

Mock Test Paper - Series II: December, 2025

Date of Paper: 31st December, 2025

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

FOUNDATION COURSE

PAPER – 2: BUSINESS LAWS

ANSWERS

1. (a) (i) Under Section 10 of the Indian Contract Act, 1872, a valid contract requires free consent, lawful consideration, and a lawful object.
- In the instant case, the agreement to pay ₹ 10,000 in exchange for a service (providing information about prospective grooms) is lawful.
- Hence, the agreement is valid.
- (ii) According to section 20, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void.
- In the instant case, the bull's death (unknown to both parties) constitutes a bilateral mistake regarding the subject matter of the contract.
- Hence, the agreement is void.
- (iii) Under Section 27, agreements in restraint of trade are void. However, an exception is provided for contracts involving the sale of goodwill. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.
- In the instant case, the restriction is limited to the local area and does not extend indefinitely.
- Hence, the agreement is valid.
- (iv) According to section 12, a contract by a person who is not of sound mind is void.
- In the instant case, a property worth ₹ 2,00,000 was agreed to be sold for just ₹ 25,000 by a person of unsound mind.
- Hence, the agreement is void.

(b) (i) **According to Section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company—**

- **paid-up share capital** of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- **turnover** of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions: This clause shall not apply to:

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

In the instant case,

1. STS Pvt. Ltd. though is a small company taking into account its turnover and paid up share capital (i.e. ₹ 10 crores and ₹ 1 crore respectively), but since it is the subsidiary company of UV Infratech Pvt. Ltd. (UV Infratech Pvt. Ltd. holds ₹ 60,00,000 equity share capital of STS Pvt. Ltd.), hence STS Pvt. cannot be considered as small company.
2. ZX Ltd. cannot be considered as a small company since it is a public company.

(ii) **Section 5(4) and (5) of the Companies Act, 2013 contains the following provisions:**

Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in 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.

Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

In the instant case, Justice Private Limited can follow the above procedure i.e. with the consent of all the members and notice to the registrar to include the entrenchment provision in its Articles.

Yes, the advice will differ, if the company is public company, since it has to pass Special Resolution and also inform to the registrar.

- (c) (i) (1) **Partner by holding out (Section 28 of the Indian Partnership Act, 1932):** Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

- (2) **Nominal Partner:** A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

- (ii) **Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932)**

According to Section 38, a continuing guarantee given to a firm or to third party in respect of the transaction 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 change may occur by the death, or retirement of a partner, or by introduction of a new partner.

2. (a) (i) According to Section 15 of the Sale of Goods Act, 1930, where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

In the instant case, the contract specified that the basmati rice should be grown in Chhattisgarh, packed in pink colour bags of 25 kg each but the seller mistakenly packed 1800 kg of rice from Maharashtra in white bags of 30 kg each, and only 200 kg of rice from Chhattisgarh in the correct pink bags.

Therefore, the buyer has the right to reject the entire quantity of basmati rice supplied by the buyer as the goods do not correspond with the description.

(ii) Section 10 of the Sale of Goods Act, 1930 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

In the instant case, as Kusum cannot do valuation of laptop due to non-sharing of particulars and configuration by Kartik who was bound by his promise, the agreement will be void.

The other remedy available to Vasant is that he can claim damages from Kartik as he will be liable for the damages to Vasant who is not at fault.

(b) (i) **"Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions."**

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- (1) **To determine the character of the company i.e. to find out whether co-enemy or friend:** It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
- (2) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.
 - (i) Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity.
 - (ii) Where the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company.

- (3) **To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction (*The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another*).
 - (4) **Formation of subsidiaries to act as agents:** A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.
 - (5) **Company formed for fraud/improper conduct or to defeat law:** Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.
- (ii) **Effect of Memorandum and Articles:** As per Section 10 of the Companies Act, 2013, where the Memorandum and Articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles.
- All monies payable by any member to the company under the Memorandum or Articles shall be a debt due from him to the company.
- (c) (i) **Change of name of LLP (Section 17 of Limited Liability Partnership Act, 2008):**
- (1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to —
 - (a) that of any other LLP or a company; or
 - (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company,

the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

- (2) Where a LLP changes its name or obtains a new name under sub-section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.
- (3) If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.

Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

(ii) **Small Limited Liability Partnership [Section 2(1)(ta) of the Limited Liability Partnership Act, 2008]:** It means a limited liability partnership—

- (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

- 3. (a) (i) **Liability of D:** As per section 31 of the Indian Partnership Act, 1932, the liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred

by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. The mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In the instant case, D would not be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors.

- (ii) **If D was minor at the time of admission:** As per section 30, the liability of the minor is confined only to the extent of his share in the profits and the property of the firm.

Minor has no personal liability for the debts of the firm incurred during his minority.

Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

Hence, D would not be liable in this case also.

- (iii) **Liability of D upon becoming major:** A minor partner on attaining majority becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

Hence, D would not be liable to pay the existing debt upon becoming major.

- (b) (i) It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.

Since the memorandum is a “public document”, it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, ABC Pvt. Ltd. was authorised to trade in property only, so taking loan for construction business was ultra virus the power of the company.

Therefore, Magnum Finance Ltd. cannot enforce against ABC Pvt. Ltd. for recovery of the loan. But

- (a) It can recover the money to the extent it has been utilised in meeting lawful debt of the company, then it steps into shoes of the debtor paid off and consequently it would be entitled to recover the loan to that extent from the company.
- (b) if the money is not spent, it may stop ABC Pvt. Ltd. from spending by means of injunction and recover the unspent amount.

(ii) **Formation of companies with charitable objects etc. (Section 8 company):** Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company intends to apply its profit in promoting its objects and
- prohibiting the payment of any dividend to its members.

In the instant case, SNM Ltd. cannot declare dividend @10% to equity shareholders for the year ending 31st March, 2025 as it is a Section 8 company which are specifically prohibited from paying dividend. The profits of a section 8 company must be applied towards promoting its objects.

Therefore, the special resolution passed in the EGM to declare a dividend is invalid.

(c) (i) **Nature and extent of Surety's Liability [Section 128 of the Indian Contract Act, 1872]**

- (A) The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.
- (B) Liability of surety is of secondary nature as he is liable only on default of principal debtor.
- (c) Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.
- (D) A creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.

(ii) **Discharge of a contract of Surety by the invalidation of the contract of guarantee.**

- (a) **Guarantee obtained by misrepresentation [Section 142]:** Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.
- (b) **Guarantee obtained by concealment [Section 143]:** Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.
- (c) **Guarantee on contract that creditor shall not act on it until co-surety joins (Section 144):** Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

4. (a) Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfil the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfil the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express

agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

In the instant case,

- (i) D can compel any of three parties A, B and C to pay him ₹ 6,000.
- (ii) (1) C can recover the contribution from A and B because A, B and C are joint promisors.
(2) A is unable to pay anything, C is compelled to pay the whole. C is entitled to receive ₹ 3,000 from B.

(b) Rules as to compensation (Section 117 of the Negotiable Instruments Act, 1881):

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

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if

any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

(c) The Ministry of Finance

- The Ministry of Finance (Vitta Mantralaya) is a Ministry within the Government of India concerned with the economy of India, serving as the Treasury of India.
- In particular, it concerns itself with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.
- One of the important functions of the Finance Ministry is the presentation of the Union Budget. This annual event is eagerly awaited by professionals and the common man as it provides for the rates of taxes and budget allocations for the ensuing year.

The Ministry of Corporate Affairs

- The Ministry of Corporate Affairs is an Indian Government Ministry.
- It is primarily concerned with administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.
- It is responsible mainly for the regulation of Indian enterprises in the industrial and services sector.

The Ministry of Law and Justice

- The Ministry of Law and Justice in the Government of India is a Cabinet Ministry
- It deals with the
 - management of the legal affairs, through the Department of Legal Affairs
 - legislative activities through the Legislative Department
 - administration of justice in India through the Department of Justice
- The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

5. (a) (i) As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer when he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question.

Since, Mangesh, who had taken delivery of the camera on Sale or Return basis and delivers the same to Rahul on sale for cash only or return, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Camera) passes to Mangesh.

Now, Rahul delivered it to Vishal on a sale or return without paying cash to Mangesh.

