

PAPER – 3 : BUSINESS AND CORPORATE LAWS

QUESTIONS

1. Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance in the light of the following:
 - (i) The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.
 - (ii) The telegram of revocation and letter of acceptance both reached together.
2. Explaining the provisions of the Indian Contract Act, 1872, answer the following:
 - (i) 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 guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability ?
 - (ii) C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability ?
3. What is meant by Anticipatory Breach of Contract?

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, 2007. However, on 1st November, 2007 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.
4. '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?
5. Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide.
6. Sunil delivered his car to Mahesh for repairs. Mahesh completed the work, but did not return the car to Sunil within reasonable time, though Sunil repeatedly reminded Mahesh for the return of car. In the meantime a big fire occurred in the neighborhood and the car was destroyed. Decide whether Mahesh can be held liable under the provisions of the Indian Contract Act. 1872.
7. What is meant by 'Undue Influence'? '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.
8. What is the status of a "finder of goods" under the Indian Contract Act, 1872? What are his rights?
9. Explain the concept of 'misrepresentation' in matters of contract. Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons.
10. "An agreement made without consideration is void. "With reference to provisions of the Indian Contract Act, 1872 examine the validity of the statement and explain the cases in which the statement does not apply.

11. What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.
12. For the purpose of making uniform for the employees, Bansi Bhaiya bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Bansi Bhaiya whether he is entitled to have any remedy under the sale of Goods Act, 1930?
13. Point out the differences between conditions and warranties under the Sale of Goods Act, 1930.
14. With a view to boost the sales Hanuman Automobiles sells a motorcar to Mr. A on trial basis for a period of three days with a condition that if Mr. A is not satisfied with the performance of the car, he can return back the car. However, the car was destroyed in a fire accident at the place of Mr. A before the expiry of three days. Decide whether Mr. A is liable for the loss suffered
15. State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. Examine whether there should be an agreement between the parties in order to constitute a sale under the said Act.
16. J the owner of a Fiat car wants to sell his car. For this purpose he hand over the car to p, a mercantile agent for sale at a price not less than Rs. 50, 000. The agent sells the car for Rs.40, 000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide given reasons whether J would succeed.
17. A contracts to sell B, by showing sample, certain quantity of rape-seed oil described as 'foreign refined rape-seed-oil'. The oil when delivered matches with the sample, but is not foreign refined rape-seed oil. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to B.
18. "Mere sharing in the profits of a business is not a conclusive proof of existence of partnership." Comment.
19. Describe the provisions of Indian Partnership Act. 1932 regarding the admission of minor in the partnership firm. State the rights and liabilities of such minor before or after he attains majority.
20. Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act.
21. Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd.
Explain with reasons:
 - (i) Whether Ram's private estate is liable for the price of the machine purchased by the firm?
 - (ii) Against whom can the creditor obtain a decree for the recovery of the price?
22. Explain the essential elements of a Promissory note. 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. 5000 and all other sums, which shall be due.
23. 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, OH comics 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 gets the cheque encashed from ABC Bank himself?
24. Who is a holder in due course of a Negotiable Instrument? In what respects does he differ from a holder?
 25. 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 ?
 26. Explain the meaning of 'Holder' and 'Holder in due course' of a negotiable instrument. 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 from 'A's banker. Decide.
 27. 'A' draws a cheque for Rs.50,000. When the cheque ought to be presented to the drawee bank, the drawer has sufficient funds to make payment of the cheque. The bank fails before the cheque is presented. The payee demands payment from the drawer. What is the liability of the drawer.
 28. A, a major, and B, a minor, executed a Promissory Note in favour of C. Examine with reference to the provisions of the negotiable Instruments Act, 1881 the validity of the Promissory Note and state whether it is binding on A and B.
 29. J, a shareholder of a Company purchased for his personal use certain goods from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company's account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonoured by the Company's Bank. J, the shareholder of the company was neither a Director nor a person in-charge of the company. Examining the provisions of the Negotiable Instruments Act, 1881 state whether J has committed an offence under Section 138 of the Act and decide whether he (J) can be held liable for the payment, for the goods purchase from the Mall (Departmental Store).
 30. Explain with reference to the provisions of the Payment of Bonus Act the possibility of a non-banking company relying on its Balance Sheet and Profit and Loss Account in the case of a dispute with its employees relating to bonus payable under the Act and the limitations, if any, in this regard.
 31. Explain the provisions of the Payment of Bonus Act, 1965 relating to the following:
 - (i) Adjustment of customary bonus against bonus payable under the Act.
 - (ii) Application of the Act to the establishments in public sector. What is the time limit within which payment of bonus due to an employee under the Act, be paid ?
 32. Specify any six kinds of establishments which are not covered under the Payment of Bonus Act, 1965.
 33. In an accounting year, a company to which the payment of Bonus Act, 1965 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?
 34. On 1st January, 2007, Aryan Textiles Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limit of 30% of their salary wages during the relevant accounting year. It was also agreed by the employees that they will not claim minimum bonus stated under Section 10 of the Payment of Bonus Act, 1965. As per the agreement the employees of Aryan Textiles Ltd claimed annual bonus linked with production or productivity in the relevant accounting year. On refusal of the company the employees of the company moved to the court for relief.

