F Ltd. included a statement which was misleading in the forms and contents. On the faith of the prospectus believing it to be a true, Amar subscribed for shares and sustained loss. Can Amar sue for compensation of loss? If so, who will be sued for such loss?

Sol.: Yes, Amar can sue for compensation of loss. Sec.62 of the Companies Act provides that an allottee is entitled to claim compensation from directors, promoters and any other persons who authorised the issue of the false prospectus, for damages sustained by reason of any untrue statement in it. However, he will have to prove that misrepresentation was of material fact; he Acted on misrepresentation and has suffered damages in consequence. The following persons are liable to pay compensation for loss or damage sustained by reason of untrue statement included in a prospectus:

a. Every person who is a director of the Company at the time of issue of prospectus.
b. Every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;
c. Every person who is a promoter of the Company; and
d. Every person who has authorised the issue of the prospectus.

Mr. Amar having sustained loss because of having believed the facts given in the prospectus issued by F Ltd. to be true, can sue the four categories of persons mentioned above for compensation of his loss. Apart, from above, the allottee may sue the Company for damages for deceit.

Q.No.36. All statements in a prospectus issued by X & Co. Ltd. were literally true, but it failed to disclose that the dividends stated in it as paid were not paid out of revenue profits, but out of realised capital profits. The statement that the Company had paid dividends for a number of years was true. But the Company had incurred losses for all those years, however, no disclosure of this was made in the prospectus. An allottee of shares wanted to avoid the allotment on the ground that the prospectus did not disclose this fact which, in his opinion, was very material. Would he succeed?

Sol.: In the given case the Allottee of shares would succeed and he can avoid the contract on the grounds of untrue statement included in the prospectus. As per Sec.65 a prospectus shall be deemed to include an untrue statement:

- **a.** If it contains a statement which is misleading in the form or content.
- **b.** There is an Omission of any matter.

Nothing should be stated as fact which is not so, and no fact should be omitted. Thus it is not necessary that there should be false representation in prospectus, even every word included in it is true, the suppression of material facts may render it fraudulent.

Q.No.37. An allottee of shares in the Company has brought an action against director Q in the Company in respect of false statements in the prospectus. The director has contended that the statements were prepared by promoters and he had relied on them. Is the director liable?

Sol.: Sec.62 lays down civil liabilities for misstatements in prospectus. It renders every Directors liable for any misstatement in prospectus. Sec.62(2), however, lays down the circumstances under which the director concerned shall not be held liable. One of the plea that the director can take is that he had reasonable ground to believe and did upto the time of allotment of shares or debentures believe that the statement was true. In the instant case the director can absolve himself of the liability if he proves that he had reasonable grounds to believe and did believe that the statement prepared by the promoters was true. The onus of proof is on the director.

Q.No.38. No additional information in addition to the statutory requirements can be given in the prospectus.
Sol.: False., Sec.56 of the Act provides that the prospectus must contain matters specified in Part II of that Schedule. The section does not contain any negative provision regarding inclusion of additional information in the prospectus. Any additional information which may useful to the investors i.e. the contents given in Sec.56 are only minimum.

Q.No.39. In a scheme of amalgamation shareholders of Company ‘A’ was offered shares of Company ‘B’ in lieu of shares held by them in Company ‘A’. The offer letter issued by Company B to the shareholders of Company A can be regarded as prospectus?

Sol.: No, the offer Letter issued by Co. B to the shareholders of Co. A cannot be regarded as a prospectus because the offer has been made to specified persons only and no person other than those can avail the offer. The test for determination of the nature of offer is not who receives the offer but who can avail the offer. If offer can be availed only by the person to whom offer has been made, it is not a prospectus.

Q.No.40. The Directors of Vijay Electronics Ltd. allotted to themselves certain rights shares for which no application was made by certain shareholders as required by Section 81 of the Companies Act. Discuss the validity of their action specially in view of the fact that market price of shares of the Company is 50% above par.

Sol.: If no application is made by the shareholders to whom the offer is made under Section 81 of the Companies Act, 1956, the Board of Directors may dispose of the shares in such a manner as they think most beneficial to the Company. Therefore, unless shares were allotted to directors on terms unfavourable to the Company, the allotment would be valid.

Q.No.41. The Board of Directors of a Company reissued shares which were forfeited for non-payment of calls. As a Company secretary, tell whether Return of Allotment is required to be field?

Sol.: Return of allotment is required to be field only in case of allotment of shares. Allotment means an act of appropriation by the Board of directors of the Company out of previously unappropriated capital of the company to persons who have made application for shares. Since reissue of forfeited shares is not an allotment of shares no return of allotment need to filled.

Q.No.42. What is the remedy available to a Company if stock exchanges refuse to accept its application for listing of shares or debentures?

Sol.: Every Company going for public issue shall make an application to stock exchange(s) for obtaining the permission for listing of such shares or debentures. The prospectus shall state that application has been made for obtaining listing permission and names of such stock exchange(s). If the permission has not been applied for or having applied for has not been granted by the stock exchange(s) before the expiry of 10 weeks from the date of the closing of the subscription list the allotment made shall become void. [Sec.73(1)]. An appeal may be preferred against the refusal with Securities Appellate Tribunal & in the allotment shall not be void until the dismissal of appeal.

Q.No.43. A Co. forfeited 1000 shares of Rs.10 each on which Rs.8 had been paid up & subsequently disposed of same for Rs.1.50 each. Examine the validity of reissue of shares.
Sol.: Reissue can be at any price provided that the total sum paid by the original owner of shares together with the reissue price is not less than the par value. In other words, the discount on re-issue should not exceed the amount forfeited on those shares. The allotment is invalid since the shares have been reissued a price less than the amount remaining unpaid.

Q.No.44. The prospectus of a Company stated that application has been made to Delhi and Bombay Stock Exchanges for permitting its shares to be dealt there at. The Company applied to the said stock exchange. The Company got permission from Bombay stock Exchange only. The Company allotted shares to its applicants thereafter. Is this allotment of shares valid?

Sol.: Every company going for public issue shall make an application to stock exchange(s) for obtaining the permission for listing of such shares. The prospectus shall state that application has been made for obtaining listing permission and names of such stock exchange(s). If the permission has not been applied for or having applied for has not been granted by the all the stock exchanges before the expiry of 10 weeks from the date of the closing of the subscription list the allotment made shall become void. Therefore allotment is void in this case.

Q.No.45. Dowell Co. Ltd issued 10,000 shares of Rs. 10 each. The entire issue was under written by ICICI; but before the prospectus was issued the entire capital was subscribed by the friends of directors of the Company. Would ICICI be entitled to receive any underwriting commission?

Sol.: 'Underwriting' means 'Guaranteeing'. It is a contract entered between the Company and underwriters for the purpose - in case the whole or an agreed portion of the shares or debentures are not applied for, then the underwriters will themselves apply for unsubscribed shares or debentures. As a return for the services rendered by them, the underwriters get U/C. It is payable even if the underwriters are not called upon to take any shares.

Q.No.46. As per the audited balance sheet of Dowell Ltd. as at 31st March, 1999, the details of share capital and reserves and surplus are as under.

Equity Share Capital	300.00
Reserves and surplus:	
Profit and loss account	62.75
General reserves	12.00
Share premium	25.00

Break up of unsecured loans as at 31st March, 1999 in given below:

Deposits from public	13.00
Deposits from shareholders	3.62

Compute the limits up to which Dowell Ltd. can accept further deposits from public & shareholders.

Sol.: As per Balance Sheet of Dowell Ltd. as at 31.3.99.

Paid up capital:		
Equity Share Capital	300.00	
Share Premium	25.00	325.00
Free Reserves:		
Profit and Loss a/c	62.75	
General Reserves	12.00	84.75
		409.75

[Rs. in lakhs]

Particulars	***From shareholders***	***From public***
Limit up to which Dowell can accept deposits		--
10% of Rs. 409.50 lakhs	49.95	102.375
25% of Rs. 409.50 lakhs		
Deposits as at 31st March, 1999	3.62	13.00
Maximum further deposits that can be accepted.	***46.33***	***89.375***

Q.No.47. M Company Limited issued 2,00,000 Equity shares of Rs. 10 each. You are allotted 100 shares. Explain any ten rights you have as a member of the Company.

Sol.: Refer to question rights of members in membership lesson (10th lesson).

Q.No.48. Is a person, holding Pref. shares in a Co., deemed to be a member of that Co.?

Sol.: Yes, a person holding preference shares in a Company is a member of that Company Membership in a Company can be obtained, by acquiring shares in it and such shares may be equity or preference. As such, a person holding preference shares shall be deemed to be its member.

Q.No.49. Can a subsidiary Company hold shares in its holding Company? S Ltd. held shares of H Ltd. before becoming its subsidiary. Will it be necessary for S Ltd. to surrender those shares on its becoming a subsidiary of H Ltd.?

Sol.: As per Section 42, a body corporate cannot be a member of a Company which is its holding Company and any allotment or transfer of shares in a Company to its subsidiary shall be void; except:

a. Where the subsidiary holds shares in the holding Company in the capacity of a legal representative of a deceased shareholder, or

b. Where the subsidiary holds shares as trustee, or

c. Where the subsidiary was a member before the commencement of this Act or it held shares in the holding Company before it become its subsidiary. In these case the subsidiary can continue to hold the shares but, without to vote at meetings of the holding Company.

Since S Limited held shares of H Limited before it become its subsidiary, as per the provisions of Section 42, it is not necessary for S Limited to surrender those shares on its becoming a subsidiary of H Limited. S Limited in this case can continue to hold the shares of H Limited, but S Limited will not have the right to vote at meeting of H Limited in respect of the shares held by it.

Q.No.50. Shyam's name appears in the register of members of a Company. He contends that he is not a member. The Company maintains that Shyam had orally agreed to become the member. Is the contention of Shyam correct?

Sol.: Yes; the contention of Shyam is correct. According to Section 41 (2) of the Companies Act, 1956, every person who agrees in writing to become a member of the Company and whose name is entered in its register, shall be a member of the Company. Agreement in writing can be either by way of application for allotment of shares or by transfer/transmission of shares. The subscribers to the memorandum of a Company are deemed to have agreed to become members of the Company and their names shall be entered in register of members on registration of the Company. There is no provision for becoming a member of the Company by oral agreement.

Q.No.51. DJA Co. Ltd. is holding 40% of total equity shares in MR Co. Ltd. The Board of Directors of MR Co. Ltd. (incorporated on 1.1.1998) decided to raise the paid-up Equity Share Capital by issuing further shares and also decided not to offer any shares to DJA Co. Ltd. on the ground that it was already holding a high percentage of shares in MR Co. Ltd. Articles of Association of MR Co. Ltd. provides that the new shares be offered to the existing shareholders of the Co. On 1.3.2001 new shares were offered to all the shareholders excepting DJA Co. Ltd. Referring to the provisions of the Companies Act, 1956 examine the validity of decision of Board of Directors of MR Co. Ltd. of not offering any further shares to DJA Co. Ltd.

Sol.: The question is based on Sec.81 of the Companies Act. As per Sec.81 if, at any time after the expiry of 2 years from the formation of the Company or after the expiry of 1 year from the first allotment of shares, which is earlier it is proposed to raise capital by allotment of further shares, it should be offered to the existing equity shareholders of the Company. In the given case applying the provisions and the ruling in the above case, MR Company's decision not to offer any further shares to DJA Co. Ltd. on the ground that DJA Co. Ltd. already holds a high percentage of shareholding in MR Co. Ltd. is not valid for the reasons that it is against to Sec.81. Therefore Board of MR Company Limited cannot take a decision not to allot shares to DJA Company Limited unless the same is approved by the general meeting by means of special resolution required as under Sec. 81.

Q.No.52. A Public Company proposes to purchase its own shares. State the source of funds that can be utilised by the Company for purchasing its own shares and the requirements to be complied with by the Company under the Companies Act before and after the shares are so purchased.

Sol.: Refer to Buy Back provisions (Sec.77A).

Q.No.53. ABC Company Limited at a general meeting of members of the Company pass an ordinary resolution to buy-back 30% of its Equity Share capital. The articles of the Company empower the Company for buy-back of shares. The Company further decide the payment for buy-back to be made out of the proceeds of the Company's earlier issue of equity shares. Explaining the provisions of the Companies Act, 1956, and stating the sources through which the buy-back of Companies own shares be executed. Examine.

