CA MITALI BOTHARA

SUGGESTED ANSWERS

CA Foundation – Paper 2

BUSINESS LAWS

Full solution set to the examination question paper
Covering all six questions (compulsory Q.1 and Q.2 to Q.6)
Total Marks: 100 | Time Allowed: 3 Hours

CA MITALI BOTHARA

Prepared by **CA Mitali Bothara**

Note: These are model / suggested answers based on the provisions of the relevant Acts and the ICAI study material. In the examination, Question 1 is compulsory and any four of the remaining five questions (Q.2 to Q.6) are to be attempted; solutions to all questions are provided below for complete reference. Section references may be verified against the latest ICAI module.

Question 1(a) [7 Marks]

The Indian Contract Act, 1872

QUESTION

Green Wave Solutions is a new entrant in software development owned by Mr. Arjun. The business had bagged a software development contract. Its employees were struggling to overcome a complex coding bug while developing the software. To resolve this, Mr. Arjun sent an e-mail to all employees on 1st May 2026 stating: "My father has agreed to pay Rs. 50,000 as bonus out of his personal savings to any employee who successfully fixes the bug."

Meera, a junior developer, saw the e-mail and immediately began working on the bug after her regular shifts. She did not inform Mr. Arjun that she had started the task. Meera spent Rs. 10,000 to pay a consultant out of her own pocket to guide her. On 5th May 2026, Mr. Arjun sent a follow-up e-mail at 10.00 AM stating, "Please disregard the previous offer. We have decided to hire an external consultant to fix the bug instead". However, due to a sudden server crash, this e-mail leaves Mr. Arjun's mail box but lands in Meera's inbox only on May 7th at 9.00 AM when the server is restored.

Unaware of the crash or revocation, on May 6th at 4.00 PM, Meera successfully fixed the bug and submitted the solution to Mr. Arjun's office. Mr. Arjun refused to pay the bonus amount of Rs. 50,000, claiming that:

1. He had already revoked the offer before she submitted the solution;

2. Meera never formally communicated her acceptance of the offer;

3. Fixing the bug fell under her ordinary duties, and since the money was promised by his father (a third party), there was no valid legal consideration.

Determine the following under the provisions of the Indian Contract Act, 1872:

(i) Whether Meera was required to communicate her acceptance of the offer to Mr. Arjun.

(ii) Whether the revocation of offer by Mr. Arjun is legally valid and binding on Meera.

(iii) Whether the consideration of Rs. 50,000 provided by a third party (the father) is lawful and enforceable.

ANSWER

(i) Whether Meera was required to communicate her acceptance of the offer to Mr. Arjun

Mr. Arjun's e-mail dated 1st May 2026, addressed to all employees, offering a bonus of Rs. 50,000 to any employee who successfully fixes the bug, is a **general offer** (an offer made to a class of persons at large).

As per **Section 8** of the Indian Contract Act, 1872, the performance of the conditions of a proposal constitutes an acceptance of the proposal. In the case of a general offer of this nature, the offeree is not required to communicate acceptance separately — acceptance is made by actually performing the condition stated in the offer, and the contract is concluded on such performance itself.

Conclusion: Meera was **not** required to formally communicate her acceptance to Mr. Arjun. By successfully fixing the bug (i.e., by performing the condition of the offer), she accepted the offer by conduct under Section 8, and a valid contract came into existence on such performance.

(ii) Whether the revocation of offer by Mr. Arjun is legally valid and binding on Meera

Under **Section 5**, a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. Under **Section 6(1)**, an offer is revoked by the communication of notice of revocation by the proposer to the other party. As per **Section 4**, the communication of a revocation is complete as against the person to whom it is made only when it comes to his knowledge.

In the given case, Mr. Arjun sent the revocation e-mail on 5th May 2026. However, owing to the server crash, it reached Meera's inbox (i.e., came to her knowledge) only on 7th May 2026 at 9.00 AM. Meera had already successfully fixed the bug and submitted the solution on 6th May 2026 at 4.00 PM — that is, she completed the act amounting to acceptance **before** the revocation came to her knowledge. A revocation is effective against the offeree only when it reaches her, and by that time the contract had already been concluded by performance.

Conclusion: The revocation is **not** legally valid or binding on Meera. It reached her only after she had completed the performance amounting to acceptance; hence it came too late to revoke the offer.

(iii) Whether the consideration of Rs. 50,000 provided by a third party (the father) is lawful and enforceable

As per **Section 2(d)**, consideration may move from the promisee "or any other person". Thus, consideration need not move from the promisee alone — it may proceed from a third party. In other words, there can be a **stranger to consideration but not a stranger to contract** (Chinnaya vs. Ramayya). The source or the person funding the consideration is immaterial so long as it is lawful and has some value; consideration need not be adequate.

Here, the promise was made by Mr. Arjun (the promisor/employer) through his own e-mail. The mere fact that the Rs. 50,000 was to come out of his father's personal savings (a third party) does not defeat the consideration. Meera, on her part, furnished consideration by fixing the bug (and even spending Rs. 10,000 from her own pocket).

Conclusion: The consideration of Rs. 50,000 is **lawful and enforceable**, even though the funds are provided by the father (a third party). Mr. Arjun cannot escape liability on the ground that the money was promised from his father's savings. Meera can enforce the promise and Mr. Arjun is bound to pay Rs. 50,000.

Question 1(b) [7 Marks]

The Companies Act, 2013

QUESTION

The Articles of Association (AOA) of High-Tech Innovations Limited authorized the Board of Directors to borrow money on behalf of the Company (upto a certain limit), provided that a Board Resolution was passed to approve the loan amount.

The Company's directors approached Global Bank for a loan of Rs. 50 Lakh (which was within the above limit) for business expansion. The Bank's Manager requested for a copy of the AOA and the MOA. Upon review, the Bank confirmed the directors had the power to borrow since it was within the limit specified in the Articles of the Company. The directors then submitted a formal confirmation letter stating that the required board resolution had been passed, though in reality, no such board meeting was ever held for this purpose.

Global Bank, relying on this representation, disbursed the loan. When the Company later defaulted, the directors contended that the loan transaction was unauthorised and void because the internal requirement of a board resolution was never passed for the purpose.

Answer the following, referring to the legal doctrine behind the relevant provisions of the Companies Act, 2013.

(i) Does Global Bank have a legal right to recover the loan amount from the Company despite the absence of a board resolution?

(ii) If the Company proves that the Bank Manager had attended a private lunch (before the loan was sanctioned) where the Directors admitted that they skipped the board meeting due to lack of the required number of directors to pass the resolution on the day when it was required, would the Bank be protected?

(iii) If the formal letter confirming that the required board resolution was passed (which was submitted to the bank) was found to have been forged with the wrong signature of the Company Secretary, can the Bank recover the loan from the Company by suing against it?