- Decide in reference to the provisions of the payment of Bonus Act, 1965 whether the employees will get the relief? In spite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus.
35. Explain the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 authorising certain employers to maintain a Provident Fund Account.
 36. An employee leaves the establishments in which he was employed and gets employment in another establishment wherein he has been employed. Explain the procedure laid down in the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 in this relation.
 37. State the emoluments paid to employees, which do not come within the purview of "basic wages" under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
 38. State the powers of the Central Government to authorize certain employers to maintain provident fund accounts under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
 39. Explain the provisions of Cooperative Societies Act 1912 with regards to inquiry by the Registrar into the affairs of a society and inspection of books of an indebted society.
 40. Explain the manner in which 'Net Profits' of a Multi-State Cooperative Society can be appropriated. Examine also the validity of the following acts of the society during a particular year:
 - (i) The society declares dividend 11% on its paid-up Share Capital.
 - (ii) The society decides to donate a sum of Rs.10 lakhs out of its 'Net profits'
 41. A Co-operative Society with unlimited liability wants to expel its member, who prejudices the society by his misconduct. For this purpose, the society wants to amend its bye-laws. State the grounds which should be included in the bye-laws of the society so as to expel such member from the membership of the society.
 42. Describe the procedure of registration of a Multi-State Cooperative Society laid down in the Multi State Co-operative Societies Act, 2002. Which are the documents required to be filed at the time of registration of such a society?
 43. Mohan, a member of a cooperative society, registered with unlimited liability, desires to withdraw from the membership of the society. Advise in the light of provisions of the Cooperative Societies Act, 1912, whether Mohan can do so. What will be the consequences of such withdrawal from the society?
 44. A society registered under the Cooperative Societies Act, 1912, likes to invest its surplus funds in the securities of a Public Limited. Whether it is permitted and state other modes of investments under the Act?
 45. A Society registered under the Co-operative Societies Act, 1912, did not allow a non-member to inspect its byelaws. State whether a society can do so? Briefly explain the duties of a society registered under the Co-operative Societies Act, 1912
 46. State whether a Society registered under the Multi-state Co-operative Societies Act, 2002 can issue non-convertible debentures for raising funds for achieving its objectives. Briefly explain the restrictions on loans and borrowings under the Act.
 47. Briefly explain the circumstances under which the Central Government can direct a Multi-state Co-operative Society for special audit of its accounts.
 48. How can a person acquire membership of a public company? Explain in brief, whether shareholders and members are similar?
 49. Illustrate, whether a limited company can become partner in a partnership firm?
 50. Briefly explain the privileges and exemptions for a private company as provided under the Companies Act, 1956.
 51. What do you mean by Proxy? Explain the provisions relating appointment of Proxy under the Companies Act, 1956

52. Explain the procedure for payment of Interim Dividend.
53. Briefly explain the effects of Irregular allotment under the Companies Act 1956.
54. State the types of charges to be registered with the Registrar of Companies and explain the consequences of non-registration of such charges.
55. What is red-herring prospectus? Briefly explain the information memorandum.

SUGGESTED ANSWERS/HINTS

1. The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions

- (i) Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.
 - (ii) If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.
2. (i) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission for the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case the B omits to supply the timber. Hence C is discharged from his liability.
 - (ii) According to Section 136 of the Indian Contract Act, 1872, 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 surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence A is not discharged.
3. **Anticipatory breach of contract** Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived. In such a situation the promisee can claim compensation by way of loss or damage caused to him by the refusal of the promisor. For this, the promisee need not wait till the time stipulated in the contract for fulfillment of the promise by the promisor is over.

In the given problem Dubious Textiles has indicated its unwillingness to supply the cotton shirts on 1st November 2007 itself when it has time upto 31st- December 2007 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, 2007, without waiting upto 31st December 2007. 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.
4. 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.

5. Invitation to offer

The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash in selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell. [Fisher V. Bell (1961) Q.B. 394 Pharmaceutical society of Great Britain V. Boots Cash Chemists].

6. The problem asked in the question is based on the provisions of section 160 and 161 of the Indian Contract Act 1872. Accordingly, it is the duty of the bailee to return or deliver the goods bailed according to the bailor's directions, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed for any loss, destruction of the goods from that time (Section 161), notwithstanding the exercise of reasonable care on his part.

Therefore, applying the above provisions in the given case, Mahesh is liable for the loss, although he was not negligent, but because of his failure to deliver the car within a reasonable time (Shaw & Co. v. Symmons & Sons).

7. Meaning of Undue Influence: Section 16 of the Indian Contract Act, 1872, states that a contract is said to be induced by undue influence where the relations subsisting between the parties are such that the parties are in a position to dominate the will of the other and used that position to obtain an unfair advantage over the other.

A person is deemed to be in that position:

- (a) where he holds real or apparent authority over the other or stands in a fiduciary relation to him;
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of old age, illness or mental or bodily distress.
- (c) where a man who is in position to dominate the will of the other enters into contract with him and the transaction appears to be unconscionable, the burden of proving that it is fair, is on him, who is in such a position.

When one of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and the transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence [section 16(3)]. Every transaction where the terms are to the disadvantage of one of the parties need not necessarily be considered to be unconscionable. If the contract is to the advantage of one of the parties but the same has been made in the ordinary course of business the presumption of under influence would not be raised.

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.

8. Status of a Finder of Goods & his Rights:

A person, who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. He is bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value. He must also take all necessary measures to trace its owner. If he does not, he will be guilty of wrongful conversion of the property. Till the owner is found out, the property in goods will vest with the finder and he can retain the goods as his own against the whole world (except the owner, of course).

A finder of goods has the following rights under the Indian Contract Act, 1872

1. Right of lien: The finder of goods has a right of lien over the goods for his expenses. As such he can retain the goods against the owner until he receives compensation for trouble and expenses incurred in preserving the goods and finding out the owner. But he has no right to sue the owner for any such compensation (Section 168).
 2. Right to sue for reward. The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward. (Section 168)
 3. Right of resale: The finder has a right to sell the goods in the following cases:
 - (a) where the goods found is in danger of perishing;
 - (b) where the owner cannot, with reasonable diligence, be found out;
 - (c) where the owner is found out, but he refuses to pay the lawful charges of the finder; and
 - (d) where the lawful charges of the finder, in respect of the goods found, amount to 2/3rd of its value.
9. Misrepresentation & the Problem: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is there:
1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
 2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
 3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Problem:

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale [Long v. Lloyd, (1958)].

10. Validity of an Agreement without consideration: The general rule is that an agreement made without consideration is void (Section 25). In every valid contract consideration is very important. A contract may only be enforceable when an adequate consideration is there. However, the Indian Contract Act, 1872 contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.
1. Natural Love and Affection: A written and registered agreement based on Natural Love and Affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. A contract in writing, registered on account

of natural love and affection between parties standing near relation to each other are the essential requirements for valid contract though it is without consideration. (Rajlukhee Devee vs. Bhootnath).