- **a.** Whether Company's proposal is in order?
- **b.** Would your answer be still the same in case the Company instead of 30% decide to buy-back only 20% of its Equity Share Capital's

Sol.: Sources of funds: As per Sec.77A, a Company may purchase its own shares/other specified securities (herein after referred to as buy-back) out of:

a. Its free reserves Or
b. The securities premium account Or
c. The proceeds of any shares/other specified securities.

However, buyback of any kind of shares or other specified securities CAN NOT be made out of the proceeds of an earlier issue of the SAME KIND of shares/other specified securities.
Conditions: No Company shall purchase its own shares or other specified securities unless:

a. **A *S.R.*** (special resolution) has been passed in general meeting authorising the buy-back.
b. ***BOD.*** However, a resolution by the B.O.D. (board of directors) is sufficient, instead of a above, if the buy back of shares is LESS THAN OR EQUAL TO 10% of the total paid up capital (equity shares and preference shares) and free reserves.

Taking into account these two provisions, the questions as asked in the problems can be answered as under:

- **a.** The Company's proposal for buy-back is not in order as it has passed only an ordinary resolution and the percentage of 30% buy-back is in violation of the provisions.

b. The answer to the second question shall also be the same since there also the resolution passed by the Company is an ordinary resolution and not special resolution, through the percentage of buy-back, i.e., 20% is not violative.

Q.No.54. Preference shareholders have same voting rights as the equity shareholders.

Sol.: False., In general they have voting right only on matters directly relating to rights attached to preference share capital (**E.g.:** Resolution for winding up of Company, change in dividend rate). (Sec.87)
Exception: But they are entitled to vote on every resolution placed before Company at any meeting, if dividend on such capital in full or in part is remaining unpaid in the case of:

- ***Cumulative preference shares -*** If dividends are in arrears for two years preceding the date of commencement of the meeting.
- ***Non-cumulative preference shares -*** If dividends are has not been paid for 2 financial years immediately preceding the meeting or for any 3 years during the period of 6 years ending with the financial year preceding the meeting.

Q.No.55. Reserve capital can be created out of net profits of the Company?

Sol.: False., Reserve capital is created out of capital of the Company. This is that part of the uncalled capital of the Company which can be called up only in the event of its winding up. A limited Company may, by a special resolution, determine that a portion of its uncalled capital shall be called up in the event of winding up for the purposes of winding up (Sec. 99).

Q.No.56. Companies are not permitted to issue shares by way of donation.
Sol.: True. The Act permits for issue and allotment of shares for cash or some consideration other than cash either at part or at discount or at premium but there is no provision for issue and allotment of shares for no consideration. Issue of shares by way of donation would amount to issue of shares for no consideration and is, thus, invalid in law. (Sec.75)

Q.No.57. Interest can be paid on share capital. Comment.

Sol.: Sec.208 provides for payment of interest to shareholders, if following conditions are satisfied:

a. The ***AOA*** shall authorise such payment ***Or*** a S.R. shall be passed authorising such payment.
b. The ***permission*** from the C.G. shall be obtained.
c. The ***rate of interest*** will be determined by C.G. and it shall not exceed 12%.
d. Before permitting the payment, the C.G. may appoint a person for enquiry.
e. ***Time limit:*** The payment of interest shall be made only for such period as may be determined by the central government.

Q.No.58. 500 equity shares in 'XYZ' Limited were acquired by Mr. 'B'. But the signature of Mr. 'A', the transferor, on the transfer deed was forged. Mr. 'B'. After getting the shares registered by the Company in his name, sold 200 equity shares to Mr. 'C' were not aware of the forgery. What are the rights of Mr. 'A', 'B' and 'C' against the Company with reference to the aforesaid shares?

Sol.: Forgery does not confer any title. It is because in case of forgery there is not merely an absence of free consent but there is not consent at all. Hence a forged transfer can never

confer ownership upon the transferee thereof, however genuine the transAction may appear. Thus, if a transfer is forged and the Company registers the transfer, the true owner can apply to the Company for his name to be placed back in the register. As a forged transfer is a nullity, Mr. A, the original owner continues to be the share-holder and the Company is bound to restore the name of transferor in the register of members.
A person who presents a transfer of shares for registration by a Company thereby represents that the instrument of transfer is genuine, and if it turns out to be a forgery, the Company is not stopped from denying his title to the shares, even though he did not know that the transfer was forged when he presented it. Consequently, even if the Company issues a share certificate to the person who presents the transfer, and he relies on it, the Company may remove his name from the register of members and he cannot claim damages for wrongful removal. Therefore, B the transferee is not entitled to the shares on the contrary, he is liable to indemnify the Company against the consequences of the damages which may have to be paid by the Company to the true owner of the shares.
According to Sec.84(1) of the Companies Act, a share certificate specifying any shares held by any member is a prima face evidence of the title of the member to such shares of the Company has issued a share certificate to the transferee and he has sold the shares to an innocent purchaser, the Company cannot deny his title, for the certificate stops it from doing so. Therefore the innocent purchaser is entitled to compensation from the Company.
Q.No.59. A' Commits forgery and there by obtains a certificate of transfer of shares from a Company and transfers the shares to 'B' for value Acting in good faith. Company refuses to transfer the shares to 'B'. Whether the Company can refuse? Decide the liability of 'A' and of the Company towards 'B'.

Sol.: A forged transfer is a nullity. It does not give the transferee concerned any title to the shares. Since the forgery is an illegality therefore it cannot be a source of a valid transfer of a title. Although the innocent purchaser acting in good faith could validly and reasonably assume that the person named in the certificate as the owner of the shares was really the owner of the shares represented by the certificate. Even then the illegality cannot be converted into legality. Therefore, in this case Company has right to refuse to do the transfer of the shares in the name of the transferee B.
Here, as regards to the liability of A against 'B', A does not stand directly responsible according to provisions of Company law as he has already committed forgery which is illegal but A is liable to compensate the Company as he has lodged the forged transfer and the Company has suffered the loss.
As regards to the liability of the Company towards B, the Company shall be liable to compensate to B so far as the Company had issued a certificate to transfer and was, therefore, stopped from denying the liability accruing from its own Act. Further as the Company has refused to register him as a shareholder, Company has to compensate B. However, in this case the interest of the original shareholder will be protected.

Q.No.60. Sushil, a shareholder, holding 100 shares in XYZ Ltd. applied to the Company for issuing of a duplicate shares certificate. As a Company secretary advise the Company with particular reference to the circumstances and conditions subject to which duplicate shares certificates can be issued.

Sol.: Section 84(2) provides that a certificate may be renewed or a duplicate of a certificate may be issued if such certificate:

- **a.** Is proved to have been lost or destroyed or
- **b.** Having been defaced or mutilated or torn is surrendered to the Company.

For the term and conditions on which duplicate certificates may be issued, Companies (issue of Share Certificates) Rules.1960 has to be followed. A duplicate share certificate cannot be issued unless:

a. The consent of the Board is taken.
b. Payment of fees, if any, not exceeding Rs.2 is made by the shareholder.
c. Proper evidence and indemnity to the satisfaction of the Company is furnished.
d. Out of pocket expenses estimated to be incurred by the Company in investigating the evidence, as the Board may think fit, are deposited with the Company.
e. The fact that the certificate is duplicate should be inscribed with the words "duplicate issued in lieu of share certificate no".
f. Mutilated defaced or torn certificates surrendered shall be defaced by a cancellation mark and destroyed after three years with the authority of the Board.

A Company can, however, issue a duplicate share certificate only to a registered shareholder.

Q.No.61. Is a share warrant holder a member of the Company?

Sol.: No, the share warrant holder is not member of the Company. As per Sec.115 on issue of share warrant the Company shall strike out name of the person from its register of members. As per Sec.41 of the Act, a person can become a member of the Company by agreeing in writing to become the member of the Company and whose name is entered in the Register of Members of the Company.

Q.No.62. Every Company is required to keep the share certificate ready for delivery within three months from the date of allotment.

Sol.: False., Under Sec.113 every Company is required to deliver (Not ready for delivery) the share certificates within a period of 3 months from the date of allotment and within 2 months from the date on which the certificates are lodged with the Company for transfer.

Q.No.63. Under Sec.113 the NCLT can grant extension of time for delivery of shares certificates.

Sol.: Under section 113 of the Act, the NCLT has been vested with the powers to extend the duration within which the certificates for debentures are to be delivered by the Company to the debenture holders. The NCLT is not vested with similar powers in respect of share certificates.

Q.No.64. Share warrants can be issued against fully paid up preference share also.

Sol.: A public Company limited by shares, if so authorized by its articles, may, with the previous approval of the Central Government, with respect to any fully paid-up shares, issue under its common seal, a warrant stating that the bearer of the warrant is entitled to the shares therein specified. The words used in the section are "fully paid-up shares". Under the section, there is no distinction between the equity shares and preference shares and thus, the Company can issue share warrants in respect of fully paid preference shares also. (Sec.114)

Q.No.65. X Ltd. is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. `X' a shareholder of the X Ltd., deposits in advance the remaining amount due on his shares without any calls made by X Ltd. Discuss the rights and liabilities of Mr. X, which will arise on the payment of calls in advance.

Sol.: A Company may, if so authorised by the articles, accept from any member the whole or a part of the amount remaining unpaid on any shares, although no part of that amount has been called up.

Rights & Liabilities of payment of calls in advance:

- **a.** ***Voting rights:*** The shareholders are not entitled to voting rights in respect of the calls so paid in advance by them until the same would become presently payable.
- **b.** ***Liability:*** The shareholder's liability in respect of the call for which the advance call is paid, is extinguished.
- **c.** ***Interest:*** The shareholder is entitled to claim interest on the amount of the call. If there are no profits, interest must be paid out of capital. The rate of interest can be up to as provided in articles of association. Table A provides payment of interest at 6% p.a.
- **d.** ***Non refundable:*** The amount received as calls in advances is not refundable.
- **e.** ***Rank before:*** In the event of winding up, the shareholder must be paid of his amount with interest, if any, before other shareholders are paid off.

Q.No.66. Strict compliance with the Articles is necessary for forfeiture of shares.

Sol.: Yes. Forfeiture of shares is governed by the provisions of the articles of association of the Company and there should be strict compliance with the procedural formalities in respect of forfeiture of shares.

Q.No.67. A Company refuses to register transfer of shares made by X to Y. The Company does not even send a notice of refusal to X or Y within the prescribed period. Has the aggrieved party any right(s) against the Company for such a refusal? Advise.

Sol.:

1. ***When entitled to remedy:***
   - **a.** If a Company refuses to register the transfer or transmission of shares or debentures, it shall, within 2 months from the date on which the application for transfer or transmission was delivered to the Company, send notice of such refusal to the applicant, giving reasons for such refusal.
   - **b.** The applicants may appeal to the NCLT against any refusal of the Company to register the transfer or transmission, or against any failure to send notice of its refusal within 2 months.
2. ***Time limit for application:***
   - **a.** Within 2 months of receipt of notice of refusal or
   - **b.** Where no reply has been received within 4 months of lodging documents for registration.
3. ***NCLT Decision.*** NCLT after the enquiry, direct the Company to accept the transfer/transmission or to rectify its register. NCLT has the power to pass interim orders including suspending the voting rights till the enquiry is complete. It may also direct the Company to pay the damages to the aggrieved person.
4. The order of NCLT shall be complied within 10 days of the receipt of the order.

5. ***Penalty.***

a. Default in complying with the order of NCLT will invite the Company and every officer of the Company who is in default punishable with a fine which may extend to Rs.10,000 and with a further fine which may extend to Rs.1000 per day during which the default continues.

b. Default in complying with this section will invite the Company and every officer of the Company who is in default punishable with a fine which may extend to Rs.500 per day during which the default continues.