ANSWER

This problem is based on the **Doctrine of Indoor Management** (Royal British Bank vs. Turquand) and its exceptions. Under this doctrine, outsiders dealing with a company — though bound to read the company's public documents (Memorandum and Articles) under the doctrine of constructive notice — are entitled to assume that the internal proceedings and procedures of the company (such as the passing of a Board Resolution) have been duly and regularly complied with. They need not enquire into the regularity of the internal proceedings.

(i) Whether Global Bank has a legal right to recover the loan despite the absence of a Board Resolution

The Bank read the AOA and MOA (public documents) and satisfied itself that the directors had the power to borrow Rs. 50 Lakh, which was within the limit specified in the Articles. Whether the required Board Resolution was in fact passed is a matter of the internal management of the company. Under the doctrine of indoor management, the Bank was entitled to assume that the resolution had been duly passed and was not bound to verify it.

Conclusion: **Yes**, Global Bank has a legal right to recover the loan from the Company. The Company is bound to repay the loan even though, internally, no Board Resolution was actually passed.

(ii) If the Company proves that the Bank Manager knew (from the private lunch) that the board meeting was skipped for want of the required number of directors — would the Bank be protected

One of the recognised exceptions to the doctrine of indoor management is **actual or constructive knowledge of the irregularity**. The rule does not protect a person who has notice — whether actual or constructive — of the irregularity. If the Company proves that the Bank Manager had attended a private lunch where the directors admitted that they had skipped the board meeting due to lack of the required number of directors, then the Bank (through its Manager) had **actual knowledge** of the irregularity.

Conclusion: **No**, in that situation the Bank would not be protected. Having knowledge of the irregularity, the Bank cannot take shelter under the doctrine of indoor management, and it cannot recover the loan on the strength of that presumption.

(iii) If the formal confirmation letter was forged (with the wrong/forged signature of the Company Secretary) — can the Bank recover from the Company

Forgery is another well-settled exception to the doctrine of indoor management. The doctrine applies only to irregularities that might otherwise affect a transaction; it can never apply to a forgery, which is regarded as a **nullity** (Ruben vs. Great Fingall Consolidated). A forged document is void ab initio and confers no rights, because the company never consented to it.

Conclusion: **No**, the Bank cannot recover the loan from the Company on the basis of the forged confirmation letter. Being a forgery, the letter is a nullity and the doctrine of indoor management offers no protection. (The Bank may, however, proceed against the persons who committed the forgery.)

Question 1(c) [3 + 3 Marks]

The Indian Partnership Act, 1932

QUESTION

Referring to the applicable provisions of The Indian Partnership Act, 1932 answer the following:

(i) "The sharing of profits or gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such person partners." Discuss the correctness of the statement and state any four types of sharing of receipts which would not make a person partner?

(ii) "'Joint stock', 'common stock' or 'joint estate', denotes all property, rights and interests to which the firm, that is, all partners collectively, may be entitled." Discuss the validity of the statement emphasizing on items which can be termed as a partnership property and discuss how to determine whether a particular property is or is not 'property' of the firm.

ANSWER

(i) Correctness of the statement and four types of sharing of receipts which would not make a person a partner

The statement is **correct**. As per **Section 6**, in determining the existence of partnership, regard must be had to the real relation between the parties as shown by all relevant facts taken together. Sharing of profits is only **prima facie evidence** and not conclusive evidence of partnership; the true test of partnership is **mutual agency**. The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not by itself make such persons partners.

The following are types of persons who receive a share of profits but do **not**, by that reason alone, become partners:

- A **lender of money** to persons engaged in (or about to engage in) business, who receives a share of profits (or a return varying with the profits);
- A **servant or agent** who receives remuneration by way of a share of profits;
- A **widow or child of a deceased partner** who receives an annuity or a portion of the profits;
- A **previous owner or part-owner** of the business who receives a share of profits as consideration for the sale of the goodwill of the business.

(ii) Validity of the statement, items which are partnership property, and how to determine whether a property is property of the firm

The statement is **valid**. "Joint stock", "common stock" or "joint estate" denotes the totality of the property, rights and interests to which the firm may be entitled. As per **Section 14**, subject to the contract between the partners, the property of the firm includes:

- all property, rights and interests originally brought into the common stock/partnership by the partners as their contribution to the common business;
- all property, rights and interests acquired by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm; and
- the **goodwill** of the business.

How to determine whether a particular property is the firm's property: it depends on the **agreement and real intention of the partners**. In the absence of an agreement, the intention is gathered from the surrounding facts and conduct. Property acquired with the firm's money is presumed to belong to the firm unless a contrary intention appears; and merely because a partner's separate property is used for the firm's business does not, by itself, make it the property of the firm.

Question 2(a) [7 Marks]

The Sale of Goods Act, 1930

QUESTION

Mohan and Bibhuti are friends. Mohan owns an electronic consumer durable products showroom selling all kinds of electronic consumer durable goods. Bibhuti's daughter was getting married in July and since the weather was still hot and humid, Bibhuti was planning to have a portable air conditioner; but since his finance condition were very tight because of the wedding expenses, he was hesitating to spend on the portable air conditioner. Mohan told him that there was an option available with Bibhuti to avail the air conditioner on sale or return basis by which he can avail the portable air conditioner now, use it for the occasion and in case he does not like it he can return it within 10 days of receiving the same. Bibhuti also liked the idea and brought the portable AC on sale or return basis from Mohan.

Bibhuti used the portable air conditioner during the wedding occasion, but since the stipulated period of 10 days had not elapsed, he did not confirm whether to purchase the same or return it. In the meanwhile, before elapse of the stipulated 10 days, Bibhuti's daughter took the portable air conditioner with her to her in-law's house without intending to return the same, of which Bibhuti was aware, but remained silent.

Referring to and explaining the applicable provisions of the Sale of Goods Act, 1930 regarding the circumstances under which goods are delivered to the buyer "on approval" or "on sale or return" or other similar terms, the property therein passes to the buyer, decide whether Mohan can treat the transaction as approved by Bibhuti in this situation, when the stipulated period of 10 days has not elapsed, since Bibhuti's daughter has taken it away with her.

Also decide whether Mohan can recover the price of the portable air conditioner from Bibhuti's daughter under the circumstances since she has taken away the portable air conditioner.

ANSWER

The transaction between Mohan and Bibhuti is a delivery of goods on "**sale or return**" basis. As per **Section 24**, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property in the goods passes to the buyer:

- (a) when the buyer signifies his approval or acceptance to the seller or does any other **act adopting the transaction**;
- (b) if he does not signify approval/acceptance but retains the goods without giving notice of rejection, then on the expiry of the fixed time (or, if no time is fixed, on the expiry of a reasonable time); or

- (c) if he does something to the goods which is equivalent to accepting them (e.g., pledges or sells the goods).

