PAPER – 2: BUSINESS LAWS

*Question No. **1** is compulsory.*

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

Working Notes should form part of the answer.

Question 1

(a) 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 ₹ 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 ₹ 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 ₹ 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 ₹ 50,000 provided by a third party (the father) is lawful and enforceable.* ***(7 Marks)***

(b) *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 ₹ 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 unauthorized 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? ***(7 Marks)***

(c) 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? ***(3 Marks)***

(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. ***(3 Marks)***

Answer

(a) (i) Whether Meera was required to communicate her acceptance to Mr. Arjun?

Under the Indian Contract Act, 1872, a general offer is an offer made to public at large and hence anyone can accept and do the desired act *(Carlill Vs. Carbolic Smoke Ball Co.)*. In terms of Section 8, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.

In the present case, Mr. Arjun offered a reward of ₹50,000 to any employee who successfully fixed the coding bug. The offer was, therefore, an offer capable of acceptance by performance of the specified act. Meera, after acquiring knowledge of the offer started working on the bug and incurred ₹10,000 from her own pocket for engaging a consultant. She ultimately successfully fixed the bug and submitted the solution.

The fact that she did not "formally" inform Mr. Arjun that she had started working is irrelevant — conduct in performance of the specified act is sufficient acceptance in law.

Hence, Meera was not required to formally communicate her acceptance before performing the stipulated act. Her successful fixing of the bug constituted acceptance of the offer.

(ii) Whether the revocation of the offer was legally valid and binding on Meera?

- **Section 5 of the Indian Contract Act, 1872:** A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.
- **Section 4 of the Indian Contract Act, 1872:** Revocation is complete as against the person to whom it is made only when it comes to his knowledge. Mere dispatch by the offeror is not enough; actual receipt/knowledge by the offeree is essential.

In the present case, Mr. Arjun sent the revocation e-mail on 5th May 2026 at 10:00 AM. Due to a server crash, the e-mail was not received in Meera's inbox until 7th May 2026 at 9:00 AM. In the meantime, Meera successfully fixed the bug and submitted the solution on 6th May 2026 at 4:00 PM.

Meera acquired knowledge of the revocation of offer on 7th May 2026 after acceptance of offer on 6th May 2026. According to the law, once the offer is accepted, it cannot be revoked or withdrawn.

Therefore, the revocation was not legally valid and binding on Meera.

(iii) Whether the consideration of ₹50,000 provided by a third party, namely Mr. Arjun's father, is lawful and enforceable

Under section 2(d) of the Indian Contract Act, 1872, consideration may move from the promisee or any other person who is not a party to the contract. The definition of consideration as given in Section 2(d) makes that proposition clear. Accordingly, when, at the desire of the promisor, the promisee or any other person does something, such an act is consideration. In other words, there can be a stranger to a consideration but not a stranger to a contract.

In the present case, Mr. Arjun communicated the offer to his employees that his father had agreed to pay ₹ 50,000 out of his personal savings

to any employee who successfully fixes the bug. Further, Meera performed the stipulated act by successfully fixing the bug.

Here, there was consideration in the form of the act performed by Meera in accordance with the terms of the offer.

Therefore, the consideration of ₹ 50,000 provided by the third party (Mr. Arjun's father) is lawful and enforceable.

(b) Doctrine of Indoor Management (Turquand Rule): The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the Memorandum and Articles of Association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

This doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

(i) In the given question, Global Bank being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claims that no resolution authorizing the loan was passed, Global Bank has a legal right to recover the loan amount from the company.

(ii) There are certain exceptions to the Doctrine of Indoor Management. The Doctrine of Indoor Management does not protect an outsider who has actual or constructive knowledge of the irregularity. The rule is designed to protect those who act in good faith without knowledge of internal defects.

Hence, in this case, since the Bank Manager had the knowledge of the irregularity of the absence of Board resolution, Global Bank would not be protected and has no legal right to recover the loan amount from the company.

(iii) The Doctrine of Indoor Management does not apply in cases of forgery. Forgery is another recognised exception to the doctrine. A forged document is a nullity and cannot bind the Company merely because an outsider acted in good faith.

In the present case, the formal letter confirming that the Board Resolution had been passed was forged and bore the wrong signature of the Company Secretary.

Since the "formal letter" is a forged document, the Bank cannot use the Doctrine of Indoor Management to bridge the gap of missing the board resolution. The Company would not be contractually liable for the loan, and the Bank cannot sue the Company to recover the loan.

Hence, Global Bank cannot recover the loan amount from the Company.

(c) (i) **"The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners."**

The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business.

Therefore, the said statement is correct.

Types of Sharing of Receipts That Do NOT Make a Person a Partner: As per Section 6 of the Indian Partnership Act, 1932 and its Explanations, the following types of receipt-sharing arrangements, even though they involve sharing of profits/returns, do not by themselves create a partnership:

1. **Joint owners of property** sharing profits or gross returns arising from that property (Explanation 1) — e.g., co-owners of a building sharing rental income.
2. **A lender of money** who, by contract, receives a share of the profits arising from the conduct of a business, or a rate of interest varying with such profits (Explanation 2(a)) — e.g., a moneylender who charges interest linked to the borrower's business profits does not thereby become a partner.