Q.No.68. The Company, without serving a proper notice, forfeited shares held by Mr. P Can Mr. P Claim rectification of the register of members.
Sol.: Yes. Mr. P can claim rectification of register of members of the Company where shares held by him are forfeited by the Company without serving a proper notice for the same. (Sec.111)

Q.No.69. Instrument of transfer is not required to be executed in case of transmission.
Sol. True., when the shares are transferred under the operation of law, either on the death of the shareholder or on his becoming insolvent or when the shareholder is the Co. and such Co. goes into liquidation. For this no transfer deed & payment of stamp duty is required. (Sec.109)

Q.No.70. Before registering transfer of partly paid up shares the Company is required to give a registered notice to the transferor.

Sol.: If transfer is of partly paid up shares and application for transfer is made by transferor transfer not to be registered by the Company, unless Company gives notice of application to the transferee, and transferee makes no objection to the transfer within two weeks from the receipt of notice. Notice deemed to be duly given if despatched by prepaid registered post to the transferee at address given in instrument of transfer. Board of Directors on satisfaction of above steps, recognise the transferee as new holder. (Sec.110)

Q.No.71. Charge can be created on Reserve Capital?

Sol.: False., Sec.125 of the Companies gives the list of assets on which charge can be created.

a. A charge on any immovable property.
b. A floating charge on the undertaking or any property of the Company including stock in trade.
c. A charge for the purpose of securing any issue of debentures.
d. A charge on uncalled share capital of the Company.
e. A charge on calls made but not paid.
f. A charge on the book debts of the Company.
g. A charge on Goodwill, Patent, License.
h. A charge created outside India comprising property situated outside India.
i. A charge created in India comprising property outside India.
j. Purchase of a property in India but already subject to charge.
k. Purchase of a property situated abroad but already subject to charge.

The list given above does not contain “Reserve Capital’ and, thus, no charge can be created on it.

Q.No.72. The Company was offered a term loan of Rs.200 crores by a financial institution against the security of entire fixed assets of its two factories situated in Alwar & Parwanoo. After repayment of more than 75% of the loan amount the financial institution agreed to release fixed assets of one of its factory from charge. State whether Company can file part satisfaction of charge or it would amount to modification of charge.

Sol.: The concept of partial satisfaction of charge is not there. Satisfaction shall be in full only. These amounts to modification of charge and the Company will have to file particulars of modification of charge, for registration. (Sec.135)

Q.No.73. Charge can be created on assets which are in possession of the Company on the date of creation of charge.

Sol.: False., Charge can be created even on assets which will come into Company's possession at any future date e.g. future debts, current assets etc. This is called floating charge.

Characteristics of a floating charge:

a. It is a charge on a class of assets of the Company, both present and future. It does not mean only those assets which were in existence when the charge was created.
b. The class of assets charged is one which in the ordinary course of business, is changing from time to time.
c. Until some steps are taken to enforce the charge by the creditors, the Company may continue to deal with the assets charged in the ordinary course of business.
d. The possession of assets charged is not given to the charge (i.e. creditors).

Q.No.74. ABC Ltd. observed on 2nd May, 2001 that particulars of charge created on 12th March, 2001 infavour of a Bank were not filed with the Register of Companies for Registration. What procedure should the Co. follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2001 instead of 12th March, 2001? Explain with reference to the relevant provisions of the Companies Act, 1956.

Sol.: The prescribed particulars of the charge together with the copy of instrument of charge shall be filed with the Registrar within 30 days after the date of the creation of charge. In this case particulars of charge have not been filed within the prescribed period of 30 days. However, the Registrar is empowered to extend the period of 30 days by another 30 days on payment of such additional fee not exceeding 10 times the amount of fee specified on Schedule X. Taking advantage of this provision, ABC Ltd., should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause for not filing the particulars of charge within 30 days of creation of charge.
If the charge was created on 12th Feb., 2001, then the Co. has to apply to the NCLT under Sec.141 and seek extension of time for filing the particulars for registration. The Co. must satisfy the NCLT that the omission was accidental or due to some other sufficient cause or was not of the nature to prejudice creditors, or that it is just and equitable to grant relief on the other grounds. On such satisfaction, the NCLT may extend the term for the registration of charge on such terms and conditions as it may think fit.

Q.No.75. A meeting was properly convened and was subsequently adjourned by the Chairman. No fresh notice is given for the adjourned meeting which is held subsequently. State whether the adjourned meeting is valid.

Sol.: According to sec.174 of the Companies Act 1956, if within half an hour from the time appointed for holding a meeting of the Company, a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same time and place unless the directors determine otherwise. No Fresh notice is, therefore, required to hold the adjourned meeting. Besides, no quorum is necessary in the adjourned meeting. Thus, the adjourned meeting in question is valid.

Q.No.76. The Chairman counts six votes in favour and seven against the resolution. Can the chairman cast his own vote, which he had not exercised earlier, in favour of the resolution and also casting vote which the Articles authorise and declare the resolution as passed?

Sol.: The Chairman after ascertaining the sense of the meeting by show of hands, that 6 votes are in favour and 7 are against the resolution, may before declaration of result cast his vote in favour of the resolution and also the casting vote and declare the resolution as passed.

Q.No.77. The articles of association of M/s. QPR Private Limited provides that 5 members present in person constitute the quorum. The total number of members of the Company is also 5. A general meeting of the Company was held on 25/1/1999 and it was attended by 4 members as the 5th member had expired sometime earlier. In the said meeting a resolution was passed by a majority of 3 to 1 removing one Mr. Doubtful as a director for indulging in anti Company Activities. Mr. Doubtful challenges the validity of the resolution on the ground of lack of quorum in terms of the Articles of Association. Discuss with reference to the relevant provisions of Companies Act whether the contention of Mr. Doubtful is correct.

Sol.: Section 174 of the Companies Act, 1956 stipulates that unless the articles of association of the Company provide for a larger number, two members personally present shall constitute quorum in case of Private Company. Hence a private Company may provide a larger number for quorum. The general principle is that if no quorum is present, the meeting and the proceedings are void. However, there can be situations when quorum becomes immaterial. If all the members are present, it is immaterial that the quorum required is more than the total number of members thus in this case. Mr. Doubtful cannot successfully challenge the resolution.

Q.No.78. The Articles of Association of X ltd., require the personal presence of six members to constitute of General Meetings. The following persons were present at the time of commencement of an extraordinary general meeting to consider the appointment of Managing Director.

1. Mr. G. the representative of Governor of Gujarat.
2. Mr. A and Mr. B shareholders of Preference shares.
3. Mr. L., representing M Ltd N Ltd and X Ltd.,
4. Mr. P, Mr. Q, Mr. R and Mr. S who were proxies of shareholders.

Can it be said that quorum was present? Discuss.

Sol.: In this case quorum for a General meeting is six members to be personally present. For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting. Again, only members present in person and not by proxy, are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purpose of quorum.

If a Company is a member of another Company, it may authorize a person through resolution to act as its representative at a meeting of the other Company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum (Section 187).

Where two or more companies appoint a single person as their representative, then each of such company will be counted quorum at a meeting of the latter Company.

Again, section 187 a provides that the President of India or Governor of State if he is a member of a Company may appoint such person, as he thinks fit, to Act as his representative at any meeting of the Company. A person so appointed shall be deemed to be a member of such a Company and, thus considered as member personally present.

In view of the above there are only four members personally present, namely, Mr. G and Mr. L (representing three Companies and thus effectively equal to three members) Mr A and Mr. B the preference shareholders have been excluded since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have any voting rights. Thus it can be said that the requirement of quorum being six, four members personally present shall not constitute a valid quorum.

Q.No.79. Immediately upon conducting the last general meeting held in July, the Chairman went overseas for medical treatment. Accordingly, the minutes of the said meeting could not be signed by him. To meet the requirements of the law, he sent a letter of authority to the secretary authorizing the latter to sign the minutes on the former's behalf. Can the Secretary Act on the letter of authority? if not, what procedure should be followed?

Sol.: Each page of the minute book should be signed and in the last page of the record of proceedings of each meeting in the minutes book shall be dated and signed by the Chairman of the said meeting. In the event of death or inability of the chairman, by the director duly authorised for the purpose. The Company Secretary cannot carry out the said function, although he had been authorised by the Chairman.

Q.No.80. If a Chairman of General Meeting is unable to sign minutes of General meeting he may authorize any other person to sign the minutes on his behalf.

Sol.: False., Provisions of section 193(1A)(b) provides that the minutes of the proceeding of the general meeting shall be signed by the chairman of the same meeting within a period of 30 days or in the event of death or inability of the chairman by a Director duly authorized by the Board for the purpose.

Q.No.81. The required quorum is not present within ten minutes of the scheduled time of holding of annual general meeting.

Sol.: Quorum is the minimum number of members of a Co. whose presence is necessary for commencing the meeting. If within half an hour for the time appointed for holding a meeting of the Co., a quorum is not present, the annual general meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as determined by the Board. In the present case, as the quorum is not present within 10 minutes of the scheduled time of holding the annual general meeting, the legal position is that the people present will have to wait for another

20 minutes to ascertain whether requisite quorum is present or not, before any decision regarding the conduct of the meeting can be taken.

Q.No.82. XYZ Ltd. wants to hold its annual general meeting on Sunday, the 30th June to facilitate the share holders to attend it. Advise the legal position.

Sol.: According to the provisions of Section 166(2) read with Section 171(1) every Annual General Meeting should be called with at least 21 clear days notice and must be held on a day other than a public holiday i.e., it should be held on a working day during business hours. It is clarified that if any day is declared by the Central Government to be a public holiday after the issue of the notice convening such a meeting, it shall not be deemed to be a public holiday in relation to the meeting. In view of the above mentioned provisions, XYZ Ltd. cannot hold the AGM on Sunday, the 30th June as Sunday is a public holiday.
Q.No.83. Mr. X a shareholder of 100 equity shares of P Limited sent a letter to the Company that the notice of annual general meeting is to be sent to him only by registered post. Is Company under obligation to accept such a request from the shareholder?

Sol.: The Company is under obligation to accept such requests subject to the condition that the expenses to be incurred by the Company for giving the notice by registered post are deposited by the member with the Company, in advance. (Sec.53) In the given case since Mr. X has not deposited any such amount the Company is under no obligation to accept request.

Q.No.84. Pref. shareholders, not being entitled to exercise voting rights are not entitled to attend the general meeting also.

Sol.: False., What the Act prohibits is only their exercise of voting but not the attendance of the meeting. Further they have the right to receive the notice of general meeting of the Company and therefore, the right of preference shareholder to attend the general meeting of the Co. is implied.

Q.No.85. Every Company limited by guarantee must hold a statutory meeting within the time limit prescribed under section 165 of the Act.

Sol.: False., In accordance with the provisions of section 165 only public Companies having share capital or public Companies limited by guarantee and having share capital are required to hold the statutory meeting and, thus, a Company limited guarantee and having no share capital is not required to hold annual general meeting.

Q.No.86. A copy of the statutory report is required to be filed with the Registrar of Companies after having been placed before the shareholders in the statutory meeting.

Sol.: False., In accordance with sub-section (5) of section 165, a copy of the statutory report is required to be filed with the Registrar immediately after having been sent to the shareholders.

Q.No.87. If a Company fails to hold the AGM it may be ordered to hold the annual general meeting by the central government on an application made by any person interested in the Company.

Sol.: False., In accordance with the provisions of section 167 of the Act if a Company fails to hold the annual general meeting it may be ordered to hold the annual general meeting by the Central government on an application made by any member of the Company.

Q.No.88. Even a single person present in the annual general meeting held on instructions of the central government constitutes valid quorum.

Sol.: False., Sec.167 provides that the central government while issuing instructions for holding the annual general meeting on a complaint of a member may also issue a direction that even a single member present in the meeting shall constitute a valid quorum. Thus, except where special orders are made by the C.G., single member present in the meeting will not constitute quorum.

Q.No.89. All ordinary business are required to be transacted by ordinary resolution and all special businesses are required to be transacted by special resolution.

Sol.: False., All ordinary businesses are normally transacted through ordinary resolutions except the appointment of auditor under Sec. 224A where the appointment of auditor is required to be made by passing a special resolution. All special businesses are not compulsorily required to be transacted by special resolution. The kind of resolution depends on the provisions of the Act & Articles of the Co.