Whether Mohan can treat the transaction as approved by Bibhuti

Although the stipulated period of 10 days had not yet elapsed, an act adopting the transaction has occurred: Bibhuti's daughter took the portable air conditioner away to her in-law's house **without any intention of returning it**, and Bibhuti, though aware of this, remained silent. Removing the goods in a manner inconsistent with their return, coupled with Bibhuti's silent acquiescence, amounts to an "act adopting the transaction" under Section 24(a). Consequently, the property in the air conditioner passes to Bibhuti even before the expiry of the 10-day period.

Conclusion (1): **Yes**, Mohan can treat the transaction as approved by Bibhuti. The property passed to Bibhuti the moment the goods were taken away without any intention to return and Bibhuti acquiesced by his silence, notwithstanding that the 10 days had not elapsed. The sale is complete and Bibhuti is liable to pay the price.

Whether Mohan can recover the price from Bibhuti's daughter

The contract of sale on "sale or return" basis is between **Mohan and Bibhuti** only. There is no privity of contract between Mohan and Bibhuti's daughter. Hence the seller can recover the price only from the buyer with whom he contracted.

Conclusion (2): Mohan **cannot** recover the price from Bibhuti's daughter. He can recover the price of the portable air conditioner only from **Bibhuti**, the buyer.

Question 2(b) [7 Marks]

The Companies Act, 2013

QUESTION

"The company is treated as a legal entity distinct and separate from its shareholders or members". Discuss the situations where the above principle of the corporate personality is disregarded by law. Your answer should be based on the Companies Act, 2013.

ANSWER

On incorporation, a company becomes a **separate legal entity**, distinct and independent from its shareholders/members (Salomon vs. Salomon & Co. Ltd.). This is described as the **corporate veil** — members are shielded from liability connected with the company's actions. However, in certain circumstances the law disregards this separate personality and "lifts the corporate veil", holding the persons behind the company personally responsible. The principal situations in which the corporate personality is disregarded are:

- **To determine the character of the company (enemy character):** A company may be characterised as an enemy company if its affairs are controlled by persons of an enemy country. The Court may examine the character of the persons in real control of the company.
- **To protect revenue / prevent evasion of tax:** Where the corporate entity is used to evade or circumvent tax, duties or stamps, the Court can disregard the corporate identity (e.g., where a company is merely a device to split income and avoid tax).

- **To avoid a legal obligation:** Where a company is formed as a device to avoid a legal obligation — for instance, to reduce the amount payable by way of bonus to workmen — the veil may be pierced to look at the real transaction.
- **Formation of subsidiaries to act as agents:** Where a company is used merely as an agent or trustee of its members or of another company, it may be deemed to have lost its individuality, and the principal will be held liable for its acts.
- **Company formed for fraud or improper conduct or to defeat law:** Where incorporation is adopted for an illegal or improper purpose — to defraud creditors, to defeat or circumvent the law, or to avoid legal obligations — the veil is lifted.

Thus, though the company is ordinarily treated as a legal entity distinct from its members, the corporate veil is lifted in the above situations and the members/those in control may be held personally liable.

Question 2(c) [3 + 3 Marks]

The Limited Liability Partnership Act, 2008

QUESTION

Referring to the provisions of The Limited Liability Partnership Act, 2008 answer the following:

(i) The concept of a Small Limited Liability Partnership (Small LLP), introduced by the Limited Liability Partnership (Amendment) Act, 2021, is a special category LLP aimed at reducing compliance burdens for smaller businesses. Enumerate the conditions to be fulfilled by a Limited Liability Partnership to be qualified as a Small LLP.

(ii) Incorporation Document is the most important document needed for registration of a Limited Liability Partnership. Discuss the details to be stated in such Incorporation Document.

ANSWER

CA MITALI BOTHARA

(i) Conditions for a Limited Liability Partnership to qualify as a Small LLP

As per **Section 2(ta)** of the LLP Act, 2008 (inserted by the LLP (Amendment) Act, 2021), a "Small Limited Liability Partnership" means a limited liability partnership —

- the **contribution** of which does not exceed Rs. 25 lakh (or such higher amount as may be prescribed, not exceeding Rs. 5 crore); **and**
- the **turnover** of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed Rs. 40 lakh (or such higher amount as may be prescribed, not exceeding Rs. 50 crore); **or**
- which meets such **other requirements** as may be prescribed, and fulfils such terms and conditions as may be prescribed.

(ii) Details to be stated in the Incorporation Document

As per **Section 11** of the LLP Act, 2008, the incorporation document is the most important document for registration of an LLP. It must be subscribed by two or more persons associated for carrying on a lawful business with a view to profit, and filed with the Registrar. The incorporation document shall —

- be in a form as may be prescribed;
- state the **name** of the LLP;

- state the **proposed business** of the LLP;
- state the address of the **registered office** of the LLP;
- state the **name and address of each of the persons** who are to be partners of the LLP on incorporation;
- state the **name and address of the designated partners** of the LLP on incorporation; and
- contain such other information concerning the proposed LLP as may be prescribed.

Along with the incorporation document, a **statement** in the prescribed form must be filed, made by an advocate / Company Secretary / Chartered Accountant / Cost Accountant engaged in the formation of the LLP, and by any one who subscribed his name to the incorporation document, that all the requirements of the Act and the rules in respect of incorporation have been complied with.

Question 3(a) [7 Marks]

The Indian Partnership Act, 1932

QUESTION

Neel, Dhruv and Alex were partners in M/s Fabrics Textile Agency, sharing profits and losses in the ratio of 4:3:3. They had contributed to the capital of the firm also in the same ratio. M/s Fabrics Textile Agency acted as agents between the manufacturers and buyers of some industrial machines, by providing guarantee to the manufacturers on behalf of the buyers for which they were earning commission. They had provided continuing guarantee to a manufacturer on behalf of Asif since 1st April 2022 for a period of 5 years.

On 31st October 2024 Alex sought retirement from the partnership due to his weakening health and the other partners agreed with him in terms of the partnership agreement and thereby the Firm was reconstituted and the existing partners Neel and Dhruv continued with profit sharing ratio of 4:3. The value of total partnership property including the profits earned by the Firm till Alex's retirement stood at Rs. 30 crores as on the date of retirement of Alex. No final settlement was made with Alex on the date of his retirement and the partnership deed was also silent with regard to distribution and payment of the dues of a retiring partner.

Neel and Dhruv continued the business after Alex's retirement. In the meantime, Alex passed away due to ill health on 30th November 2024. The next day, his son, Tom who was the only legal heir of Alex, asked for settlement of Alex's accounts in M/s Fabric Textile Agency. After Alex's retirement the firm made a profit of Rs. 2 crores until Alex passed away, i.e. 30th November 2024.

Referring to and explaining the applicable provisions of the Indian Partnership Act, 1932:

Calculate the maximum amount of share that Tom is entitled to as the only legal heir of Alex.