2. Compensation for past voluntary services: A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under (Section 25(2)). In order that a promise to pay for the past voluntary services is binding, the following essential factors must exist:
 - (i) the services should have been rendered voluntarily.
 - (ii) the services must have been rendered for the promisor.
 - (iii) the promisor must be in existence at the time when services were rendered.
 - (iv) the Promisor must have intended to compensate to the promisee.
 3. Promise to pay time barred debt: Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].
 4. Agency: According to Section 185 of the Indian Contract Act, 1872 no consideration is necessary to create an agency.
 5. Completed gift: In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 of the Act states "Nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.
11. Destruction of Goods-Consequences:
- (i) In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.
 - (ii) In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

12. Fitness of Cloth

As per the provision of Section 16(1) of the Sale of Goods Act, 1930, an implied condition in a contract of sale that an article is fit for a particular purpose only arises when the purpose for which the goods are supplied is known to the seller, the buyer relied on the seller's skills or judgement and seller deals in the goods in his usual course of business. In this case, the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so. Therefore, the implied condition as to the fitness for the purpose does not apply. Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act [Jones v. Padgett. 14 Q.B.D. 650].

13. Condition and Warranty

S. No.	Basis of distinction	Condition	Warranty
	Nature	A condition is a stipulation which is essential to the main purpose of the contract.	A Warranty is a stipulation which is collateral to the main purpose of the contract.
	Rights	The aggrieved party can repudiate the contract of sale in case there is a breach of a condition	The aggrieved party can claim damages only in case of breach of a warranty.
	Option	A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contended with damages only	A breach of a warranty, can not be treated as a breach of a condition.

14. The problem as asked in the question is based on the provisions of the Sale of Goods Act, 1930 as contained in Section 8. Accordingly, the contract becomes void if the goods are destroyed or do not answer to the description in the agreement before the risk passes on to the buyer. In the given case that the subject matter of the contract i.e Motorcar was destroyed before the transfer of property from the seller to the buyer. Thus the risk passes only when the ownership is transferred to the buyer. Therefore, in the present case Mr. A is not liable for the loss suffered due to the fire accident over which A has no control. Thus M/s. Hanuman Automobiles will have to bear whatever loss that has taken place due to the fire accident.

15. Essentials of Contract of Sale

The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

- (i) There must be at least two parties
- (ii) The subject matter of the contract must necessarily be goods
- (iii) A price in money (not in kind) should be paid or promised.
- (iv) A transfer of property in goods from seller to the buyer must take place.
- (v) A contract of sale must be absolute or conditional [section 4(2)].
- (vi) All other essential elements of a valid contract must be present in the contract of sale.

The Supreme Court has held in the case of "Stare of Madras Vs. Gannon Dunkerley and Co. AIR (1858) S (500)" that according to the law in order to constitute a sale, it is necessary that there should be an agreement between the parties for the purpose of transferring title of goods which of course presupposes capacity to contract, that it must be supported by money consideration that as a result of transaction the property in the goods must actually pass etc.

16. The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:
- (1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
 - (2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.

- (3) The buyer should act in good faith.
- (4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A. A similar decision, in analogous circumstances, was taken in *Folkes v. King*.

17. B has a remedy to repudiate the contract. According to section 15 of the Sale of Goods Act, 1930, when the goods are sold by sample as well as by description, there shall be an implied condition that the goods shall correspond to the sample as well as description. In this case, A supplied refined rape oil which did correspond with the sample but was not correspond to the description of foreign refined rape-oil. Hence the B has the right to repudiate the contract.
18. Sharing of Profit: According to Section 4 of the Indian Partnership Act, 1932, "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all". This clearly reveals that sharing of profits of a business is an important criterion of partnership. But in determining whether it is conclusive evidence of partnership or not, the regard shall be had to the real relations between the parties, as shown by all relevant facts taken together. Section 6 of the Indian Partnership Act, 1932, categorically lays down that receipt by a person of a share of the profits of a business does not by itself make him a partner with the persons carrying on the business as there are number of cases where the persons sharing the profits do not have relationship of partners.

For instance, in the following cases partnership relation does not exist: -

1. Joint owners of some property in sharing of profits or gross returns arising from the property.
2. A leader of the firm who receives a share of profit.
3. A widow or child of a deceased partner who receives a share of profit.
4. A servant or agent who receives a share of profit as part of his remuneration.
5. A person who receives a share of profit in consideration of sale of business or goodwill of the business.

Hence, mere participation in the profits of a trade is not a conclusive evidence of partnership.

19. Minor's Admission into a Partnership Firm: According to Section 11 of the Indian Contract Act, 1872 an agreement by or with a minor is void (*Mohri Bibi Vs. Dharm Das Ghose*). As such, a minor is incapable of entering into a contract of partnership. But with the consent of all the partners for the time being, a minor may be admitted to the benefits of partnership [Section 30(1)]. This provision is based on the rule that a minor cannot be a promisor, but he can be a promisee or a beneficiary.

Position before and on his attaining the age of majority

Position before attaining majority:

Rights:

1. He has a right to such share of the property and of profits of the firm as may have been agreed upon.
2. He has a right to have access to and inspect and copy any of the accounts of the firm but not books. (Section 30(2)).
3. When he is not given his due share of profit, he has a right to file a suit for his share of the property of the firm. But he can do so only if he wants to sever his connection with the firm. [Section 30(4)].

Liabilities:

1. The liability of the minor partner is confined only to the extent of his share in the profits and property of the firm. Over and above this, he is neither personally liable nor is his private estate liable [Section 30(3)].
2. He cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver or Official Assignee.

Position on attaining majority:

On attaining majority such a minor has to decide within 6 months whether he shall continue in the firm or leave it. These six months run from the date of his attaining majority or from the date when he first comes to know that he had been admitted to the benefits of partnership whichever date is later. Within this period he should give a public notice of his choice: (a) to become, or (b) not to become, a partner in the firm.

If he fails to give a public notice, he is deemed to have become a partner in the firm on the expiry of the said six months. [Section 30(5)].

When such a minor elects to become a partner:

1. He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
2. His share in the property and profits of the firm is the share to which he was entitled as a minor partner [Section 30(7)].

When such a minor elects not to become a partner:

1. His rights and liabilities continue to be those of a minor up to the date of the notice.
 2. His share is not liable for any acts of the firm done after the date of the public notice.
 3. He is entitled to sue the partners for his share or the property and profits in the firm [Section 30(8)].
20. Normally it is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are:
- (i) power of expulsion should exist in the partnership deed (contract between the partners).
 - (ii) power has been exercised by the majority of the partners in good faith.