Q.No.90. 30th June & 31st December have been declared as Public holidays under the negotiable Instrument Act, 1881. Hence, AGM of any Company shall not be held on these dates.
Sol.: False., 30th June & 31st December have been declared as public holiday under the negotiable Instrument Act, 1881 only for the limited purpose of closing of accounts of banks\treasuries etc, and, thus, these two dates shall not be treated as public holiday for the purpose of holding annual general meeting of the Company.

Q.No.91. The shareholders need not disclose reasons for requisitioning extraordinary general meeting while submitting a requisition to the Company therefore.

Sol.: True. In the case of LIC Vs. Escorts Ltd. the Supreme Court has laid down that every shareholders has statutory right to call an extraordinary general meeting and he is not bound to disclose the reason for the resolution proposed to be moved at the general meeting.

Q.No.92. If quorum is not present within 30 minutes from the appointed time in a general meeting called on a requisition of members of the Company the meeting stands dissolved.

Sol.: True. Sec.174 provides that "If within half an hour from the time appointed for holding a meting of the Company, a quorum is not present, the meeting, if called, upon the requisition of members, shall stand dissolved".

Q.No.93. Quorum is required to be present throughout the meeting.

Sol.: As per Reg.49 of Table A, quorum should be present at the commencement of the meeting and subsequent absence thereof will not invalidate the proceedings. In case of own articles, in the absence of a provision similar to Reg.49, then it is presumed that quorum should be present throughout the meeting.

Q.No.94. The articles of association of a Company provided that the proxy to be valid shall be deposited at least 24 hours before the commencement of the general meeting. The Company cannot prescribe less than 48 hours time.

Sol.: False., The provisions of the Act provide that the articles of a Company cannot provide more than 48 hours time for lodging the proxy. This even, if articles of Company require proxy to be deposited more than 48 hours before the commencement of the meeting, that shall have effect as if 48 hours time has been provided. However, Companies are free to provide any time less than 48 hours for the same purpose in their articles.

Q.No.95. A resolution put to vote in the general meeting shall be decided by poll unless a demand is made for deciding the matter by show of hands.

Sol.: False., Section 177 provides that, at any general meeting, a resolution put to vote of the meeting shall, unless a poll is demanded, be decided on a show of hands. Therefore, the poll is to be taken only when demanded.

Q.No.96. Poll demanded on the question of election of Chairman and on the question of adjournment of the general meeting must be taken forthwith.

Sol.: True. In accordance with the provisions of section 175 and section 180 of the Act, poll demanded on the question of election of chairman and on a question of adjournment of the meeting shall be taken immediately.

Q.No.97. A body corporate can be represented in the general meeting of any other Company of which it is a member, only by its managing directors.

Sol.: False, Section 187 provides that the Companies shall be represented in the general meeting of the other Companies through any person duly authorized by a resolution and that the presence of such person in the general meeting shall be considered as personal presence of the body corporate represented by him.

Q.No.98. An annual general meeting is called on a fixed day. After the sending of the notice of the meeting, the Government notifies that date as a public holiday. Can be meeting proceed as scheduled?

Sol.: Yes, the meeting can proceed, as scheduled. According to Sec.166 (2) of the Companies Act, 1956 an annual general meeting must be held on a day which is not a public holiday. But if the date of AGM becomes a public holiday after issue of notice - Meeting can be held on such public holiday.

Q.No.99. A preference shareholder has lodged a complaint with the Company for not receiving notice of an annual general meeting. The secretary of the Company contends that he was not entitled to such notice. Advise the shareholder.

Sol.: The shareholder contention is right and he is entitled to the notice of the annual general meeting. According to section 172 of the Companies Act, 1956, notice of every general meeting of a Company shall be given to every member of the Company. A preference shareholder is also a member because, under the Companies Act, every shareholder- whether ordinary or preference- is a member. As such, he is entitled to the notice of the meetings. In the given problem, the preference shareholder should have been issued a notice and the contention of the secretary is wrong.

Q.No.100. Will a person representing one Company under Sec.187 of the Companies Act, 1956, in addition to representing himself as a member in general meeting of a Company, be counted as two persons for the purpose of quorum?

Sol.: Yes, the person representing one Company under Sec. 187 of the Companies Act, 1956, and also himself as a member shall be counted as two persons for purposes of quorum at general meetings of a Company. This is because of the fact that a person representing a Company Sec. 187 is deemed to be a member of the Company. As he presents himself in two different capacities, he is to be counted as two persons.

Q.No.101. At an adjourned meeting (Which was adjourned previously for want of quorum) of a public Company, the chairman after waiting for half-an-hour after the schedule time finds that only 3 persons are present. Can he declare the meeting closed for want of quorum?

Sol.: No, the chairman cannot declare the meeting closed for want of quorum. In case of a public Company, five members personally present shall be the quorum for a general meeting. But, the Companies Act, if at the adjourned meeting, a quorum is not present within ½ hour from the time appointed for holding the meeting, the members, present shall be a quorum. This being an adjourned meeting, the members present constitute the quorum and, thus, the chairman cannot declare the meeting closed for want of quorum in this case.

Q.No.102. The Governor of a State is a member of a Company and has appointed X as his representative for the purpose of attending meetings. His representative is unable to attend the forthcoming general meeting. Can anything be done in these circumstances?

Sol.: Sec. 187-A of the Companies Act, 1956, provides that a person so appointed is entitled to exercise the same rights and powers as the Governor could exercise. Since a member is entitled to appoint a proxy in his place to attend the meeting of the Company, therefore, a representative of the Governor by virtue of Sec. 187-A of the Companies Act, 1956, is also entitled to appoint a proxy who can attend the meeting on behalf of the representative.

Q.No.103. A proxy duly executed by one of the joint shareholders was lodged 48 hours before the commencement of an adjourned general meeting of a Public Ltd Co. If the proxy so lodged valid?

Sol.: No, the proxy lodged is invalid Sec. 176 of the Companies Act, 1956, provides that an instrument appointing a proxy must be in writing and must be signed by the appointer. In other words, the proxy form must be signed by the member who desires to appoint a proxy. However, where the shares are held jointly by two persons, obviously, such right can be exercised by both of them jointly. As such, in case the shares are held jointly by two or more person, the proxy form must be signed by all of them. Accordingly in the given problem as the proxy has been executed by one of the joint shareholder's it is invalid.

Q.No.104. XYZ Co. Ltd. called its AGM on 7th September 1997. The notice of AGM was posted on 16th August 1997. One member holding 20 shares wishes to challenge the resolutions passed at the AGM on the ground that the notice was not valid. Advise him.

Sol.: According to Companies Act a general meeting of a Company may be called by giving not less than 21 days notice in writing. Not less than 21 days means 21 clear days i.e. excluding both the date on which the notice was served and the date of the meeting. In case the notice of the general meeting is sent by post, service notice of the meeting shall be deemed to have been effected at the expiry of 48 hours after it was posted. In the instant case, the notice was short of one day:

16th August to 7th September	23 days
Less. date of service and date of meeting	2 days
Less. 48 hours of positing but 24 hours are common between date of service and 48 hours of posting.	1 day
Total Days.	20 days

Therefore, the meeting was invalid and the resolutions passed were invalid. However in case of AGM, where all members entitled to vote consent, the meeting may be held on shorter notice.

Q.No.105. Examine the validity of the following proxies and suggest remedies where possible.

a. L, a member of a private Company, appoints B and C as proxies dividing his voting rights between them. B and C are not members of the Company.

b. X, the director of Y Limited is authorized to represent Y Limited at the general meeting of ABC Limited. He in turns appoints a proxy Z.

c. Y, a member of a Company not having share capital, appoints a proxy. Articles of the Company are silent as to the power to appoint proxies.

Sol.:

a. In case of private Companies only one proxy can be appointed (proviso b to 176) and the proxy need not be a member.

b. By virtue of Section 187, if a Company is a member of another Company, it may appoint a representative to vote. A person authorised by resolution as aforesaid shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the body corporate. Therefore the proxy Z is a valid one.

c. In the case of a Company not having share capital, the right to appoint a proxy is available only if the Articles make a specific provision about the same and therefore appointment is invalid. The Company would have to pass a special resolution to alter the Articles of Association; when the same is done, this power may be exercised by the members.

Q.No.106. The paid up share capital of ABC Limited is Rs. 5 lakhs consisting of 50,000 equity shares of Rs.10 each fully paid-up. Certain members of the Company holding the following shares requisitioned an extra-ordinary general meeting on 1.2.2000: A - 2,250 shares, B - 2,000 shares including 500 bonus shares C - 1,000 shares including 500 rights shares. The directors have failed to call the meeting on the contention that the articles have not permitted the same. What is the course of Action open to the aforesaid members?

Sol.: As per sec.169 of the Companies Act the members of a Company may also ask for an extraordinary meeting to be held.
Persons entitled to requisition. A requisition for convening an extraordinary general meeting may be made by member***(s)****:*

- **a.** Holding 10% of the paid-up share capital of the Company and having a right to vote at the date of deposit of requisition, on the matter to be discussed ***Or***
- **b.** Company has no share capital, members having 10% of the voting power of all members having a right to vote at the date of deposit of the requisition, on the matter to be discussed.

Here the total share capital held by the requisitionists amounts to Rs. 52,500 and exceeds one tenth of the total of Rs. 5 lakhs as on the date of requisition on 1.2.2000. Bonus and rights shares are at par with ordinary shares and are to be included in arriving at the eligible value. Therefore the requisition is a valid one. Members can call themselves an EGM called requisitionists meeting satisfying the conditions like time limit, number of required members etc.

Q.No.107. Examine the validity of the following:

- **a.** J, a member of a private Company, being unable to attend a meeting of the members of the Company appoints more than one proxy on the same occasion. The articles of association of the Company are silent on this issue.
- **b.** D, a member of MR & Company Limited, holding shares in his own name on which final call money has not been paid, is denied voting right at a general meeting of the Company on the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him.

Sol.:

- **a.** As per the Companies Act, unless the articles otherwise provide a member of a private Company shall not be entitled to appoint more than one proxy to attend on the same occasion. Thus based on the above provisions, J in the given case cannot, appoint more than one proxy on the same occasion. Since the articles of the Company also do not provide for the above, he cannot do so.
- ***b. Restrictions on voting rights - Section. 181.***

- The AOA may prohibit any member from excersing the voting rights if any call money is due on such shares on the date of voting.(If such a provision is not available then a member cannot be prevented from exercising his voting right).
- A public Company or a dependent Company shall not put any other restriction on voting rights other than given under Sec.181 of the Act.
- However, an independent private Company can provide in their AOA further restrictions like only holders of shares for a specified period alone can exercise voting rights.

Q.No.108. State whether the following persons can be counted for the purpose of quorum in a General Meeting of a Public Company.

a. A person representing three member Companies.
b. Both the joint owners of shares are present at the meeting.

Sol.:

a. A representative of a body corporate appointed under Sec.187 is a member personally 'present' for purposes of counting of quorum. If one individual represents three member Companies, his presence be counted as three members being present in person for purpose of quorum.

b. ***Joint shareholders.***

- In the case of joint holders it would be seen prima facie that any one of them may be counted in a quorum.
- It should be noted that Act specifically provides that for certain purposes where two or more persons hold any shares jointly, they shall be counted only as one member. (***E.g.*** Under Sec.3(1) (iii) for the purposes of counting the number of members in a private Company).
- If the Act does not provide anything to the contrary, it appears that two or more joint holders when personally present can be counted as so many members for the purpose of quorum.
- Further, in a case, it has been held that two joint holders are each member and are to be counted towards a quorum as two members personally present.

Q.No.109. Examine the va1idity of the following:

a. The Board of Directors of a Company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given reasons for the resolutions proposed to be passed at the meeting.
b. The Board of Directors refuse to convene the extra ordinary general meeting on the ground that the requisitions have not been signed by the joint holder named first in the register in respect of the shares held by the joint share holders.
c. Holding of extra general meeting at a place other than the village in which the registered office of the Company is situated, on the ground that it is more

convenient for the members to attend the meeting at a place other than the village in which the registered office of the Company is situated.

d. Adjournment of extra ordinary general meeting called upon the requisition of the members on the ground that the quorum was not present at the meeting.