Since Rahul did not pay cash and had not exercised the option to purchase, ownership of the camera did not pass to Rahul. Therefore, Rahul is not liable to pay the price of the camera either.

Since Vishal did not accept the goods and the camera was lost by theft (despite his due care), Vishal is not liable for the price of the camera as ownership had not passed to him.

Therefore, Mangesh is solely liable to pay the price of the camera to Ashok, as he accepted the camera on a "sale or return" basis and did not return it within a reasonable time.

- (ii) According to Section 51 of the Sale of Goods Act, 1930, when the carrier wrongfully refuses to deliver the goods to buyer, the right of stoppage in transit is lost and transit comes to an end.

On the other hand, according to section 57 of the Sale of Goods Act, 1930, where buyer suffers losses due to non-delivery, he can sue seller for damages on account of non-delivery.

In the instant case, the transit came to an end when Chetan wrongfully refused to deliver the goods to Baburam, and he suffered a huge loss due to non- delivery. Hence, Ansari cannot exercise the right of stoppage of goods in transit as the transit has already come to an end.

Baburam can claim loss suffered due to non-delivery from Ansari.

(b) **Dissolution by the Court (Section 44 of the Indian Partnership Act, 1932):**

Court may, at the suit of the partner, dissolve a firm on any of the following ground:

- (a) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.
- (b) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (c) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.
- (d) **Persistent breach of agreement:** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
 - Embezzlement,
 - Keeping erroneous accounts
 - Holding more cash than allowed
 - Refusal to show accounts despite repeated request etc.
- (e) **Transfer of interest:** Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue due by the partner, the court may dissolve the firm at the instance of any other partner.
- (f) **Continuous/Perpetual losses:** Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

- (g) **Just and equitable grounds:** Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
- (i) Deadlock in the management.
 - (ii) Where the partners are not in talking terms between them.
 - (iii) Loss of substratum.
 - (iv) Gambling by a partner on a stock exchange.
- (c) (i) **Suit by bailor & bailee against wrong doers [Section 180 of the Indian Contract Act, 1872]:** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.
- (ii) **Duties of the Pawnee**
- Pawnee has the following duties:
- a. Duty to take reasonable care of the pledged goods.
 - b. Duty not to make unauthorized use of pledged goods.
 - c. Duty to return the goods when the debt has been repaid or the promise has been performed.
 - d. Duty not to mix his own goods with goods pledged.
 - e. Duty not to do any act which is inconsistent with the terms of the pledge.
 - f. Duty to return accretion to the goods, if any.
6. (a) According to section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—
- for payment of any amount of money
 - to another person from that account
 - for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]

- is returned by the bank unpaid,
- either because of the—
 - amount of money standing to the credit of that account is insufficient to honor the cheque, or
 - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

Explanation: For the purpose of this section, “debt or other liability” means a legally enforceable debt or other liability.

(i) In the given question, Rohan received a cheque from Ram, for ₹ 51,000 as a gift for his marriage. In terms of section 138, cheque given as a gift does not fall within this section. Hence, Ram would not be held liable for dishonour of cheque.

(ii) The explanation to the section provides that for the purpose of section 138 only a legally enforceable debt or other liability is to be taken into consideration. The cheque of ₹ 51,000 was issued in the nature of a gift and not as a part of the payment for the balance amount of car. Hence, Rohan was not justified in considering the dishonour of cheque, an offence under section 138 of the Negotiable Instruments Act, 1881.

(b) (i) **Quasi- Contracts:** A quasi-contract is not an actual contract, but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

Salient features of quasi contracts:

- (a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.
- (b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and

- (c) Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

(ii) Responsibility of finder of goods

As per section 71 of the Indian Contract Act, 1872, 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.

Thus, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

OR

- (b) (i) Pledge by mercantile agent:** According to section 178 of the Indian Contract Act, 1872, a mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.

Such Pledge shall be valid as if were made with the authority of the owner of goods. Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.

(ii) Pledge by person in possession under voidable contract

According to section 178A of the Indian Contract Act, 1872, When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence), but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

- (c) (i) (A) Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930):** 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.

(B) Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930): Where there is an agreement to sell specific goods, and 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 the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

(ii) Section 13 of the Sale of Goods Act, 1930, specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.