The test of good faith includes:

- (a) that the expulsion must be in the interest of the partnership;
- (b) that the partner to be expelled is served with a notice; and
- (c) that the partner has been given an opportunity of being heard.

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.

Further the invalid expulsion of a partner does not put an end to the partnership and it will be deemed to continue as before.

21. Partnership Liability: The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35. The Section provides that where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death. Therefore, considering the above provisions, the problem may be answered as follows:
- (i) Ram's estate in this case will not be liable for the price of the Machinery purchased. [Bagel Vs. Willer]

- (ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was no debt due in respect of the goods in Ram's life time. [Bagel vs. Willer].

22 Essential Elements of a Promissory Note:

1. must be in writing.
2. Promise to pay: The instrument must contain an express promise to pay.
3. Definite and unconditional: The promise to pay must be definite and unconditional. If it is uncertain or conditional, the instrument is invalid.
4. Signed by the maker: The instrument must be signed by the maker, otherwise it is incomplete and of no effect. Even if it is written by the maker himself and his name appears in the body of the instrument, his signature must be there. An agent of a trading firm can sign a promissory note on behalf of the firm- (Meenakshi v. Chettiar).
5. Certain parties: The instrument must point out with certainty as to who the maker is and who the payee is. When the maker and the payee cannot be identified with certainty from the instrument itself, the instrument, even if it contains an unconditional promise to pay, is not a promissory note.
6. Certain sum of money: The sum payable must be certain and must not be capable of contingent additions or subtractions,
7. Promise to pay money only: The payment must be in the legal tender money of India.

Answer to Problem: In the case number 1, the payment to be made is fifteen days after the death of B. Though the date of death is uncertain, it is certain that B shall die. Therefore the instrument is valid.

In the second case- the sum payable is not certain within the meaning of Section 4 of the Negotiable Instruments Act, 1881- Hence the Promissory Note is not a valid one.

23. According to Section 130 of the Negotiable Instrument Act, 1881 a person taking cheque crossed generally or specially bearing in either case the words 'Not Negotiable' shall not have or shall not be able to give a better title to the cheque than the title the person from whom he took had. In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect.

Thus based on the 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. As Mr. Cleaver in the case in question had obtained the cheque fraudulently, he had no title to it and could not give to the bank any title to the cheque or money; and the bank would be liable for the amount of the cheque for encashment. (Great Western Railway Co. v. London and Country Banking Co.)

The answer in the second case would not change and shall remain the same for the reasons given above.

Thus J in both the cases shall be successful in his claim from ABC bank.

24. Holder In Due Course: It means any person who, for consideration became its possessor before the amount mentioned in it became payable. In the case of an instrument payable to order, 'holder in due course' means any person who became the payee or endorsee of the instrument before the amount mentioned in it became payable. In both the cases, he must receive the instrument without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. In other words, holder in due course means a holder who takes the instrument bona fide for value before it is overdue, and without any notice of defects in the title of

the person, who transferred it to him. Thus a person who claims to be 'holder in due course' is required to prove that:

1. on paying a valuable consideration, he became either the possessor of the instrument if payable to order;
2. he had come into the possession of the instrument before the amount due thereunder became actually payable; and
3. he had come to possess the instrument without having sufficient cause to believe that any defect existed in the title of transferor's from whom derived his title.

Distinction between Holder & Holder in Due Course:

1. A holder may become the-possessor or payee of an instrument even without consideration, whereas a holder in due course is one who acquires possession for consideration.
 2. A holder in due course as against a holder, must become the possessor payee of the instrument before the amount thereon become payable.
 3. A holder in due course as against a holder, must have become the payee of the instrument in good faith i.e., without having sufficient cause to believe that any defect existed in-the transferor's title.
25. The problem stated in the question is based on the provisions of the Negotiable Instruments Act, 1981 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 stage 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.

26. Meaning of 'Holder' and the 'Holder in due course' of a negotiable instrument :

'Holder' : Holder of negotiable instrument means as regards all parties prior to himself, a holder of an instrument for which value has at any time been given.

'Holder in due course' : (i) In the case of an instrument payable to bearer means any person who, for consideration became its possessor before the amount of an instrument payable. (ii) In the case of an instrument payable to order, 'holder in due course' means any person who became the payee or endorsee of the instrument before the amount mentioned in it became payable. (iii) He had come to possess the instrument without having sufficient cause to believe that any defect existed in the title of transferor from whom he derived his title.

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, relieved 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) A.C. 137; Town and Country Advance Co. B, Provincial Bank (1917) 2 Ir. R.421].

27. Section 84 of the Negotiable Instruments Act, 1881 provides that where a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right at the time when presentation ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged from the liability, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than would have been if such cheque had been paid. In

determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of banker, and the facts of the particular case.

Applying the above provisions to the given problem since the payee has not presented the cheque to the drawer's bank within a reasonable time when the drawer had funds to pay the cheque, and the drawer has suffered actual damage, the drawer is discharged from the liability.

28. Minor being a party to Negotiable Instrument: Every person competent to enter into contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a Promissory Note, Bill of Exchange or clearance (Section 26, Para 1, Negotiable Instrument 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 A and B is valid even though a minor is a party to it. B, being a minor is not liable; but his immunity from liability does not absolve the other joint promissory, viz., A from liability [Sulochona v. Pondiyan Bank Ltd.,].

29. The facts of the problem are identical with the facts of a case know as H.N.D. Mulla Feroze Vs. C.Y. Somaya Julu, J(2004) 55 SCL (AP) wherein the Andhra Pradesh High Court held that although the petitioner has an legal liability to refund the amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner J could not be said to have committed the offence under Section 138 of the Negotiable Instrument Act, 1881. Therefore X also is not liable for the cheque but legally liable for the payments for the goods.

30. Presumptions about the accuracy of balance sheet and profit and loss account of a company: Dispute between an employer and his employees regarding bonus payable under the Payment of Bonus Act, 1965 shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 or any corresponding law relating to investigation and settlement of industrial disputes in force in a state and the provisions of that Act or as the case may be such law shall, save and otherwise expressly provided, apply accordingly (Section 22).