Sol.:

a. Action of the Board of Directors in the given case is not valid in view of the Supreme Court decision in LIC Vs. ESCORTS LTD. Requisitionists are not bound to give reasons for the resolutions proposed to be passed at the meeting.

b. Sec.169 provides that, in the case of joint shareholders requisition signed by one shareholder is sufficient. The Action of the Board of Directors is not valid.

c. Provisions of Sec.166(2) of the Companies Act, 1956 apply to AGM. EGM can be held at any place. In the given case Action of the Board of Directors is bonafide and hence it is valid.

d. In the given case unless the Articles of the Company otherwise provide, the meeting shall stand dissolved, if called upon the requisition of members, in case the quorum is not present with half hour from time appointed for a meeting of the Company.

Q.No.110. The quorum for a general meeting of a Company is 9 members personally present according to the provisions in the articles of association of the Company. Examine with reference to the relevant provisions of the Companies Act, 1956 whether there is proper quorum at a general meeting of the Company, which was attended by the following persons.

a. 7 members personally present out of which 2 members are also proxies for 5 members.

b. 5 members represented by proxies who are not members of the Company.

c. One person representing two member Companies.

Sol.: In this case, the quorum for a general meeting is 9 members personally present according to the provisions in the Articles of Association of the Company. For the purpose of ascertaining quorum, only members present in person and not by proxies, are to be counted. If a Company is a member of another Company, it may authorise a person by a resolution to Act as its representative at a meeting of the latter Company, then such a person shall be deemed to be a member present in person and counted for the purposes of quorum. Where two or more Companies being members of another Company appoint a single person as their representative, then each of such Companies will be counted in quorum. Hence the meeting is attended by 9 members personally consisting of 7 members personally present & 2 member companies and there is proper quorum.

Q.No.111. Any document sent to the member by the Company will be deemed to have been delivered to him on expiry of 48 hours from the time of delivery.

Sol.: False., Sec.53 provides that the notice of a meeting shall be deemed to have been served on members at the expiration of 48 hours after the letter containing the same is posted and in case of any other documents to be served on members it shall be deemed to have been delivered at the time at which the letter would be delivered to him in the ordinary course of post.

Q.No.112. MR Co. Limited could not hold its first AGM with in 18 months from the date of its incorporation. The Board of Directors of the Company by a resolution decide not to call first AGM at all on the ground that most of the directors were outside India on a business trip and since the Company was under gestation period it would cost the Company heavily. Referring to the provisions of the Act, examine whether:

a. The Board of Directors decision is legally justified.
b. What course of Action is open to the Company if one of the members writes to the Company for holding the meeting though the statutory time limit is over?

Sol.: According to Section 166 of the Companies Act, 1956 every Company shall in each year hold in addition to any other meetings a general meeting as its AGM and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one AGM of a Company and that of the next. The ***First*** AGM of the Company must be held within 18 months from the date of incorporation of the Company. If the AGM is held within that period and consequent to which the Company had not held an AGM in the year of incorporation or in the following year there is no violation of the Act. Further the Registrar may extend the time within which any AGM (not being the first AGM) shall be held by a period not exceeding three months.
Thus, applying the above provisions, the questions can be answered as follows:
a. The Board of Directors decision is not legally justified. Holding of First AGM is a statutory requirement. No Company can be exempted from this.
b. The course of Action open is that any member should apply to the CG under Section 167 and the CG in turn shall call or direct the calling of a general meeting of the Company with necessary directions and a meeting held according shall be an AGM. The member should approach the CG and seek its assistance to fulfill his demand. Member may, therefore, be advised accordingly.

Q.No.113. Examine the possibilities of the following:
- **a.** Signing of minutes of general meeting of a Company by a person other than the Chairman of the said meeting.
- **b.** Holding of annual general meeting of a Private Company in New Delhi when its registered office is situated in Lucknow.

Sol.:
- **a.** As per the Companies Act the minutes of the proceedings of a general meeting must be signed by the chairman of the same meeting within a period of 30 days of the conclusion of such meeting. But in the event of death or inability of that chairman within that period, the minutes of the said general meeting may be signed by a director duly authorised by the Board for the purpose.
- **b.** As per the Companies Act every annual general meeting of a Co. must be held either at the registered office of the Co. or at some other place within the city, town or village in which the registered office of the Co. is situate. But the proviso to Sec.166(2) permits a Private Co. which is not a subsidiary of a public Co. to fix a place for holding the AGM by a resolution agreed to by all the members. So it is possible to hold the AGM in New Delhi provided it is agreed by all the members by a resolution and the private Company is not subsidiary of a public Company.

Q.No.114. A & B are joint-holders of 1,000 shares in ABC Ltd. which has adopted Table A as its Articles. For the general meeting of the Company, A whose name stands first in the order of names executes a proxy authorising X to attend the meeting. On the other hand B appoints Y as his proxy for the meeting.
a. Of the two proxies X and Y who will have the right to attend and vote in the meeting?
b. Would it make any difference to your answer if A's proxy is registered first with the Company and B's proxy is registered later?
c. What would be your answer if B personally attends the meeting?

Sol.:

a. According to regulation 57 of Table A, in the case of joint holders of shares, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. As such, the seniority shall be determined by the order in which the names stand in the register of members. Unless the Company has modified Regulation 57 of Table A, the proxy appointed by A will have the right to attend and vote in the general meeting. Y, the proxy appointed by B, will have no right to attend and vote in the meeting.

b. The proxy appointed by A will be valid. The time of its lodgment with the Company is immaterial. Though B has lodged his proxy later, but as given above (Regulation 57 of Table A) it cannot supersede A's proxy.

c. After giving a proxy if a member personally attends the meeting and votes thereat, the proxy is automatically cancelled. If B personally attends the meeting, both the Proxies X and Y shall be revoked.

Q.No.115. A Company served a notice of a general meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complains that the amount of the proposed increase was not specified in the notice. Is the notice valid?

Sol.: Section 173 of the Companies Act, 1956 requires a Company to annex an explanatory statement to every notice for a meeting of Company, at which some Special Business to be transacted. This explanatory statement is to bring to the notice of the members all material facts relating to each item of special business. Section 173 further specifies that all business in case of any meeting other than annual general meeting is regarded as special business. Thus, the objection of the shareholders is valid since the details on the item to be considered are lacking. The notice is, therefore, not a valid notice under Section 173 of the Companies Act, 1956.

Q.No.116. The secretary of a Co. while sending out to members of the Co. notices of a special resolution to be proposed at the AGM inadvertently omitted to send notice to one member. The resolution was passed at the meeting. Discuss whether the resolution is valid or not.

Sol.: Section 172(3) of the Companies Act requires that proper notice must be served on all the persons entitled to receive such notice. Deliberate omission to give notice even to a single member entitled to receive notice, shall invalidate the proceedings of the meeting. But, however, it provides that an accidental omission to give notice to a member or if the member does not receive the notice, the meeting cannot be held invalid. Thus, in the present case, the resolution shall be valid since the omission is stated to be inadvertent (i.e. unintentional).

Q.No.117. The auditor of a Company complains that he was not given notice of a recently held general meeting of the Company. The secretary of the Company contends that as no part of the business of that meeting concerned the auditor, no notice was required to be given to him. Do you agree with the secretary? If the auditor attends a general meeting, can he participate in the meeting?

Sol.: The contention of the secretary is not correct. The auditor has a statutory right under Companies Act to receive all notices of any general meeting of a Company, which any member is entitled to have sent to him. Failure to send notice of general Meeting to the

Company's auditor, whether he is concerned or not with any part of the business to be transacted at the meeting, amounts to a default on the part of the Company. Sec.231 further entitles the auditor of a Company to attend any general meeting of the Company. He cannot participate in the meeting.

Q.No.118. Discuss the validity of the following: ABC (Pvt.) Ltd. provides in the Articles of Association of the Company special requirements for the forms of proxy. 'Z', a member, submits a form of proxy to the Company in the form given in Sch. IX of Companies Act. The Company rejects the proxy.

Sol.: Section 176(6) provides that an instrument appointing a proxy, if in any of the forms set out in Schedule IX shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the Articles. The aforesaid provisions are applicable to both public as well as private Companies. Accordingly, Company is guilty of wrongful rejection.

Q.No.119. The Registrar of Companies on examining the statutory report filed by M/s De Jyoti Company Ltd finds that the report has been certified as correct, by all the directors of the Company except the Managing director. The ROC refused to register the document on the ground that it is not signed by the Managing Director of the Company, and further wants to hold the Company liable to penalties for non-compliance of the provisions of the Companies Act. State in this connection

- **a.** What provisions of the Companies Act have not been complied with by the Co. and its officers?
- **b.** Whether the Registrar of Companies can hold the officers of the Company liable?

Sol.:

- **a.** Sec.165 of the Companies Act, 1956 requires the statutory report to be certified as correct by at least two directors of the Company one of whom must be a managing director, where there is one. Thus, the aforesaid provision of Section 165(4) has not been complied with.
- **b.** Yes, the Registrar can hold the officers of the Company liable.

Q.No.120. At an annual general meeting held on 25th Sept. 1989, the auditor was appointed to hold office up to the conclusion of next annual general meeting. The next annual general meeting was convened on 20th September, 1990 but stood adjourned without transacting any business. Does the retiring auditor continue in office?

Sol.: According to the Companies Act, 1956, an auditor who is appointed at an annual general meeting holds office from the conclusion of that AGM to the conclusion of the next AGM. In the given case, the auditor was to hold office up to conclusion of the AGM duly convened but which stood adjourned. As the adjourned meeting is merely a continuation of the original meeting, the retiring auditor continues to hold the office till the conclusion of meeting.

Q.No.121. Annual general meeting of a public Company was scheduled to be held on 15.12.1899. Mr.X, a shareholder, issued two proxies in respect of the shares held by him in favour of Mr.A and Mr. B. The proxy in favour of Mr. B was lodged on 12.12.1989 and the one in favour of Mr. A was lodged on 15.12.1989. The Company rejected the proxy in favour of Mr.B as the proxy in favour of Mr. B was dated 12.12.1989 and that in favour of Mr.A was dated 13.12.1989. Is the rejection by the Company in order?

Sol.: In case more than one proxies have been appointed by a member in respect of the same meeting, one which is **later in time** shall prevail and the earlier one deemed to have been revoked. Thus, in the normal course, the proxy in favour of Mr. A, being later in time, should be upheld as valid. But as per Sec.176. A proxy should be deposited 48 hours before the time of the meeting. In this case, the proxies should have, therefore, been deposited on or before 13.12.1989 (the date of the meeting being 15.12.1989). But, Mr. A deposited the proxy on 15.12.1989. Therefore, proxy in favour of Mr. A has become invalid. Thus, rejecting the proxy in favour of Mr. B is unsustainable. Proxy in favour of Mr. B is valid since it is deposited in time.

Q.No.122. Once annual General Meeting was called by a Company in December 1994. This meeting was adjourned to march 1995 and then held. Subsequent meeting was held in February 1996. Is the Company liable for any irregularity?

Sol.: Sec.166 of the Companies Act, 1956 requires a Company to hold its annual general meeting every calendar year. Thus, in the above case the meeting held in March 1995 is actually the meeting of December 1994. Since, the next meeting is held only in February 1996, the meeting of December 1995 has been missed. Under these circumstances, unless permission of the registrar was obtained for extension of time, which may be granted up to a period of 3 months under certain special circumstances, the Company shall be convicted.

Q.No.123. At an adjourned extraordinary general meeting of a public limited Company only three members are personally present. Comment.

Sol.: As per Section 174(5), if a meeting is adjourned for want of quorum and at the adjourned meeting also quorum is not present within half-an hour from the time appointed for holding the meeting, the members present shall be quorum. Assuming that the given situation, i.e. adjournment of the meeting is caused because of absence of quorum, the above-stated position will prevail. Accordingly, three members who are personally present can validly conduct the meeting. But if adjournment has taken place for any reason other than absence of quorum, the quorum as per Articles or at least five members must be present.

Q.No.124. M, a foreign shareholder, receives notice of the annual general meeting after it was held.