What will be your answer (maximum amount of claim by Tom) in case Tom approached for settlement of the dues of his father on 31st December, 2024, i.e. after one month his father passed away, if the Firm had earned an additional profit of Rs. 50 Lakh from 1st December 2024 to 31st December 2024 (i.e. after retirement of Alex till his death Rs. 2 crore and from his death till the date of claim Rs. 50 lakh) and he had not made any claim earlier?

In order to avoid future complications, Neel and Dhruv decided to revoke the continuing guarantee provided by the Firm on behalf of Asif with effect from 1st November 2024. However, Asif contended that since the firm was not dissolved, the continuing guarantee will continue and it can be revoked only upon mutual understanding between the Firm and Asif since neither the guarantee agreement did cover such a situation, nor the partnership deed. In terms of the provisions of the applicable provisions of the Indian Partnership Act, 1932, decide whether contention of Asif is tenable.

ANSWER

Share of the outgoing/deceased partner — Section 37. Where a partner has ceased to be a partner (by retirement or death) and the surviving/continuing partners carry on the business of the firm with the property of the firm **without any final settlement of accounts** with the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled, **at his option**, to either —

- (a) such share of the profits made since he ceased to be a partner as may be **attributable to the use of his share of the property** of the firm; **or**
- (b) **interest at 6% per annum** on the amount of his share in the property of the firm.

Alex's profit-sharing / capital ratio was 4 : 3 : 3, so **Alex's share of the partnership property = 3/10 of Rs. 30 crore = Rs. 9 crore**. The partnership deed was silent on distribution/payment of a retiring partner's dues, and no final settlement was made — hence Section 37 applies. On Alex's death, his son Tom, being the only legal heir, steps into Alex's estate and can exercise the same option.

Maximum amount of share Tom is entitled to (claim at the date of death, 30th November 2024)

Profit earned by the firm after Alex's retirement (31.10.2024) up to his death (30.11.2024) = Rs. 2 crore.

- Option (a) — Share of subsequent profit attributable to Alex's share of property = (Alex's share of property ÷ Total property) × Profit = (Rs. 9 crore ÷ Rs. 30 crore) × Rs. 2 crore = 3/10 × Rs. 2 crore = **Rs. 60 lakh**.
- Option (b) — Interest @ 6% p.a. on Rs. 9 crore for 1 month (31.10.2024 to 30.11.2024) = Rs. 9,00,00,000 × 6% × 1/12 = **Rs. 4.5 lakh**.

Tom will exercise the option that is more beneficial, i.e., the share of subsequent profits (Rs. 60 lakh) rather than interest (Rs. 4.5 lakh).

Maximum amount Tom is entitled to = Alex's share in the property (Rs. 9 crore) + share of subsequent profits (Rs. 60 lakh) = **Rs. 9.60 crore**.

If Tom claims settlement on 31st December 2024 (having made no earlier claim)

As no final settlement has yet been made, the estate continues to be entitled under Section 37 up to the date of claim. Additional profit of Rs. 50 lakh was earned from 1.12.2024 to 31.12.2024. Total subsequent profit from retirement (31.10.2024) up to the date of claim (31.12.2024) = Rs. 2 crore + Rs. 50 lakh = Rs. 2.5 crore.

- Option (a) — Share of subsequent profit = 3/10 × Rs. 2.5 crore = **Rs. 75 lakh**.
- Option (b) — Interest @ 6% p.a. on Rs. 9 crore for 2 months (31.10.2024 to 31.12.2024) = Rs. 9,00,00,000 × 6% × 2/12 = **Rs. 9 lakh**.

Tom will again opt for the share of profits (Rs. 75 lakh). Maximum amount of claim by Tom = Rs. 9 crore + Rs. 75 lakh = **Rs. 9.75 crore**.

Whether Asif's contention regarding the continuing guarantee is tenable

As per **Section 38**, a continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is — **in the absence of an agreement to the contrary — revoked as to future transactions from the date of any change in the constitution of the firm**. Such a change may occur by the death, or retirement of a partner, or by the introduction of a new partner.

Here, Alex retired on 31.10.2024, which is a change in the constitution of the firm. Neither the guarantee agreement nor the partnership deed contained any agreement to the contrary. Therefore, by operation of

Section 38, the continuing guarantee given on behalf of Asif stood revoked as to future transactions from the date of the change in constitution — it does not require the mutual understanding of the firm and Asif.

Conclusion: Asif's contention is **not tenable**. The continuing guarantee is automatically revoked as to future transactions upon the change in the constitution of the firm (Alex's retirement); the firm's revocation is valid and does not depend on Asif's consent.

Question 3(b) [7 Marks]

The Companies Act, 2013

QUESTION

Smooth Panels Private Limited is a private limited company engaged in the business of manufacturing of plastic panels used to cover walls against seepage and moisture. The Company was incorporated in 2023 in Bhubaneswar, Odisha (not a SEZ zone) with share capital of Rs. 50 Crores comprising of equity shares of Rs. 100 each.

The Company is planning to alter its Articles of Association by passing a special resolution so as to include an entrenchment clause with regard to power of directors to invest the funds of the Company in the securities of other bodies corporate in excess of sixty per cent of its paid-up capital, free reserves and security premium account or one hundred per cent of its free reserves and securities premium account whichever is more only after passing a prior unanimous resolution of all the members of the Company in this regard.

[Note: This entrenchment clause was provided to curb the power of the Board of Directors to invest money of the Company only with the approval of all the members, since restriction has been provided under Section 186 of the Companies Act 2013 that when the investment exceeds sixty per cent of its paid-up capital, free reserves and security premium account or one hundred per cent of its free reserves and securities premium account whichever is more, a prior special resolution is required to be passed.]

One Director of the Company Mr. Yogesh objected to the proposed move of the Company contending that only an ordinary resolution will be enough to include the above entrenchment clause; whereas another director Mr. Zitesh in contrast contended that only if it is agreed to by all the members of the Company, then only the Company can include the above entrenchment clause in the Articles of Association of the Company.

Decide the following with reference to the applicable provisions of the Companies Act, 2013:

(i) Whether the Company can include the above entrenchment clause in the Articles of Association of the Company at all.

(ii) Whether the above entrenchment clause can be included in the Articles by passing a special resolution as planned by the Company and whether the contention of Mr. Yogesh or Mr. Zitesh is tenable in this regard.

ANSWER

The issue concerns the inclusion of a **provision for entrenchment** in the Articles of Association. As per **Section 5** of the Companies Act, 2013, the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures that are **more restrictive than those applicable in the case of a special resolution** are met or complied with.

Manner of inclusion of an entrenchment provision: a provision for entrenchment may be made only —

- on the **formation** of the company; or
- by an **amendment of the articles agreed to by ALL the members** of the company, in the case of a **private company**; and by a **special resolution**, in the case of a **public company**.