Proceeding may be lying before any arbitrator or tribunal under the Industrial Disputes Act or under any corresponding law relating to investigation and settlement of industrial disputes in force in the state (herein referred to as the 'said authority') to which any dispute of the nature specified in Section 22 has been referred. During the course of such proceeding the balance sheet and the profit and loss account of an employer, being a corporation or a company other than a banking company may be produced. If these statements of accounts are audited by the Comptroller and Auditor General of India or by auditors qualified under Section 226(1) of the Companies Act, then as specifically provided in Section 23 of the Payment of Bonus Act, the said authority may presume that those are accurate. In view of this presumption corporation or company need not prove the accuracy of such statements by affidavit or any other mode.

But there are certain limitations. If the said authority is satisfied that those statements are not accurate, it may take such steps as it thinks necessary to find out the accuracy thereof.

Further, the trade union and if there is no trade union, employees being a party to the dispute may apply to the specified authority seeking clarification relating to any item in the balance sheet or profit and loss account. On receipt of such application the specified authority is to satisfy itself as to the necessity of such clarification. On being thus satisfied, the specified authority may direct the corporation or the company to furnish to the trade union or the employees such clarifications within such time as may be specified in the direction. Thereupon, the company or the corporation must comply with such direction [Section 23(2)].

31. (i) Adjustment of customary bonus againsts bonus payable: The Payment of Bonus Act, 1965 provides that if in any accounting year, an employer has paid any customary bonus to

an employee, then the former shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to employee under the Act in respect of that accounting year. The employee shall be entitled to receive only the balance. The employer can do the same thing even in a case where he has paid off the bonus payable under the Act to an employee before the date on which such bonus payable becomes payable. (Section 17)

- (ii) Application of the Act to the establishment in public sector: Section 20 of the Payment of Bonus Act, 1965 provides that if in any accounting year, an establishment in public sector may sell any goods produced or manufactured by it or it may render any services in competition with an establishment in private sector. And if the income from such sale or service or both is not less than 20% of the gross income of establishment in public sector, then the provisions of Bonus Act shall apply in relation to establishment in private Sector (Sub-section 1) Save as otherwise provided in Subsection (1), nothing in this Act shall apply to the employees employed by any establishment in the public sector (Sub-section 2).

The limit for a payment of bonus: The employer is bound to pay his employee bonus within one month from the date on which the award becomes enforceable or the settlement comes into operation, if a dispute regarding payment of bonus is pending before any authority under Section 22 of the Act. In other cases, however, the payment of the bonus is to be made within a period of 8 months from closing of the accounting. But this period of 8 months may be extended upto a maximum of 2 years by the appropriate Government or by any authority specified; by the appropriate Government. This extension is to be granted on the application of the employer and only for sufficient reasons.

32. Kinds of establishment not covered under the payment of Bonus Act, 1965: The payment of Bonus Act, 1965 does not cover under its purview the following categories of employees (Section 32):

- (i) Employees employed by the Life Insurance Corporation of India.
- (ii) Seamen as defined under Section 3(42) of the Merchant Shipping Act, 1958.
- (iii) Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by the registered or listed employers.
- (iv) 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.
- (v) Employees employed by :
 - (a) the Indian Red Cross Society or any other institution of a like nature (including its branches),
 - (b) Universities and other educational institutions;

Institutions including hospitals, chambers of commerce and social welfare institutions established not for purposes of profit.
- (vi) Employees employed through contractors on building-operations.
 - (i) Employees employed by Reserve Bank of India.
 - (ii) Employees employed by :
 - (a) The Industrial Finance Corporation of India;
 - (b) Any financial corporation established under section 3 or any joint financial corporation established under section 3A of the State Financial Corporation Act 1951;
 - (c) The Deposit insurance Corporation;
 - (d) The Agricultural Refinance Corporation;
 - (e) The Unit Trust of India;

- (f) The Industrial Development Bank of India;
- (g) Any other Financial Institution (other than a banking company) being an establishment in Public Sector, which the Central Government may by notification in the Official Gazette, specify; while so specifying the Central Government shall have regard to its capital structure, its objectives and the nature and extent of financial assistance or any concessions given to it by the Government and any other relevant factor.
- (h) Employees employed by inland water transport establishment operating on routes passing through any other country.

Besides the above, if the appropriate government is of the opinion that it will be in the public interest, having regard to the financial position and other relevant circumstances of any establishment or class of establishment, it may, by notification in the Official Gazette, exempt for such periods as may be specified therein and subject to such conditions as it may think fit to impose, such establishments from all any of the provisions of this Act.

33. Problem on Payment of Bonus.

Section 10 of the Payment of Bonus Act, 1965 provides that subject to the other provisions of the Act, every employer shall be bound to pay to employee in respect of the accounting year commencing on any day in 1979 and in respect of any subsequent year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or Rs. 100 (Rs. 60 in case of employees below 15 years of age), whichever is higher. The minimum bonus is payable whether or not employer has any allocable surplus in the accounting year.

Therefore based on the above provision (Section 10) the question asked in the problem can be answered as under:

Yes, applying the provisions 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 earned during the accounting year or Rs. 100 (Rs. 60 in case of employees below 15 Years of age), whichever is higher.

34. Problem relating to bonus linked with production or productivity (Section 31A)

As per Section 31 (A) of the Payment of Bonus Act, 1965, there may be an agreement or settlement by the employees with their employer for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, as is payable under the Act. Accordingly, when such an agreement has been entered into the employees are entitled to receive bonus as per terms of the agreement/settlement, subject to the following restriction imposed by Section 31A;

- (a) any such agreement/settlement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void in so far as it purports to deprive the employees of the right of receiving minimum bonus.
- (b) If the bonus payable under such agreement exceed 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of salary/wages.

In the given case Aryan Textile Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of based on profits subject to the limit of 30% of their salary/ wages during the relevant accounting year. According to Section 31A the maximum bonus under this provision can be given which should not exceed 20% of the salary/wages earned by the employee during the relevant accounting year. Hence, the maximum bonus may be paid upto 20% of the salary/wages. If the company agrees to pay more than 20% then it will be against the provisions of the Payment of Bonus Act, 1965.