Sol.: Under Sec.53 of the Companies Act a Company is required to serve notice of meeting on foreign shareholders only if they have left their Indian address. Further, in such cases it would be enough if the notice excluding the explanatory statement is advertised in a newspaper circulating in the neighbourhood of the Registered Office of the Company. However, the fact that the explanatory statement has been sent along with the notice of the meeting should be mentioned in the advertisement. Therefore, ‘M’ attention should be drawn to the notice published in the newspaper.

Q.No.125. At a general meeting of a Company a matter was to be passed by a special resolution. Out of 40 members of the Company 20 voted in favour of the resolution, 5 voted against it and 5 votes are cancelled. The remaining 10 members abstained from voting. The chairman declared the special resolution as passed. Is the decision valid?

Sol.: In case of a special resolution votes cast in favour of the resolution must be atleast three times the votes cast against it. Votes cancelled or votes of members who abstain from voting are not taken into account. In the given case, since the votes cast in favour(20) are more than three times the votes cast against the resolution(5) the decision of the chairman treating the resolution passed is valid.

Q.No.126. Dividend can be paid on the basis of called up capital.

Sol.: False. Dividend shall be paid up only on paid up capital. (Sec.93)

Q.No.127. Under section 205 Companies defaulting in compliance with the provisions of section 80A can not pay dividend on equity share till default continues.

Sol.: True. Section 80A relates to redemption of irredeemable preference shares. Sec.205 of the companies act provides that the Company which fails to comply with the provisions of Sec.80A shall not declared any divided on its equity shares as long as the failure continues.

Q.No.128. Dividend cannot be paid in kind.

Sol.: True. Sec.205 provides that the dividend shall be paid in cash and that issue of fully paid- up Bonus shares is not prohibited by capitalizing the profits or reserves of the Company.

Q.No.129. Company can adjust amount of dividend payable to a shareholder against any sum due to it from the shareholders.

Sol.: True. As per Sec.207 the dividend payable by the Company to any person can be lawfully adjusted by the Company against any sum due to it from the shareholders.

Q.No.130. Strike in postal dept. could be a valid reason for delay in dispatch of dividend warrants?

Sol.: True. Sec.207 provides that the Company shall not attract any penalty for delay in payment of dividend for any other reasons not due to any default on the part of the company.

Q.No.131. Academic qualification of a member is also required to be entered in the Register of Members of the Company.
Sol.: False., Sec.150 of Act requires the following to be entered in Register of Members:

- **a.** The name and address, and the occupation, if any, of each member;
- **b.** In the case of a Company having share capital, the shares held by each member, distinguishing each share by its member and the amount paid or agreed to be considered as paid on those shares;
- **c.** The date at which each person was entered in the Register as a member; and
- **d.** The date at which the person ceased to be a member.

The particulars mentioned above are the only particulars of a member which are required to be entered in the Register of Members maintained by the. There is no requirement of entering academic qualification of the members in the Register of Members.

Q.No.132. All private limited Companies are required to maintain index of members.

Sol.: False., Under section 151 every Company in which number of members exceed 50 is required to maintain an alphabetical index of all the members. Private limited Companies, generally, do not have more than 50 members and thus these are not required to maintain an index of members. However, if number of members in private Companies also exceeds fifty, then such Companies will also be required to maintain index of members.

Q.No.133. Company can maintain its books of account on single entry system of accounting.

Sol.: False., Sec.209 provides that the Company shall not be deemed to have maintained proper books of account unless these have been maintained on accrual basis and on double entry system of accounting.

Q.No.134. In accordance with the provisions of section 2 (17) of the Act "financial year" refers to a period of 12 months
Sol.: False., Under Sec.2(17) "financial year" means", the period in respect of which any profit and loss account of the Company is made up, whether that period is a 12 months or not. Financial year of Company may extend up to 18 months.

Q.No.135. Any partnership firm having more than 20 partners is necessarily required to be registered under the Act as a Company?

Sol.: True. An association of more than 10 persons carrying on the business of banking Or An association more than 20 persons carrying on any other type of business, not registered under the Companies Act or any other law is an 'Illegal Association' (Sec.11). In such a case such association must have to be registered under the Companies Act or any other Indian law.

Q.No.136. Mr. M applied for allotment of shares in the name of Mr.Dara. Subsequently it transpired that the particular application made in the name of Mr.Dara was in fictitious name. Did Mr. M. incur any penalty under the Companies Act, 1956?

Sol.:

a. ***1st Declaration.*** Sec.187C provides that a person, whose name is entered in the register of members of a Company as the holder of a share in that Company but who does not hold the beneficial interest (called registered holder) in such shares, shall make a declaration to the Company in the prescribed form specifying the name and other particulars of the person who holds the beneficial interest in such share. Such declaration shall be made by the registered holder within 30 days after his name is entered in the register of members.
b. ***2nd Declaration.*** Similarly a person who holds a beneficial interest in a share of a Company, shall, within 30 days after his becoming such beneficial owner, make a declaration to the Company in the prescribed form specifying the particulars of the person in whose name the shares stand registered.

c. ***Penalty.*** If the registered holder or the beneficial owner fails to make the aforesaid declarations, without any reasonable excuse to do so, he shall be punishable with the fine up to Rs.1000 for every day during which the default continues.

Q.No.137. The name of Shri A.K. Modi appears in the register of members of XYZ Ltd. as holding 5,000 Equity' shares of Rs.10 each. However, according to the information given to you, Shri R.S. Darna is the beneficial owner of the said shares. Advise XYZ Ltd. about the procedure to be followed under the provisions of the Companies Act.

Sol.: Refer to the previous question.

Q.No.138. The rates of equity dividend declared and paid by a Company are as follows: Year 2002 - 15%, Year 2001 - 12%, and Year 2000 - 12%. The Company has earned sufficient profit after tax in 2003 and wishes to propose a dividend on equity shares at 11% of the current profits. It also wishes to transfer more than 10% of Current Profits to its Reserves. The Company did not issue bonus shares during last few years. The Company's PAT for the past years are: Year 2003 - Rs. 10.00,000, Year 2002 - Rs.17,00,000, Year 2001 - Rs. 15,00,000, and Year 2000 - Rs. 18,00,000. Comment on whether the Company is allowed to transfer a higher rate of profits to Reserves.

Sol.: A company may transfer a higher percentage of profits (i.e., more than 10%) by satisfying the below given conditions:

a. ***Minimum rate:*** The company is to maintain a rate of dividend for the current year equal to the average rate of dividend for the immediately preceding 3 years. In the given case, the average rate of dividend for the previous three years =(15+12+12)/3=13% and higher than the proposed dividend rate of 11%. Hence, the first condition is not satisfied.
b. ***Minimum amount:*** Where bonus shares have also been issued in the financial year in which the dividend is declared or in the 3 years immediately preceding the financial year, a minimum amount of dividend equal to the average amount of dividend declared over the 3 years immediately preceding the financial years is to be maintained. In the given case, there is no bonus issue and this condition is hence not applicable.
c. ***However***, if the ***PAT*** for the current year is lower at least 20% compared to the average PAT for the immediately 2 preceding years, the company will not be required to ensure the maintenance of the average ***rate/amount*** of dividend mentioned earlier. In the given case, PAT of the current year is Rs.10 lakhs, which is 37.5% [(16-10)/16] lower than that of the average of the immediately preceding two years Rs.16 lakhs. [(17+15)/2 Years] The Company may take advantage under this exception.

THE PAYMENT OF BONUS ACT

Q.No.1. An employer had been paying to his employees every year at the time of Deepawali one month's basic wages as Deepawali Bonus for the last 10 years, in addition to the bonus payable under the Payment of Bonus Act. The bonus had been paid even in those years when there were losses. The employer now wants to adjust Deepawali Bonus paid by him for the current accounting year against the bonus payable by him under the Act, for the current accounting year. State whether it is possible for the employer to make the above adjustments.

Q.No.1a) An employer had been paying to his employees every year at the time of 'Diwali' one month's basic wages as bonus for the last 10 years, In addition to the bonus payable under the P.B. Act,1965. The bonus had been paid even in those years when there were losses. The employer now wants to adjust 'Diwali' bonus paid by him for the current accounting year against the bonus payable by him under the Act for the current accounting year. State with reference to the provision of the Payment of Bonus Act, 1965, whether it is possible for the employer to make the above adjustment.

Sol.: According to Sec.17 of the Payment of Bonus Act, if the employer has paid in any accounting year, Deepawali, Puja or any customary bonus to his employees, the employer is within his rights to deduct the amount of bonus so paid from the amount of bonus payable by him under the Act in respect of that accounting year. Thus, the employer can deduct/adjust the Deepawali bonus already paid against the bonus payable under the Act and the employees shall be entitled to receive only the balance.

Q.No.2. A person has worked only for 35 days in an accounting year. Is he eligible or entitled to be paid bonus by his employer for that year?

Sol.: The employee in the given case has not worked for all working days in an accounting year. Sec.13 provides for proportionate reduction of bonus in such cases. The employees shall hence be entitled to bonus for 35 working days only as a ratio of the bonus payable for the total working days.

Q.No.3. X, a temporary employee drawing a salary of Rs.3,000 per month, in an establishment to which the Payment of Bonus Act, applies was prevented by the employers from working in the establishment for two months during the financial year 2001-2002, pending certain inquiry. Since there were no adverse findings 'X' was re-instated in service. Later, when the bonus was paid to other employees, the employers refuse to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Examine the validity of employer's refusal?

Sol.: The employee in the given case has not worked for all working days in an accounting year. Sec.13 provides for proportionate reduction of bonus in such cases. (Sec.13) But Sec.13 does not cover a case where an employee was prevented from working by reason of an illegal order of termination. Thus based on the above, the refusal by the employers to pay bonus to X is not valid and he (X) is entitled to get bonus.

Q.No.4. A Company in a particular accounting year suffered losses and hence was not able to pay even the minimum bonus to its workmen. State in this connection, whether the minimum bonus is payable irrespective of losses and any circumstances that the Company may get exemption under the Payment of Bonus Act, 1965.

Sol.: As per the act, minimum bonus is payable whether or not the employer has any allocable surplus in the accounting year i.e. even if the employer suffers losses during the accounting year he is bound to pay this. However, exemption can be granted by the central government - Write Sec.36.

Q.No.5. In an accounting year, a company to which the payment of Bonus Act, applies, suffered heavy losses. The Board of Directors of the said company decided not to give bonus to the employees. The employees of the company move to the Court for relief. Decide in the light of the provisions of the said Act whether the employees will get relief?

Sol.: As per the act, minimum bonus is payable whether or not the employer has any allocable surplus in the accounting year i.e. even if the employer suffers losses during the accounting year he is bound to pay this (Sec.10). Applying the provisions of as contained in Section 10 the employees shall succeed and they are entitled to be paid minimum bonus at rate 8.33% of the salary or wage earn during the accounting year or Rs. 100 (Rs. 60 in case of employees below 15 Years of age), whichever is higher.

Q.No.6. Mr. Sharma is a supervisor in a factory drawing a salary of Rs.3,500 per month. In a particular accounting year he was on one month leave with salary. His employer declared minimum bonus as per the Payment of Bonus Act, to all eligible employees. State in this connection:

- **a.** What shall be the salary that shall be taken into account for the purpose of calculating bonus payable to him?
- **b.** What shall be the total bonus payable to him in that accounting year?
- **c.** What would be your answer if the company suffers losses in that accounting year?
- **d.** Is bonus payable to him if he was illegally terminated?

Sol.:

- **a.** Where the salary or wage of an employee exceeds Rs.2,500 per month, the bonus payable to such employee shall be calculated as if his salary or wages were Rs.2,500 per month. In the instant case, Mr. Sharma is drawing a salary of Rs.3,500 per month. For the purpose of bonus his salary shall be taken at Rs.2,500 per month.
- **b.** The total bonus payable to him in that accounting year shall be Rs.2,500 X 12 X 8.33%. For the purpose of calculating the total working days, leave with salary or wages shall be deemed to the working days of an employee. (Sec.14)
- **c.** Even if the company suffers losses, the employer has to pay the minimum bonus.
- **d.** Where an employee was prevented from working by reason of an illegal order of termination, Sec.13 and 14 do not apply.

Q.No.7. A Company could not pay bonus to its employees even after the expiry of six months from the close of its accounting year. Can the employees sue the employer for this reason?