Further, where the articles contain provisions for entrenchment, the company must give **notice to the Registrar** of such provisions in the prescribed form and manner. Smooth Panels Private Limited is a **private company**.

(i) Whether the Company can include the entrenchment clause in its Articles at all

Yes. The Companies Act, 2013 expressly permits a company (including a private company) to include a provision for entrenchment in its Articles under Section 5. Hence Smooth Panels Private Limited can include the entrenchment clause.

(ii) Whether it can be included by passing a special resolution, and whether Mr. Yogesh or Mr. Zitesh is correct

Since Smooth Panels is a **private company**, an entrenchment provision can be introduced by amendment only if it is **agreed to by ALL the members** of the company. A special resolution (as planned by the Company) is sufficient only in the case of a **public** company; it is not sufficient for a private company. An ordinary resolution is, in any event, insufficient.

Conclusion: The entrenchment clause **cannot** be validly included merely by passing a special resolution, because the company is a private company and the consent of **all the members** is required. Mr. Yogesh's contention (that an ordinary resolution is enough) is **not tenable**; Mr. Zitesh's contention (that it can be included only if agreed to by all the members) is **correct and tenable**. The company must also give notice of the entrenchment provision to the Registrar.

Question 3(c) [6 Marks]

The Indian Contract Act, 1872

QUESTION

"Where a debtor owes several distinct debts to one person (including time-barred and disputed debts) and makes a payment which is insufficient to satisfy the whole amount, the question arises as to which debt the payment should be applied". In light of this statement, explain the rules regarding appropriation of payments under the provisions of the Indian Contract Act, 1872, when:

(i) The debtor expressly intimates or implies which debt should be discharged.

(ii) The debtor fails to indicate any preference at the time of payment.

(iii) Neither the debtor nor the creditor makes any specific appropriation.

ANSWER

Where a debtor owes several distinct debts to the same creditor and makes a payment which is insufficient to discharge all the debts, the payment is appropriated (adjusted against the debts) as per the rules contained in **Sections 59 to 61** of the Indian Contract Act, 1872.

(i) Where the debtor expressly intimates or impliedly indicates which debt should be discharged — Section 59

Where a debtor owing several distinct debts to one person makes a payment to him, 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**. The creditor is bound to appropriate the payment to the debt indicated by the debtor.

(ii) Where the debtor fails to indicate any preference at the time of payment — Section 60

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the **creditor may apply it at his discretion** to any lawful debt actually due and payable to him from the debtor, whether or not its recovery is barred by the law of limitation. (However, it cannot be applied to a debt which is disputed.)

(iii) Where neither the debtor nor the creditor makes any appropriation — Section 61

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts **in order of time**, whether or not they are barred by the law of limitation. If the debts are of equal standing, the payment shall be applied in discharge of each debt **proportionately**.

Question 4(a) [7 Marks]

The Indian Contract Act, 1872

QUESTION

Mr. Samrat, a garment manufacturer of Surat, entered into a contract with Vogue Fabrics Limited on 1st September 2025. The contract stated that Vogue Fabrics Limited would supply 1,000 meters of premium silk at Rs. 2,000 per meter, with the delivery scheduled for 1st December 2025. Mr. Samrat required this silk to fulfill an export order worth Rs. 30 Lakhs, and he explicitly informed Vogue Fabrics Limited of this requirement including the export pricing details at the time of signing the contract.

On 15th October 2025, Vogue Fabrics Limited sent an email to Mr. Samrat stating, "Due to a sudden surge in global silk prices and a strike in our factory, we will be unable to supply the silk as agreed."

Mr. Samrat, fearing a loss, immediately looked for other alternative suppliers. On 20th October 2025, the market price of silk was Rs. 2,500 per meter. He chose not to wait until 1st December and sued Vogue Fabrics Limited on 25th October 2025 when the price was stable at Rs. 2,500 per meter. By 1st December 2025, the market price had risen to Rs. 3,000 per meter. Mr. Samrat could not fulfill his order, and he had to pay Rs. 30 lakhs to the foreign buyer as damages.

Answer the following, referring to the provisions of the Indian Contract Act, 1872:

(i) Identify the type of breach that occurred on 15th October 2025. Does Mr. Samrat have the legal right to sue before the stipulated delivery date of 1st December 2025?

(ii) Analyze the remedies available to Mr. Samrat in terms of the damages which he can recover from Vogue Fabrics Limited as per the provisions of the Indian Contract Act, 1872, considering the fact that he sued against Vogue Fabrics Limited on 25th October 2025. You are required to provide the calculation for the same.

ANSWER

(i) Type of breach on 15th October 2025 and Mr. Samrat's right to sue before 1st December 2025

Vogue Fabrics Limited, by its e-mail dated 15th October 2025, expressed its unwillingness to supply the silk before the agreed date of performance (1st December 2025). This is an **anticipatory breach of contract**. As per **Section 39**, when a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified (by words or conduct) his acquiescence in its continuance.

On an anticipatory breach, the aggrieved party (Mr. Samrat) gets an **option**: (1) to treat the contract as rescinded and sue for damages **immediately**, without waiting until the due date of performance; or (2) to treat the contract as still operative, wait till the date of performance, and then hold the other party liable.

Conclusion: The breach on 15th October 2025 is an **anticipatory (express) breach**. Mr. Samrat **does** have the legal right to sue before the stipulated delivery date of 1st December 2025 — he elected to treat the contract as rescinded and rightly sued on 25th October 2025.

(ii) Remedies / damages recoverable by Mr. Samrat, with calculation

As per **Section 73**, the party who suffers by a breach is entitled to compensation for any loss or damage which naturally arose in the usual course of things from the breach (**ordinary damages**), and also for any loss which the parties knew, at the time of contract, to be likely to result from the breach (**special damages**). The measure of ordinary damages for non-delivery is the difference between the contract price and the market price.

Since Mr. Samrat **elected to rescind the contract early** and sued on 25th October 2025, when the market price was Rs. 2,500 per meter, the damages are crystallised with reference to the market price prevailing on that date — not the Rs. 3,000 price on 1st December 2025.

- **Ordinary damages** = (Market price on the date of rescission – Contract price) × Quantity = (Rs. 2,500 – Rs. 2,000) × 1,000 meters = Rs. 500 × 1,000 = **Rs. 5,00,000**.

(Had Mr. Samrat kept the contract alive till 1st December 2025, damages would have been measured at the due-date price of Rs. 3,000, i.e., (Rs. 3,000 – Rs. 2,000) × 1,000 = Rs. 10,00,000 — but he would then have borne the risk of price movement. Having sued on 25th October, his ordinary damages stand at Rs. 5,00,000.)