The employees of Aryan Textiles also agreed not to claim minimum bonus stated in Section 10 of the Payment of Bonus Act, 1965 such an agreement shall be null and void as it purports to

deprive the employees of their right of receiving minimum bonus. Hence, the relief may be given by the court, as regards to the payment of bonus to the employees, based on the production or productivity, if it is agreed, subject to a maximum of 20%. The employees will also be entitled legally to claim bonus which is minimum prescribed under Section 10 of the Act, even though they have relinquished such right as per the agreement.

35. Section 16-A of the Employee Provident Fund and miscellaneous Provisions Act, 1952 empowers the Central Government to authorise to certain employers to maintain a P.F. Account. This section states, the Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer by an order in writing, to maintain a provident fund account in relation to the establishment subject to such terms and conditions, as may be specified in the scheme.

No authorization shall, however, be made under this sub-section, if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately preceding the date of such authorization.

Where an establishment is authorised to maintain a provident fund account as aforesaid, the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the scheme.

Any authorization made under this Section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorization or where he commits any offence under any provisions of this Act.

Before cancellation of the authorization, the Central Government shall give the employer a reasonable opportunity of being heard.

36. Transfer of accumulated amount to the credit of Employees Provident Fund on change of employment: Section 17-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for the transfer of accounts of an employee in case of his leaving the employment and taking up employment and to deal with the case of an establishment to which the Act applies and also to which it does not apply. The option to get the amount transferred is that of the employee. Where an employee of an establishment to which the Act applies leaves his employment and obtains re-employment in another establishment to which the Act does not apply, the amount of accumulations to the credit of such employees in the Fund or, as the case may be, in the provident fund in the establishment left by him shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer. The transfer has to be made within such time as may be specified by the Central Govt. in this behalf. [Sub-Section (1)].

Conversely, when an employee of an establishment to which the Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him, if the employee so desires and the rules in relation to such provident fund permit, may be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is employed. [Sub-Section (2)].

37. According to Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 'Basic wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms of contract of employment which are paid or payable in cash to him but does not include:

(i) Cash value of any food concession.

- (ii) Any dearness allowance i.e., Payments paid to an employee on account of rise in cost of living, house rent allowance, bonus, commission or over some allowance and

Any presents made by the employer.

38. Powers of the Central Government to authorize certain employers to maintain Provident Fund Accounts under the Employees' Provident Funds and Misc. Provisions Act, 1952 (Section 16A):

Under Section 16A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Central Government may, on an application made to it in this behalf by the employer and majority of employees in relation to an establishment employing 100 or more persons, authorize the employer, by an order in writing, to maintain a provident fund account in relation to the establishment subject to such terms and conditions as may be specified in the scheme.

The Central Government shall, however, not make such authorization if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under the Act during the three years immediately preceding the date of such authorization.

When an establishment is authorized to maintain a provident fund account, the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges and abide by such other terms and conditions, as may be specified in the scheme.

Any authorization so made by the Central Government may be cancelled by an order in writing if the employer fails to comply with any of the terms and conditions of the authorization or where he commits an offence under any of the provisions of the Act. Before canceling the authorization, the Central Government shall give the employer a reasonable opportunity of being heard.

39. Inspection by the Registrar under Cooperative Societies Act, 1912: Enquiry by the Registrar (Section 35)

The Registrar may on his own motion, and shall on the request of the collector, or on the application of a majority of the Committee, or of not less than 1/3rd of the members, hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society. All the officers (and members) of the society are bound to furnish such information as may be demanded of them by the Registrar or by the person authorized by the Registrar.

Inspection of books of indebted society: (Section 36) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorized by him by order in writing in this behalf to inspect the books of the society, provided that:

- (i) The applicant satisfies the Registrar that the debt, and sum then due, and that he has demanded payment thereof but has not received satisfaction within a reasonable time.
- (ii) The applicant deposits with the Registrar such sum as security for the costs of the proposed inspection, as the Registrar may require.

40. The net profits of a Multi State Cooperative Society are to be appropriated in the following manner:

1. at least 25% of the net profits should be transferred to the Reserve Fund.
2. 1% of the net profits (Rule 4 of the rules of operation) should be credited to the National Co-operative Union of India Ltd. as contribution to the education fund maintained by the Union.
3. for constitution of or contribution to special funds as may be specified in the bye-laws.
4. not more than 5% of net profits for giving donations or charities for charitable purposes as defined in Section 2 of Charitable Endowments Act, 1990.
5. for payment of ex-gratia amount to employees to the extent and in the manner specified in the bye-laws.

6. for payment of dividends.

Such societies are prohibited for using its funds for any political purposes. [Section 61 (3)]. Further in terms of the provisions of Section 61 the society is subject to the following restrictions with regard to disposal of Net Profit:

1. no dividend shall be declared or paid except from out of the Net Profits and shall not exceed 12% per an-num on the paid up share capital.
2. no dividend shall be declared or paid while a claim due from a Multi State Cooperative Society to a depositor or lender remains unsatisfied.
3. no donation made by the Multi State Cooperative Society out of the net profits of any year exceed Rs. 5 lakhs.

Thus applying the above provision in the given cases the answers to the questions asked are as under:

- (i) Declaration of dividend @ 11% on the paid share capital of the society is quite valid as it does not exceed 12%.
- (ii) The decision to donate Rs. 10 lakhs out of the society's Net Profits is not valid since the limit is Rs. 5 lakhs in a year:-

41. Expulsion of a member of a society:

A member who degenerates in conduct or character and thereby prejudices the society may be expelled from the society subject to the provisions in the bye-laws of the society for this purpose. The bye-laws of the society should contain such provisions and thereupon he may be expelled if :

- (i) he fails to fulfil his obligations in the matter of dues (the number of months arrears being specified).
- (ii) he becomes a member of another similar society and refuses to withdraw and thereby it may be possible that he may pass on such information to a rival society of which he is a member.
- (iii) he is to be proceeded against for debts;
- (iv) he becomes insolvent.
- (v) he engages in such activities as might be contrary to the principles of the society;
- (vi) he becomes insane;
- (vii) he is convicted by a criminal court, especially of bribery, forgery, theft or fraud; and
- (viii) he has committed an act which is considered dishonourable by a managing committee.