Sol.: All amounts payable to an employee by way of bonus shall be paid in cash by his employer, within a period of 8 months from the close of the accounting year. This period of 8 months may be extended upto a maximum of 2 years by the appropriate government, on an application being made by the employer. Since the periods of 8 months have not expired, employees cannot sue the employer.

Q.No.8. An employee drawing a salary of Rs. 5,000 per month is entitled to Bonus. True/false.

Sol.: False. As per the Payment of Bonus Act, 1956, an employee employed on a salary or wage not exceeding Rs. 3,500 per month is entitled to Bonus.

Q.No.9. S joins as a worker with Gokale Sugar Factory on 2nd February, 04. Will he be eligible for Bonus for the financial year 2003- 04?

Sol.: Sec.8 of the Payment of Bonus Act provides that an employee is entitled to bonus if he has worked in the establishment for not less than 30 days. Since S has worked for more than 30 days in the accounting year, he would be eligible for Bonus for 2003-04.

Q.No.10. T Ltd. Carried on three business ventures viz., manufacturing sugar, cement and heavy engineering machinery, locating them in three different places in North India. They employed workmen on different terms in the different units. One of these units was financially feeling ill. The workers of this unit demanded bonus on the basis of treating these three units as one composite establishment. Can the workmen succeed in getting bonus?

Sol.: The payment of bonus act provides that, where an establishment consists of different departments or has branches, all such departments or branches shall be treated as part of the same establishment. Therefore the workmen succeed in getting bonus.

Q.No.11. State whether an employee is eligible for payment of bonus for the following period -

a) An employee laid off under an agreement.
b) An employee on casual leave for 5 days in a year.
c) A woman employee on maternity leave.
d) An employee absent due to temporary disablement.
e) An employee prevented from working by reason of legal order of termination.

Sol.: The eligibility of the following categories of employees to bonus are discussed below
a) An employee laid off under agreement - Eligible for bonus for the period of so laid off (Sec.14)
b) An employee on casual leave - Eligible for bonus for the period of such leaves (Sec.14) as casual leaves are generally leave with salary.
c) Woman employee on Maternity Leave - Eligible if she has been on leave with salary wages. If she has been absent i.e. with salary /wages, she is not eligible for that period of absence.
d) An employee absent due to temporary disablement eligible only if the temporary disablement is caused by accident arising out of and in course of employment
e) An employee prevented to work by order of legal termination is eligible for bonus for that period.

Q.No.12. In an accounting year, A company to which the Payment of Bonus Act, 1965 applies, suffered heavy loss. The B.O.D of the Company decided not to give bonus to the employees. The employees of the company move to the court for relief. Decide in the light of the provisions of the said Act, whether the employee will get relief (PEII May 2003).

Sol.: The employees are entitled to get minimum bonus even if the company suffered any loss. As per Sec.10 of Act, Every employer shall bound to pay to every employee a minimum bonus which shall be 8.33% of salary/wages earned by the employee during the accounting year or Rs. 100 whichever is higher, whether or not the company has allocable surplus. In case of an employee who has not completed 15 years of age, such min. bonus would be Rs. 60 or 8.33% of the salary/wages, whichever is higher. In the present problem, Employer is liable to pay minimum bonus to the employee.

Q.No.13. Can the appropriate Government exempt an establishment from payment of statutory minimum bonus? If so under what circumstances?

Sol.: As provided in Sec.36 of Payment of Bonus Act, 1965, If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment is of the opinion that it will not be in public interest to apply, all or any of, the provisions of the Act thereto, it may by notification in the Official Gazette exempt such establishment for such period as may be specified therein and subject to such conditions as it may think fit.

Q.No.14. Mr. K, Who is a casual employee of PQR Company actually worked in a year for 27days. However, he was absent due to temporary disablement caused by an accident arising out of and in the course of his employment for 7 days and has been laid off for 2 days as per the service agreement. Is he eligible to bonus under the Payment of Bonus Act, 1965?
Sol.: As per Sec.8 of the Payment of Bonus Act, 1965, An employee is eligible to bonus if he has worked for not less than 30 working days in the company. Further as provided in Sec.14 of the said Act, and employee shall be deemed to have worked on the days on which he has been laid off under agreement or as permitted by the standing order of the company or under the I.D. Act, 1947 or has been absent due to temporary disablement caused by accident arising out of and in course of his employment.

In the given problem, Mr. X has worked for 27 days, temporarily absent for 7 days due to accident arising out of and in the course of employment and laid off for 2 day as per an agreement. Therefore, the total day's eligible for bonus = 27+2+7= 36 days and Mr. X is eligible for bonus under the Payment of Bonus Act, 1965.

Q.No.15. For the financial years 2001-02, 2002-03 and 2003-04 the amount of available surplus allocable as bonus to all employees of the company were Rs. 6,35,000, Rs. 2,20,000 and Rs. 3,75,000 respectively. Maximum amount of bonus payable to all employee of the company as per the Payment of Bonus Act, 1965 is Rs. 2,50,000 for each of the said years. In terms of the provisions of the said Act calculate the amount a company can pay as bonus to its employees, the amount set on in such year and the cumulative set on amount at the end of the year 2003-04.

Sol.: Considering Sec.15 of P.B. Act, Given problem can be solved in the following way:

Year	**Avbl Surplus Allocable as bonus (Rs.)**	**Amount of bonus payable (Rs.)**	**Set on or set off or Year c/f (Rs.)**	**Cumulative set on or set off (Rs.)**
2001-02	6,35,000	2,50,000	50,000	2,50,000
2002-03	2,20,000	2,50,000(incl. Rs.30K for 02-03)	Nil	2,20,000
2003-04	3,75,000 2.2L +1.25L)	2,50,000	1,25,000	3,45,000

Q.No.16. State with reference to provisions of the Payment of Bonus Act, 1965 whether the following employees are eligible to payment of bonus in terms of provisions of said Act.

a) An employee working in Life Insurance Corporation of India.
b) Employees of a university or college.
c) Employees employed though contractors on building operation.
d) Employees of National Housing Bank.
e) Employee of Reserve Bank of India.
f) Employees of a Municipal Corporation.

Sol.:Sec.32 of the Payment of Bonus Act, 1965 specially provides employees to whom the provisions of the Act shall not apply. Considering the said provision, the eligibility of the employees in the given problem are stated below.

a. ......not eligible	c. not eligible	e. not eligible
b. .....not eligible	d. not eligible	f. not eligible

Q.No.17. Sri. K. Mukherjee, an employee of Bigboss Ltd. left the company on 30.11.04 on health ground. He was on sick leave since 5th August 2004 and did not work from that date. There was an agreement by the company with its worker in 1998 for payment of bonus to employees. The company refused to pay the bonus for the year 2003-04 and threatened the employees of retrenchment in case of any labour trouble in connection with the bonus issue. Explain in terms of the payment of Bonus Act, 1965

i) What remedy is available to the workers,
ii) Can Sri Mukherjee after leaving the company move to recover amt from company?
iii) What is the power of the appropriate Government to recover the amount?

Sol.: As per Sec.21 of P.B. Act,

(i). Workers can apply to appropriate government for recovery of amount due to them.
(ii). Sri Mukherjee can move to appropriate government within one year from the date the money became due to him.
(iii). The appropriate government if satisfied that any amount is due to Sri Mukherjee, It shall issue a certificate for that amount to the collector who shall collect the amount as an arrear of land revenue.

Q.No.18. Sri. Sanjib is an employee of the Megatele Co. Ltd. There are three trade unions in the company. One of the unions prevented the workers belonging to the workers of another union and as a result Sri Sanjib was prevented from attending to his work for few days. The company paid bonus to its employees during the year 2003-04 but refused to pay full bonus to Sri Sanjib because of his not attending office during the period he was prevented from attending office. Explain in terms of the Payment of Bonus Act, 1965 whether Sri Sanjib would be entitled to bonus for those days.

Sol.: As per Sec.14 of P.B. Act, An employee who is willing to work and is prevented from working is therefore eligible to bonus. Sri Sanjib is entitled to bonus for those periods.

Q.No.19. Sri Bholanath, an employee of Newtele Ltd. destroyed some electronic machines in the company premises after taking alcoholic with his friends in the company premises. He was found guilty and punished under the industrial Disputes Act, 1947. The Company loose huge amount due to break down of the machines. When the company paid bonus in that year to its employees it deducted the amount from the bonus payable to Sri Bholanath and he did not get any bonus in that year. Did the company violate any provisions of the Payment of Bonus Act, 1965 in not paying bonus to Sri Bholanath?

Sol.: As per Sec.18 of P.B. Act, The company can deduct the amount of loss from the bonus payable to Shri Bholanath and it did not violate the provisions of the Act.

***Q.No.* 20. Is an employee entitled to get bonus on the basis of his entire salary or wage?**

If an employee is drawing a salary or wage not exceeding Rs. 3500.00 per month, he is entitled to get bonus on his entire salary or wage. If an employee is getting a salary or wage exceeding Rs. 3500.00 per month, but not exceeding 10000.00 per month, the bonus payable to him is to be calculated as if his salary or wage were Rs. 3500.00 per month. An employee getting a salary or wage exceeding Rs. 10000.00 per month is not entitled to get bonus. {Section 12}

***Q.No.21.*) What is to be included in and excluded from a salary or wage for the purpose of calculating bonus?**

For the purpose of calculation of bonus a salary or wage includes a basic salary or wage and dearness allowance but does not include other allowances, overtime salary or wage, house rent allowance, traveling concessions, bonus, employer's contribution to provident fund, retrenchment compensation, gratuity or commission. {Section 2(21)}

***Q.No.22.*) Is a seasonal worker entitled to get bonus?**

Section 8 relates to the eligibility for bonus. The only requirement of that section is that the employee should have worked in an establishment for not less than thirty working days in an accounting year. Therefore, if a seasonal worker has worked in an establishment for more that thirty working days, he shall be entitled to get bonus.

***Q.No24.*) Can an employee be held ineligible for payment of Bonus under the Act on the ground that he is a managerial employee?**

An employee, irrespective of whether he is managerial or not, so long as he came within the definition of employee by virtue of drawing salary falling within the maximum prescribed under Section 2(13) of the Act, he would be eligible for payment of bonus under the Act.

***Q.No25.*) Who are entitled to be paid bonus?**

Every employee who is drawing a salary or wage upto Rs. 10000.00 per month (w.e.f. 1-4-2006) and who has worked for minimum period of 30 days in a year is entitled to be paid bonus. {Section 2(13) & 8}

***Q.No26.*) To which establishments is the Act applicable?**

The Act is applicable to:

(a) Every factory
(b) Every other establishment employing 20 or more persons. The Government can, however, apply the Act to any establishment employing less that 20 but not less than 10 persons. An establishment to which the Act applies shall continue to be governed by the Act irrespective of any fall in the number of person employed therein. {Section 1}

***Q.No27.*) What is the Object of the Payment of Bonus Act, 1965?** The object of the Act is to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour.

***Q.No28.*) The Model Mills, Nagpur refused to pay bonus to its employees on the ground that its management was controlled by an authorised controller appointed by the Government and as such it was entitled to exemption from the liability to pay bonus. Decide.**
Section 32 of the Payment of Bonus Act, 1965 provides that the Act shall not apply to employees employed by an establishment engaged in any industry carried on by or under the authority of any Department of the Central Government or a State Government or a local authority.
However, in RMS vs. The Model Mills Hon. supreme court has held held that the exemption as aforesaid will not extend to cases contemplated in the given problem, i.e., where the establishment was not under the direct authority of the Central/State Government or local authority. Appointment of a controller may be a temporary phenomenon. The company was, therefore, held liable to pay bonus to its workmen. The claim of the company shall, therefore, be not tenable.