Special damages (Rs. 30 lakh export loss): Mr. Samrat had, at the time of signing the contract, **expressly informed** Vogue Fabrics Limited of the export order worth Rs. 30 lakh and the export pricing details. As the special circumstances were within the knowledge/contemplation of both parties at the time of contracting (rule in Hadley vs. Baxendale, reflected in Section 73), the resulting export loss may be claimed as **special damages** — subject to proof and to Mr. Samrat's duty to **mitigate** his loss (alternative silk was available in the market).

Conclusion: Mr. Samrat can recover ordinary damages of **Rs. 5,00,000**, and may additionally claim the Rs. 30 lakh export loss as special damages since the special circumstances were communicated at the time of the contract, subject to proof and the duty to mitigate.

Question 4(b) [7 Marks]

The Negotiable Instruments Act, 1881

QUESTION

Referring to the provisions of the Negotiable Instruments Act, 1881, answer the following:

(i) State the meaning of an ‘inchoate instrument’. Also elaborate the provisions regarding liability of drawing such an instrument on the holder as well as the holder in due course.

(ii) “All cheques are bills, while not all bills are cheques.” Discuss under the Negotiable Instruments Act, 1881.

ANSWER

(i) Meaning of an 'inchoate instrument' and liability of the person drawing/signing it

An **inchoate instrument** is an instrument that is incomplete in certain respects. As per **Section 20**, where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments 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 to make or complete it into a negotiable instrument for any amount specified therein and **not exceeding the amount covered by the stamp**.

Liability: The person so signing is liable, in the capacity in which he signed, upon such instrument. As against a **holder in due course**, he is liable for the whole amount as filled in (so long as it is within the amount covered by the stamp), even if it exceeds the amount he actually intended. However, a person **other than a holder in due course** cannot recover more than the amount intended by the signer to be paid. The rule is based on the principle of **estoppel**.

(ii) 'All cheques are bills, while not all bills are cheques' — discuss

As per **Section 6**, a **cheque** is a bill of exchange drawn on a specified banker and payable on demand (and includes the electronic image of a truncated cheque and a cheque in electronic form). Thus, a cheque possesses **all the essential characteristics of a bill of exchange**, plus two additional features: (a) it is **always drawn on a banker**, and (b) it is **always payable on demand**.

Because every cheque necessarily satisfies the definition of a bill of exchange, **all cheques are bills of exchange**. But a bill of exchange qualifies as a cheque only if it additionally satisfies the two extra conditions — a bill may be drawn on any person (not necessarily a banker) and may be payable on demand or after a specified period. Therefore, **not all bills of exchange are cheques**.

Conclusion: The statement is **correct** — every cheque is a bill of exchange, but only those bills that are drawn on a banker and are payable on demand are cheques.

Question 4(c) [6 Marks]

Indian Regulatory Framework

QUESTION

The Ministry of Home Affairs (Gr■ha Mantra■laya) is a premier ministry of the Government of India. State the major responsibilities of the Ministry and enlist various departments which are covered under this Ministry.

ANSWER

The **Ministry of Home Affairs (MHA)** is a premier ministry of the Government of India. As the interior ministry of India, it is mainly responsible for the **maintenance of internal security and domestic policy**. It is headed by the Union Minister of Home Affairs.

Major responsibilities of the Ministry of Home Affairs include, among others:

- maintenance of internal security of the country;
- management of the international borders (border management);
- Centre–State relations and matters relating to the Union Territories;
- administration and management of the Central Armed Police Forces; and
- disaster management and matters connected with national integration and internal law and order.

Departments under the Ministry of Home Affairs broadly include:

- Department of Border Management;
- Department of Home;
- Department of Internal Security;

- Department of Jammu & Kashmir Affairs;
- Department of Official Language;
- Department of States; and
- Department of Union Territories.

Question 5(a) [7 Marks]

The Sale of Goods Act, 1930

QUESTION

M/S Kashmir Apples and Juice Limited are engaged in the sale of raw apple as well as processed apple juice in and around India. The Raw apples and the juice are safely packed and transported to cold storages situated in almost every state in India. The Company has a storage facility at Faridabad from where it supplies items to North Indian states. Fresh Tropical Limited is a retail unit situated in Faridabad near Delhi dealing in products of M/S Kashmir Apples and Juice Limited.

On 1.4.2025 the retailer ordered 1400 Kg of garden-fresh apples at Rs. 200 per Kg and 10,000 cans of apple juice at Rs. 100 per can on credit. A contract was executed between the above parties with specific clause regarding right of lien in goods as well as possession which would remain with the seller until full payment is made. Payment condition is fixed that it can be made till 31.07.2025. The contract did not contain any clause with regard to notice to buyer in the event of exercise of the above right of lien and possession by the seller.

Till 01.06.2025 no payment for the order was made by the buyer. On 05.06.2025 Mr. Gulfam, a representative from M/S Kashmir Apples and Juice Limited visited and inspected the cold storage in Faridabad and assessed that the stored apples (already sold to Fresh Tropical Limited through the above contract) will soon start to rot and hence decided to sell the same in the local market with immediate effect without notice to Fresh Tropical Limited.

On 21.07.2025 Fresh Tropical Limited paid for only 7000 cans of juice and took them to their own possession. On 28.07.2025 the seller gave a notice to the buyer stating that the remaining 3000 cans in their (seller's) possession will be sold by M/S Kashmir Apples and Juice Limited to other parties if payment is not made by 31.07.2025. The buyer failed to pay for the rest of cans till 31.07.2025.

M/S Kashmir Apples and Juice Limited sold 1200 of the remaining cans at a discounted price of Rs. 75 per can to another party M/S New Fruit Private Limited and the rest of 1800 cans at Rs. 105 per can in the open market.

M/S Kashmir Apples and Juice Limited urged Fresh Tropical Limited to compensate them for loss on the sale at discounted price (Rs. 75 per can) which the latter refused to pay.

M/S Kashmir Apples and Juice Limited filed a suit against Fresh Tropical Limited to recover the above loss.

Referring to and explaining the relevant provisions of the Sales of goods Act, 1930, answer the following:

(i) Whether the act of selling raw apples by M/S Kashmir Apples and Juice Limited without any notice to the buyer was valid.

(ii) Also decide whether M/S Kashmir Apples and Juice Limited can recover the sustained loss of Rs. 25 per can from Fresh Tropical Limited and how would the profit of Rs. 5 per can earned from sale of the rest of 1800 cans be treated in this case.

(iii) In case no notice of resell was given by the seller, what would be the outcome of the suit filed for recovery of loss on sale of 1200 cans and the profit earned on sale of 1800 cans?