If a member of a society with unlimited liquidity joins another society and so pledges his liquidity twice over he should be expelled.

42. Procedure for registration of a Multi State Cooperative Society and the documents to be filed;

1. An application for the registration of a society shall be made to the Central Registrar in prescribed form with requisite particulars.
2. The application shall be signed by members of the Society, in case of which all members are:
 - (a) Individuals - at least 50 persons from each of the state concerned.
 - (b) Cooperative societies - duly authorized representatives of at least 5 such societies registered with different states.
 - (c) Multi-State Cooperative Society and other Co-operative Societies - duly authorized representatives of each of such societies, subject to condition of at least two of co-operative societies registered not in the same state.

- (d) Cooperative; Societies or Multi-State Co-operative Societies and Individuals by at least:
- (i) 50 persons being individuals from each of the two states or more and
 - (ii) One cooperative society from two states or more, or one multi-state cooperative society.
3. Application shall be accompanied by 4 copies of the proposed bye-laws of the multi-state cooperative society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Central Registrar may require.
- After receiving the application duly accompanied with documents, the Central Registrar may register the multi-state cooperative society and its bye-laws if he is satisfied that the application complies with the provisions of the Act and the Rules;
- basis criterion that its objects are to serve the interests of members in more than one State, bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the cooperative principles, and the proposed bye-laws are not contrary to the provisions of the Act and the Rules. The Central Registrar shall then issue a Certificate of Registration under his signature and bearing his official seal containing the registration number and the date of registration of the society.
43. The right of withdrawal from the membership of a society by a member is in conformity with the principles of cooperation. In the case of a society with unlimited liability, a member thereof should be able to withdraw before any liability is incurred. He is only liable for the debts that exist at the time he ceases to be a member (Section 23, Cooperative Societies Act, 1912).
- Where the member ceases to reside within the area of the society [Section 6(1) (a)], both the member and the society may insist on withdrawal. The share value is paid to the member, but he has no claim on the reserve or other assets and may be made to pay off his share of any deficit. His legal claim in share capital lapses in 2 years. If the society is dissolved within 6 months of the withdrawal, the withdrawal is null and void.
44. The Investment decision is based on the rules of such society. If rules permit, then a society can make an investment. However, A society registered under the Co-operative Societies Act, 1912 may invest or deposit its funds in the following:
- (i) in the Government Savings Bank or
 - (ii) in any of the Securities of the Indian Trust Act, 1882.
 - (iii) in the shares or on the security of any other registered society. or
 - (iv) with any bank or person carrying on the business of banking approved for this purpose by the Registrar; or
 - (v) in any other manner permitted by the rules. (Section 32).
45. Section 16 of the Co-operative Societies Act, 1912, provides, the documents of every registered society i.e., copy of the Act, rules governing such society and byelaws, must be kept open to non-members also.
- The following are the duties of registered society: -
1. To register address of society with the Registrar,
 2. Copy of Act, Rules and Byelaws to be open to inspection.
 3. Audit of Accounts
 4. Access to books, papers, etc.
46. A Multi-state Co-operative Society can issue non-convertible debentures to the extent of 25% of its paid-up share capital for the fulfillment of its objects on such terms and conditions as are mutually contracted upon.
- Restrictions on Loans (Section 66)

Restrictions on Borrowing (Section 67)

47. The Central Government will give direction for special audit, where it is of the opinion: -
- (a) that the affairs of any Multi-state Co-operative Society are not being managed in accordance with self-help and mutual aid and co-operative principles or prudent commercial practices; or with such business principles; or
 - (b) that any Multi-state Co-operative Society is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains; or
 - (c) that the financial position of any Multi-state Co-operative Society is such as to endanger its solvency.
48. (a) Modes of Acquiring Membership: A person may become a member of the company in any one of the following ways:
1. By subscribing to the memorandum of association: The persons who subscribe (i.e. sign) to the memorandum of association are deemed to have agreed to become the members of the company. And on the registration of the company, their names are entered as members on the register of members [Section 41].
 2. By application and allotment of shares: A person, who agrees in writing to become a member of the company and whose name is entered in the register of member is also a member of the company [Section 41(2)]. The person intending to become a member has to make an application to the company for the purchase of its shares. On valid allotment, the name of the shareholder is entered in the register of member.
 3. By agreeing to take qualification shares: A director of a public company is appointed when he takes or signs an undertaking to take and pay for his qualification shares. When a director signs and files with the Registrar an undertaking to take and pay for his qualification shares, he is in the same position as subscriber of the memorandum of association [Section 266(2)].
 4. By transfer of shares: The Companies Act provides that the shares of a public company are freely transferable. Thus, one person may transfer his shares to any other person. On the registration of transfer of shares, the transferee becomes the member of the company.
 5. By succession: The legal heirs of the deceased member/shareholder get a right to be a member of the company and be registered as a member of the company on the basis of the succession certificate. The company on the basis of the Succession Certificate enters their name in the Register of Members.

A member and a shareholder: In the parlance of Company Law, the two words "member" and "shareholder", are similarly used by common people, thereby giving an impression that they are synonymous but in fact they can be differentiated on the following grounds:

- (1) A registered member may not be a shareholder, since a company may not be having Share Capital. For example, a company limited by guarantee and not having a share capital, does have members but not shareholders. But a registered shareholder is a member, since his name appears in the Register of Members maintained by the company.
- (2) A person who owns a share warrant (bearer), is not a member since his name does not appear in the Register of Members maintained by the company. He is a shareholder only [Section 115(1)].
- (3) A legal representative of a deceased member is a shareholder but not a member, till he applies for registration and his name is entered in the Register of members.