EMPLOYEES PROVIDENT FUND & MISCELLANEOUS ACT, 1952

1) What points and matters should be kept in mind by member while sending application to Employees' Provident Fund organization ?
Instructions for a member while sending application to Employees' Provident Fund Organization:

1. Use the appropriate form for claiming Provident Fund Pension, withdrawal benefit/scheme certificate, Employees' Deposit Linked Insurance benefit, etc. as given below :- Form-19 : To claim final settlement of Provident Fund by a member.
Form-20 : To claim Provident Fund by nominee/legal heir on death of the member.
Form-10-D : To claim pension. (In duplicate : If within state, In triplicate : If outside state.)
Form-10-C : To claim withdrawal benefit/scheme certificate under Employees' Pension Scheme '95.
Form-5IF : To claim assurance benefit under Employees' Deposit Linked Insurance '76 by nominee/legal heir of a member.
Form-31 : To claim temporary withdrawal/advance under Employees' Provident Fund scheme'52.
Form-13 : To effect transfer of Provident Fund/Pension from one A/C to another.

2. Ensure that all columns of the application are filled completely.

3. Information in the application form relating to name, a/c no. should agree with the detailsavailable with Employees' Provident Fund Organization; which were furnished by the employer at the time of enrolling to Provident Fund.

4. Application should be signed by the member/claimant.

5. It should be attested by the former employer. In case attestation by the former employer is not possible, it should be got attested by any other authorized official specified with application form.

6. Application for final settlement can be sent by a member on completion of 2 months from the date of leaving service, if the reason for leaving service is other than superannuation, medical ground, retrenchment and V.R.S./ Female members getting married etc.

7. Desired mode of payment can be given legibly, if the amount involved is more than Rs. 2000/-. The amount will sent by deposit in payees' bank a/c. To facilitate this, Bank a/c no., name and address of the bank should be furnished. An advance stamped receipt should also accompany this application. Application may be supported by the return Form-10, showing the details of leaving service and details of contribution for the year in Form-3A, if not sent earlier by the employer.

2) What is the voluntary rate of Provident Fund contribution by the member?

As per the Act, the member has to contribute at the rate of 10% or 12% of his basic pay, D.A. & retaining allowance if any. In case the member wants to contribute more than this, voluntarily he can do so at any rate he desires. i.e. upto 100% of basic and D.A. But the employer is not bound to contribute at the enhanced rate.

3) What are the modalities to be followed for payment through cheque?

The member has to open an account in the nationalised bank, scheduled bank, urban bank or post office savings bank. He has to furnish the details of bank a/c no. with the full address of the bank in application form. An advance stamped receipt has also to be annexed in the form.For receipt of pension member/claimant has to open an account only in State Bank of India or Punjab National Bank.

4) What is the procedure to be followed by the member if the employer is not attesting his claim forms?

It is the duty of the employer under the Act & Scheme to help Employees' Provident Fund organisation to settle the Provident Fund dues of his employees. He has to complete the prescribed application within 5 days of receipt of forms & hand over it to the member when he leaves the service. When a member finds difficult to get the form attested by the employer, he can get the attestation of any of the following officer & send to the Provident Fund office

1. Manager of a bank.
2. By any gazetted officer.
3. Member of the Central Board of Trustees./ committee/ Regional Committee (Employees'Provident Fund Organization). Magistrate/ Post/ Sub Post Master/ President of Village Panchayat/ Notary Public.

5) What are the periodical returns to be sent by an employer to the Provident Fund Office?

The employer of an un-exempted establishment has to forward the following returns. These returns will include details required under the three schemes namely, Employees Provident Fund Scheme, 1952, Employee Deposit Linked Insurance Scheme,1976 and Employee Pension Scheme, 1995.

a) Form-9(Revised):The details of employees enrolled as members of Employees' Provident FundS'52, Employees' Deposit Linked Insurance'76 & Employees' Pension Scheme'95 on coverage of the establishment- This is to be submitted immediately after coverage, within 15 days of coverage.

b) Form-12A:The details of the contributions recovered form the members & paid along with details of employers' contribution & administrative charges- This is to be submitted monthly by 25th of following month.

c) Form-5:The details of the employees enrolled newly to the Provident Fund- To be submitted along with Form-12A every month within 15 days of the following month.

d) Form-10:The details of the employees leaving service during the month- To be submitted along with form-12A.

e) Challans:The triplicate copy of challans in token of having remitted the Provident Fund dues in the bank- to be submitted along with form-12A every month.

f) Form-2(Revised):Nomination form- To be submitted along with form-5/9.

g) Form-3A:The details of wages & contributions in respect of each member, to be prepared financial year wise- To be submitted to the Provident Fund office by 30th of April every year.

h) Form-6A:Yearly consolidated statement of contributions- To be forwarded yearly along with form-3A. It should be ensured that all the form-3A are entered in form-6A, irrespective of whether the form-3A was forwarded for the broken period and the total dues as per the form-12A for the whole year agrees with the total of form-6A within 30th April.
i) Form-5A:Return of ownership of the establishment- To be forwarded immediately after coverage & whenever there is a change in the ownership, it has to be intimated with in 15 days of change.

j) Specimen signature:Specimen signature of the officer/officers who are authorized to sign the returns/documents relating to Provident Fund forwarded immediately after coverage & whenever there is a change inauthorized officer.

6) What is the procedure to be followed by the member if the employer is not attesting his claim forms?

It is the duty of the employer under the Act & Scheme to help Employees' Provident Fund organisation to settle the Provident Fund dues of his employees. He has to complete the prescribed application within 5 days of receipt [para72(5)] forms & hand over it to the member when he leaves the service. When a member finds difficult to get the form attested by the employer, he can get the attestation of any of the following officer & send to the Provident Fund office

1. Manager of a bank.

2. By any gazetted officer.

3. Member of the Central Board of Trustees./ committee/ Regional Committee (Employees'Provident Fund Organization).

4. Magistrate/ Post/ Sub Post Master/ President of Village Panchayat/ Notary Public.

7) What is nomination?

Every member has to give the details of himself & details of the nominee for Employees' Provident Fund & Employees' Deposit Linked Insurance Schemes and details of family for Employees Pension Scheme, 1995 in form no. 2. A member if, is having a family can nominate any one or more persons to receive the Provident Fund on his death. In case of him having no family he can nominate any other person. Family for the purpose of Employee Provident Fund Scheme'52 means wife/husband, children, whether married or unmarried, including adopted children, if adoption is recognized and dependant parents of member. Employees Deposit Linked Insurance Scheme benefit will be paid to the nominee under Employees Provident Fund Scheme, 1952. For the purpose of Employees Pension Scheme,1995 the member has to furnish the details, such as name, relationship & age of all the family members in the form no. 2. Family for the purpose of Employees Pension Scheme, 1995 means wife/husband & children. Whenever member wants to make a change in the nomination already made for Provident Fund, or to update the details of family for Employees Pension Scheme,1995, he has to send a revised form no. 2. The form no.2 is routed through the employer.

8) Can member change his/her nomination? What if member as not nominated anyone.

He/She can change his/her nomination whenever he/she decides within the framework of rules for such nomination. In other words if he/she has a family, nomination should be in favour of a member(s) of the family. If he/she has no family he/she can nominate anyone he/she wishes. The pension / ROC will be paid to the dependent parents.

9) What is meant by Family under the PF Act ?

Family means employees' spouse and children below 25 years of age.

10) If employee is not a Family Pension Scheme member and he/she is 56 years of age, Can he/she join Family Pension?

Yes, by diverting from his/her Provident Fund balance, Family Pension Scheme contribution from date of his/her joining or 01-03-71, whichever is later.

11) If employee is a Family Pension Scheme Member and he/she has retired after 58 years of age on 15-01-94. Can he/she join the new scheme?

Yes, anyone who has retired by reaching age 58 between 01-04-93 and 15-11-95 may join the scheme by returning the withdrawal benefit along with interest. He will be paid pension with immediate effect, from date of exit provided he has rendered 10 years of contributory service.

12) If employee was a Family Pension Scheme member. He/She has left on 13-12-93 and he/she is 54 years old. He/She has taken his withdrawal benefit. Can he/she join the new scheme?

Yes, by refunding withdrawal benefit together with interest. Thereafter, he/she will be entitled to receive pension from age 58, if he/she completes atleast 10 years of contributory service by then.

13) What is a covered establishment?

Covered establishment is an establishment belonging to the class of industries / other establishments, which has been listed in the schedule appended to the Employees' Provident Fund and Miscellaneous Provisions Act 1952 and where 20 or more persons are employed.

14) Who will be covered by the Pension Scheme?

Every member of the ceased Family Pension Scheme 1971 and anyone who joins any covered establishment on or after 16-11-95 is compulsorily to join this scheme, provided his/her salary/wage is less than Rs. 6500/- per month at the date of appointment.

Q.No.1. Mrs. Tsunami who was an employee of M/s. Backbone Ltd. died in a sudden accident. She had taken a loan from a bank for purchasing a house and the loan was still out standing. After her death her legal representative applied for payment of her P.F dues. The bank lodged a claim with the authorities for payment of its balance loan amount from the P.F dues. Explain with reference to the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952

i) Whether the bank can recover the loan amount from the P.F. dues and

ii) If, Instead of the bank, Mrs. Tsunami had taken any loan from her legal representative what would have been the answer?

Sol.: As per Sec.10(2) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 any amount standing to the credit of a member in the Fund at the time of his death and payable to his nominee shall vest on the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before death of the member and shall not be liable to attachment by any decree or order of any court. So,

i) The bank cannot recover its loan dues from the P.F. dues,

ii) Answer would be same in case the nominee had paid any loan to Mrs. Tsunami before her death.

Q.No.2. M/s Harsh Ltd. has been regularly depositing the P.F. contributions to the Government in respect of the company's contribution as well the employees' contribution. The company is doing well and earning huge profit. But due to reverse market conditions the company suffered loss for the last two years. The management is thinking to reduce the salary/wages of the employees to reduce the company's contribution to P.F. and instead, to pay certain compensatory allowance so that the employee's pay packet remains same. Explain in terms of the provisions of Employee's Provident Fund and Miscellaneous Provisions Act, 1952 whether the company can reduce the salary/wages.

Sol.: As per Sec.12 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, M/s Harsh Ltd. cannot reduce the salary/wages of its employees so that lower contribution will be made by the company to the Fund which will reduce the benefit to the employees under the Scheme.

Q.No.3. M/S Atwal & Co. Pvt. Ltd. is engaged by M/s. Mine managers Ltd. for doing operational work at its mines. There are about 300 employees employed by M/s Atwal & Co. Pvt. Ltd. to do the mining operation. M/s Minemanagers Ltd. deducted from the amount payable to M/s Atwal & Co. Pvt. Ltd. a sum of Rs.2,00,000 being the P.F. contribution of the employees engaged by it. M/s Atwal in response to such deduction, deducted from the employees the entire amount of Rs. 2,00,000 in two installments to which the employees protested. Explain in terms of the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

i) Whether M/s Atwal & Co. Ltd. Can deduct from the salary/wages of the employee;

ii) Whether it can deduct the employee's contribution from the salary/wages paid to the employees in one installment.

iii) Can it recover the amount from the employees by entering into an agreement with employees?

Sol.: As per Sec.8A of Employee's Provident Fund and Miscellaneous Provision Act, 1952,

i). M/s Atwal may deduct the employee's contribution from the salary/wages of employees.

ii). M/s Atwal may deduct the employee's contribution only from the salary/wages of the employees in one or more installments.

iii) M/s Atwal cannot recover the employer's contribution from the salary/wages of the employees even by entering into any agreement with the employees.

Q.No.4. Manorama Group of Industries sold its textile unit to Giant Group of Industries. Manorama Group contributed 25% of the total contribution in pension scheme, which was due before sale under the provisions Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The transferee company (Giant Group of Industries) refused to bear the remaining 75% contribution in the Pension Scheme. Decide in the light of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952, who will be liable to pay for the remaining contribution in case of transfer of establishment and upto what extent? (PE II, Nov' 04)

Sol.: As per Sec.17B of Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Both Manorama Group of industries and giant Group of industries are liable to bear the amount of contribution. However, Giant Group of industries will bear only upto the value of the assets obtained by it.

Q.No.5. The P. F. authorities passed an order in 2000 determining dues from Feedback Co. Ltd. in July 2003 the concerned officer who passed the order issued a notice to the company as to why the amount determined earlier should not be re-determined. Explain in terms of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 as to power of the concerned officer to re-open the case if any amount hand been escaped his determination.

Sol.: Based on Sec.7C of aforesaid Act, the P.F. authorities may re-open the case.