ANSWER

M/S Kashmir Apples and Juice Limited (the seller) is an **unpaid seller** under **Section 45**, as the price had not been paid. Under the contract, the right of lien and possession remained with the seller until full payment. The dispute concerns the seller's **right of re-sale** under **Section 54**, which provides:

- Where the goods are of a **perishable nature**, the unpaid seller may re-sell the goods **without giving any notice** to the buyer of his intention to re-sell;
- Where the seller **gives notice** to the buyer of his intention to re-sell and the buyer fails, within a reasonable time, to pay/tender the price, the seller may re-sell the goods, and on such re-sale he is entitled to (a) **recover the difference between the contract price and the re-sale price as damages**, and (b) **retain any profit** if the re-sale price is higher than the contract price;
- Where the goods are re-sold **without giving notice** (in a case not covered by the perishable-goods rule), the seller **cannot recover the loss** on re-sale, and must hand over any surplus/profit on the re-sale to the original buyer.

(i) Whether selling the raw apples without notice to the buyer was valid

The stored apples had been assessed to **soon start to rot** — i.e., they were goods of a **perishable nature**. Under Section 54, where the goods are perishable, the unpaid seller may re-sell them without giving any notice to the buyer. The buyer had also not paid and the seller retained possession/lien.

Conclusion: **Yes**, the act of selling the raw (perishable) apples in the local market without notice to Fresh Tropical Limited was **valid**, because the goods were of a perishable nature.

(ii) Whether the seller can recover the loss of Rs. 25 per can on 1,200 cans, and treatment of the Rs. 5 per can profit on 1,800 cans

For the remaining 3,000 cans of juice, the seller **gave proper notice** on 28.07.2025 that they would be sold if payment was not made by 31.07.2025, and the buyer failed to pay. Since valid notice of re-sale was given, Section 54(2) applies: the seller re-sold 1,200 cans at Rs. 75 (a loss of Rs. 25 per can against the contract price of Rs. 100) and 1,800 cans at Rs. 105 (a profit of Rs. 5 per can).

- **Loss on 1,200 cans:** the seller can recover the difference as damages = (Rs. 100 – Rs. 75) × 1,200 = Rs. 25 × 1,200 = **Rs. 30,000** from Fresh Tropical Limited.
- **Profit on 1,800 cans:** since notice of re-sale was given, the seller is entitled to **retain the profit** = Rs. 5 × 1,800 = **Rs. 9,000**; it need not be paid over to the buyer.

Conclusion: Yes, the seller can recover the loss of Rs. 30,000 on the 1,200 cans from Fresh Tropical Limited, and may retain the Rs. 9,000 profit earned on the 1,800 cans.

(iii) Outcome if no notice of re-sale had been given

If the seller had re-sold the cans **without giving any notice** of re-sale, then, under Section 54, the seller **cannot recover the loss** suffered on the re-sale, and must **return any profit** earned on the re-sale to the original buyer.

Conclusion: Without notice of re-sale, the suit to recover the Rs. 30,000 loss on the 1,200 cans would **fail**, and the Rs. 9,000 profit on the 1,800 cans would have to be **handed over to Fresh Tropical Limited**. (This consequence does not affect the apples, which — being perishable — could validly be re-sold without notice.)

Question 5(b) [7 Marks]

The Indian Partnership Act, 1932

QUESTION

P and Q are running a partnership firm of manufacturing and trading of industrial chemicals. They invited R to join the firm as a partner.

R has sought your opinion as to what would be the limits of his implied authority as a partner and since the business is prone to hazards, he wants to know his authority in the case of an emergency.

Explain R, in this regard by referring to the applicable provisions of the Indian Partnership Act, 1932.

ANSWER

R has been invited to join P and Q's firm as a partner and wishes to know the limits of his implied authority and his authority in an emergency.

Implied authority — Section 19. The act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm binds the firm. Such authority to bind the firm is called his "implied authority" (subject to Section 22 — the act must be done in the firm name or in a manner expressing/implying an intention to bind the firm). Thus, in the ordinary course, R's acts within the usual business of the firm (dealing in industrial chemicals) will bind the firm.

Acts beyond implied authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner **does not** empower him to —

- submit a dispute relating to the business of the firm to arbitration;
- open a banking account on behalf of the firm in his own name;
- compromise or relinquish any claim or portion of a claim of the firm;
- withdraw a suit or proceeding filed on behalf of the firm;
- admit any liability in a suit or proceeding against the firm;
- acquire immovable property on behalf of the firm;
- transfer immovable property belonging to the firm; and
- enter into partnership on behalf of the firm.

Authority in an emergency — Section 21. A partner has authority, **in an emergency**, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances; and such acts bind the firm.

Conclusion: In the usual course of the firm's business, R's acts bind the firm under his implied authority (Section 19), except for the restricted acts listed above. Given that the business is prone to hazards, in an emergency R is empowered under Section 21 to do whatever a person of ordinary prudence would do to protect the firm from loss, and such acts will bind the firm.

Question 5(c) [6 Marks]

The Indian Contract Act, 1872

QUESTION

What is a Wagering agreement? State the transactions resembling with wagering transaction, but are not void.

Your answer should be based on the applicable provisions of the Indian Contract Act, 1872.

ANSWER

Wagering agreement — Section 30. An agreement by way of a wager is **void**. It is an agreement involving payment of a sum of money (or money's worth) upon the determination of an **uncertain event**. The essence of a wager is that each side should stand to **win or lose** depending upon the way an uncertain event takes place, and that neither party has any interest in the contract other than the sum/stake he will win or lose — neither party having any control over the event.

Transactions resembling a wagering transaction but which are NOT void:

- **Chit fund:** A chit fund does not come within the scope of a wager. Members contribute a fixed sum for a specified period, and the amount is paid to the winner of the draw.
- **Commercial / share-market transactions:** Transactions in which actual delivery of goods or shares is intended to be given or taken do not amount to wagers.
- **Games of skill and athletic competitions:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are games of skill, and such competitions are valid.
- **Contract of insurance:** A contract of insurance is a contingent contract supported by insurable interest; it is valid under law and is different from a wagering agreement.

Question 6(a) [7 Marks]

The Negotiable Instruments Act, 1881

QUESTION

Mr. Shah, a diamond merchant in Mumbai, draws a Bill of Exchange on May 1, 2026, for 50,000 British Pounds upon Mr. Smith, a resident of London. The bill is payable in London “60 days after sight.” Mr. Shah endorses the bill to Mr. Binod in Mumbai for the value received.

Due to a sudden and unforeseen grounding of all international courier flights caused by a volcanic eruption, Mr. Binod is unable to send the bill to London for presentment until May 19, 2026. Mr. Binod dispatches the bill on 20th May 2026 once the above bottleneck was removed. It is presented to Mr. Smith on May 24th 2026, who accepts the bill on May 25, 2026, but dishonours it at maturity.

Mr. Binod incurs additional expenses for noting the bill and suffers a loss due to fluctuations in the exchange rate between London and Mumbai. Mr. Binod demands, and Mr. Shah refuses to pay the same, claiming that the delay by Mr. Binod discharged him and that he is only liable for the face value of the bill, not the extra costs. Referring to the applicable provisions of the Negotiable Instruments Act, 1881, and based on the above facts, answer the following with reasons:

(i) Whether the instrument as discussed above will be treated as inland bill or foreign bill.