49. One of the important features of a company is an artificial juristic person. Being a juristic person, company is capable of entering contract in its own name. According to Section 4 of the Partnership Act, 1932, partnership is a contractual relationship between persons; therefore, there should not be any objection to a company in becoming partner. Further, the limited liability element of a limited company is also do not restrict a company in becoming a partner in a unlimited liability of a partnership firm, because, it is limited liability of members of a limited company and not the company itself. However, the Department of Company Affairs (now Ministry ...) is in the opinion that, a company may become a partner if the Memorandum of Association specifically allows it.
50. A private company can have a greater degree of secrecy as regards its affairs and enjoys greater freedom on its operation. It enjoys some privileges and exemptions which a public company is deprived of. Briefly these are as follows:
1. Two or more persons may form a private company [Section 12(1)].
 2. It need not hold a Statutory Meeting or file a statutory report [Section 165].
 3. The consent of directors to act as such, and to take up qualification shares need not be filed with the Registrar [Section 266].
 4. There is no restriction on the amount of overall managerial remuneration that it may pay [Section 198].
 5. The directorship of a private company is not includible in the maximum number of directorships that a person may hold [Section 310].
 6. The consent of the Central Government for advancing loans to directors is not required [Section 295].
 7. There are no restrictions on the powers of the Board of Directors [Section 293].
 8. The Central Government is not empowered to prevent a change in the Board of Directors of a company which is likely to affect management prejudicially [Section 409].
 9. It can advance loans for the purchase of its own shares [Section 77(2)].
51. A proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. The term is also applied to the person so appointed.

According to Section 176, the appointment of proxy must be in written instrument signed by the appointer or his duly authorized attorney. The instrument of proxy must be deposited with the company 48 hours before the meeting.

Further, unless articles otherwise provide:

1. a member of a company having no share capital cannot appoint a proxy;
 2. a member of a private company cannot appoint more than one proxy to attend on the same occasion;
 3. a proxy shall not be entitled to vote except on a poll.
52. A company desirous of declaring interim dividend should follow the procedure given below:
1. Verify that the Board of Directors has declared the interim dividend.
 2. Ascertain whether profits for the part of the financial year up to the time of proposed declaration are sufficient to justify payment of interim dividend. Availability of profits should be ascertained after taking into account depreciation and compulsory transfer to reserves. Auditor's opinion should also be obtained.
 3. Intimate the stock exchange(s) about the Board meeting to consider the payment of interim dividend
 4. Resolution of the Board of directors should state the rate of dividend, deposit of interim dividend in a separate account within five days from the date of its declaration, the date in

reference to which shareholders registered in the Register of Members are to receive interim dividend, record date or the period of closure of the Register of Members and transfer books, date of posting of dividend warrants, etc. The Secretary may be authorized to take necessary action in this regard.

5. Inform the Stock Exchange of the date of the closure of Register of Members.
 6. At least seven days before the closure of the Register of Members or the record date fixed, publish a notice in this regard in a newspaper circulating in the district in which the registered office of the company is situate.
 7. Open a separate 'Interim Dividend Account' with a Bank and issue necessary instructions to the Bank.
 8. Post 'Dividend Warrants' within 30 days from the declaration of interim dividend.
 9. Dividend warrants to non-resident shareholders should be posted after securing necessary permission of the Reserve Bank as per the provisions of FEMA, 1999. However, if dividend-balancing rule is applicable to the company paying dividend, no foreign exchange will be released.
53. Effect of Irregular allotment: When the shares are not allotted in pursuance of Section 69 and 70 (i.e. without receiving the minimum subscription and without filing a prospectus or statement in lieu of prospectus to the registrar before the allotment) such an allotment is an irregular allotment. In spite of the stringent provision of Section 69 and 70 one may find that allotment has been made in utter contravention thereof. The directors may choose to take a chance and proceed to allot shares although minimum subscription has not reached or a prospectus or statement in lieu of prospectus has not been filed. Such an allotment is not void *initio* but as irregular.

The applicant for the shares may avoid the allotment, if he does so within the time specified by Section 71, namely:

- (a) where the allotment was made before the statutory meeting within 2 months after the holding of statutory meeting of the company and not later; or
- (b) where no statutory meeting is required to be held by the company, within 2 months after the date of allotment and not later; or
- (c) where the allotment was made after the statutory meeting, within 2 months of allotment (and not later) the allotment shall be voidable despite the fact that the company is in the course of being wound up.

Within the aforesaid period, the allottee must intimate to the company that he wants to avoid the allotment. If legal proceedings are required to be taken, these need not be within the period of two months provided the notice of avoidance was served on the company within the aforesaid time but they should be reasonably prompt thereafter if they are required to be brought.

Furthermore, Section 71(3) makes every director of a company, who knowingly contravenes or authorizes the contravention of any of the provisions of Section 69 or Section 70 with respect to allotment, liable to compensate the company and the allottee for any loss, damages or costs which they have sustained or incurred thereby. But the proceedings for such compensation can only be taken within 2 years from the date of allotment. As the allotment is voidable at the option of the shareholder, the shareholder may keep the shares and yet sue the directors who have knowingly contravene either of the two sections i.e. 69 and 70 to compel them to make good the loss to him as a result of the irregular allotment.

54. Types of Charges to be registered and Consequences of Non-Registration: Section 125 and 127 of the Companies Act, 1956 require the companies to get registered the following charges with the Registrar of Companies within 30 days of their creation:
1. a charge for the purpose of securing any issue of debentures.
 2. a charge on uncalled share capital of the company
 3. a charge on any immovable property, wherever situate or any interest therein.

4. a charge on any book debt of the company.
 5. a charge not being a pledge, on any movable property of the company.
 6. a floating charge on the undertaking or any property of the company including stock in trade.
 7. a charge on calls made but not paid.
 8. a charge on a ship or any share in a ship.
 9. a charge on goodwill, on a patent or licence under a patent, on a trade mark or on a copy right or a licence under a copy right.
 10. a charge created out of India comprising solely property situate outside India with particulars and the instrument creating or evidencing the charge or a copy thereof.
 11. a charge created in India comprising property outside India with the instrument creating or purporting to create the charge or a verified copy thereof (Section 125).
 12. a charge on a property acquired subject to charge (Section 127).
55. "Red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered.
- (1) A public company making an issue of securities may circulate information memorandum to the public prior to filing of a prospectus.
 - (2) A Company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer.
 - (3) The information memorandum and red-herring prospectus shall carry same obligations as are applicable in the case of a prospectus.
 - (4) Any variation between the information memorandum and the red-herring prospectus shall be highlighted as variations by the issuing company.
 - (5) Every variation as made and highlighted in accordance with Sub-section (4) above shall be individually intimated to the persons invited to subscribe to the issue of securities.
 - (6) The applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.