(ii) Whether the delay in presentment for acceptance in this case is excusable under the Act.

(iii) Determine what components of compensation Mr. Binod can claim from Mr. Shah.

ANSWER

(i) Whether the instrument is an inland bill or a foreign bill

As per **Section 11**, an **inland instrument** is a promissory note, bill of exchange or cheque drawn or made in India **and** made payable in India, **or** drawn upon any person resident in India. As per **Section 12**, any instrument that is not an inland instrument is deemed to be a **foreign instrument**.

Here, the bill was **drawn in India (Mumbai)** by Mr. Shah, but it was drawn upon **Mr. Smith, a resident of London** (not a person resident in India), and it was made **payable in London** (not in India). As it is neither payable in India nor drawn upon a person resident in India, it does not satisfy the conditions of an inland instrument.

Conclusion: The bill of exchange is a **foreign bill (foreign instrument)**.

(ii) Whether the delay in presentment for acceptance is excusable

A bill payable "60 days after sight" must be presented for acceptance to fix its maturity. As per **Section 75A**, **delay in presentment for acceptance or payment is excused** if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence; and when the cause of the delay ceases to operate, presentment must be made within a reasonable time.

The delay in this case was caused by the sudden and unforeseen **grounding of all international courier flights due to a volcanic eruption** — a circumstance entirely beyond Mr. Binod's control and not due to any default or negligence on his part. Once the bottleneck was removed, Mr. Binod dispatched the bill on 20th May 2026 (within a reasonable time), and it was presented on 24th May 2026.

Conclusion: The delay in presentment for acceptance is **excused** under Section 75A. Mr. Shah is therefore **not discharged** by reason of the delay, and his contention that the delay by Mr. Binod discharged him is **not tenable**.

(iii) Components of compensation Mr. Binod can claim from Mr. Shah

As Mr. Shah is not discharged, he remains liable to Mr. Binod. The compensation is governed by **Section 117**, under which the holder/endorsee is entitled to recover:

- the **amount due upon the instrument** (the value of the bill), together with the **expenses properly incurred in presenting, noting and protesting** it — this covers the additional noting expenses incurred by Mr. Binod;
- where the person charged resides at a place different from that at which the instrument was payable, the amount is recoverable at the **current rate of exchange** between the two places (re-exchange) — this covers Mr. Binod's loss arising from the fluctuation in the exchange rate between London and Mumbai; and
- interest, and (for an endorser who has paid) the amount paid with interest and expenses caused by the dishonour, as provided in Section 117.

Conclusion: Mr. Shah's contention that he is liable only for the face value of the bill and not the extra costs is **incorrect**. Under Section 117, Mr. Binod can recover from Mr. Shah the amount of the bill, the noting/protesting charges, and the amount computed at the current rate of exchange (re-exchange) to cover the exchange-rate loss, together with interest as applicable.

Question 6(b) [6 Marks]

The Indian Contract Act, 1872

QUESTION

As per the Indian Contract Act, 1872, a general rule is, “Stranger to a contract cannot file a suit in case of breach of contract”.

Provide the exceptions to the above rule.

OR

Describe any six legal rules regarding ‘consideration’ in terms of the provisions of the The Indian Contract Act, 1872.

ANSWER

(Either part may be attempted. Both are set out below.)

Option 1 — Exceptions to the rule that a 'stranger to a contract cannot sue' (doctrine of privity of contract)

The general rule is that only a person who is a party to a contract can sue upon it; a stranger to the contract cannot. This is the **doctrine of privity of contract**. It is, however, subject to the following exceptions, in which even a stranger to the contract may enforce a claim:

- **Trust:** A beneficiary can enforce his right under a trust, though he was not a party to the contract between the settlor and the trustee.
- **Family settlement:** Where the terms of a family settlement are reduced to writing, members of the family who were not parties may enforce the agreement.
- **Marriage contracts / arrangements:** A provision made for the benefit of a person under a marriage arrangement may be enforced by that person even though he is not a party.
- **Assignment of a contract:** Where the benefit of a contract is assigned, the assignee can enforce it (provided it does not involve personal skill).
- **Acknowledgement or estoppel:** Where the promisor, by his conduct, acknowledges himself as an agent of the third party, a binding obligation towards the third party arises.
- **Covenant running with the land:** A person who purchases land with notice that the owner is bound by certain duties affecting the land is bound by such covenants, which may be enforced by the successor.

Option 2 — Any six legal rules regarding 'consideration'

- **Consideration must move at the desire of the promisor:** An act done at the desire of a third party, or without the promisor's desire, is not consideration.
- **Consideration may move from the promisee or any other person:** It may proceed even from a stranger to the contract (stranger to consideration).
- **Consideration may be past, present or future:** It may consist of an act already done, done simultaneously, or promised to be done.
- **Consideration need not be adequate:** It need not be of equal value with the promise, but must have some value in the eyes of law.
- **Consideration must be real and not illusory:** It must be competent, real and of some value; physically or legally impossible or uncertain consideration is not valid.
- **Consideration must be lawful:** It must not be unlawful, immoral or opposed to public policy; and it must be something which the promisor is not already bound to do.

Question 6(c) [7 Marks]

The Sale of Goods Act, 1930

QUESTION

Answer the following in terms of the provisions of the Sale of Goods Act, 1930.

Who is an unpaid seller?

State the remedies available to an unpaid seller against the buyer.

ANSWER

Who is an unpaid seller — Section 45

The seller of goods is deemed to be an **unpaid seller** —

- when the **whole of the price has not been paid or tendered**; or
- when a bill of exchange or other negotiable instrument has been received as **conditional payment**, and the condition on which it was received has not been fulfilled by reason of the **dishonour** of the instrument or otherwise.

The term "seller" here includes any person who is in the position of a seller (e.g., an agent of the seller to whom the bill of lading has been endorsed, or a consignor/agent who has himself paid, or is directly responsible for, the price).

Remedies available to an unpaid seller against the buyer (personally)

Apart from his rights against the goods (lien, stoppage in transit and re-sale), the unpaid seller has the following remedies **against the buyer personally**:

- **Suit for price (Section 55):** Where the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay the price, the seller may sue him for the price. Also, where the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects/refuses to pay, the seller may sue for the price even though the property has not passed.
- **Suit for damages for non-acceptance (Section 56):** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.
- **Suit for interest / special damages (Section 61):** The seller may recover interest on the price from the date of tender of goods or from the date on which the price was payable, and may also claim any special damages recoverable in law.
- **Repudiation of contract before due date (Section 60):** Where the buyer repudiates the contract before the date of delivery, the seller may either treat the contract as subsisting and wait till the date of delivery, or treat the contract as rescinded and sue for damages for the breach.