3. **A servant or agent** receiving remuneration as a share of the profits of the business (Explanation 2(b)) — e.g., a manager paid a percentage of profits in addition to/instead of salary is not a partner merely for that reason.
4. **A widow or child of a deceased partner** receiving a portion of the profits as an annuity (Explanation 2(c)) — such payment made in consideration of the deceased partner's share does not make the recipient a partner.
5. **Previous owner or part-owner** of the business who sells/transfers his interest and receives a portion of the profits in consideration of the sale of the goodwill or share — Explanation 2(d) — also does not thereby become a 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."**

The statement is valid and is derived from Section 14 of the Indian Partnership Act, 1932, which defines the property of the firm. Section 14 states that subject to contract between the partners, the property of the firm includes:

1. All property, rights, and interests which the partners may have brought into the common stock as their contribution to the common business;
2. All property, rights, and interests acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm;
3. The goodwill of the business;
4. Property acquired with money belonging to the firm — such property is presumed (unless the contrary intention appears) to have been acquired for the firm.

Hence the given statement emphasising on items which can be termed as a partnership property, is valid.

Further, determination of the question whether a particular property is or is not 'property' of the firm ultimately depends on the real intention or agreement of the partners. Thus, the mere fact that the property of

a partner is being used for the purposes of the firm shall not by itself make it partnership property, unless it is intended to be treated as such. Partners may, by an agreement at any time, convert the property of any partner or partners (and such conversion, if made in good faith, would be effectual between the partners and against the creditors of the firm) or the separate property of any partner into a partnership property.

Question 2

(a) 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. ***(7 Marks)***

(b) "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. ***(7 Marks)***

(c) 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. ***(3 Marks)***

(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. ***(3 Marks)***

Answer

(a) Goods sent on approval or "on sale or return" (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-

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or

(c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

In the instant case, Mohan supplied the portable air conditioner to Bibhuti on a sale or return basis, with a period of 10 days for return. Before the expiry of the 10 days period, Bibhuti's daughter took the portable air conditioner to her in-laws' house without intending to return it. Bibhuti was

aware that she had taken the air conditioner, remained silent, and did not take any step indicating rejection or return of the goods.

In the present case, the taking away of the portable air conditioner for permanent use, coupled with Bibhuti's knowledge conduct signifies acceptance of the Bibhuti and is an act inconsistent with the intention of returning the goods to Mohan. Such conduct indicates adoption of the transaction by Bibhuti.

Yes, Mohan can treat the transaction as approved/accepted by Bibhuti, even though the stipulated period of 10 days has not elapsed. Accordingly, the property in the portable air conditioner would pass to Bibhuti.

In terms of the provision of part (a) above, this act of Bibhuti will be treated as implied approval of the transaction, and the property in goods has passed from Mohan to Bibhuti.

Whether Mohan can recover the price from Bibhuti's daughter?

Mohan entered into the contract of sale or return with Bibhuti, and not with Bibhuti's daughter. Bibhuti was the person to whom the goods were delivered, the option to approve or return was given and the contractual obligation to pay the price arose upon approval or adoption of the transaction. Bibhuti's daughter was not a party to the contract of sale between Mohan and Bibhuti.

Therefore, even though she physically took the portable air conditioner to her in-laws' house, she does not become the buyer merely because she took possession of the goods.

Hence, Mohan cannot recover the price of the portable air conditioner directly from Bibhuti's daughter, since there is no contractual relationship between Mohan and her. Bibhuti, being the buyer and the contracting party, is liable to pay the price to Mohan.

(b) Corporate Veil: Corporate Veil refers to a legal concept whereby the Company is treated as a legal entity distinct and separate from its shareholders or members. (*Salomon Vs. Saloman and Co. Ltd.).* Thus, the shareholders are protected from the acts of the company.

Lifting of Corporate Veil: 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: In the law relating to trading with the enemy where the test of control is adopted. The leading case in this point is *Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.,* if the public interest is not likely to be in jeopardy, the Court may not be willing to crack the corporate shell. But it may rend the veil for ascertaining whether a company is an enemy company. 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 *[S. Berendsen Ltd. vs. Commissioner of Inland Revenue]*.

(i) Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity *[Juggilal vs. Commissioner of Income Tax AIR (SC)]*.

(ii) In *[Dinshaw Maneckjee Petit],* it was held that the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So, he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The Court decided that the private companies were a sham and the corporate veil was lifted to decide the real owner of the income.

(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. *(Merchandise Transport Limited Vs. British Transport Commission)*

(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. *[Gilford Motor Co. vs. Horne]*

(c) (i) Small Limited Liability Partnership [Section 2(1)(ta) of the LLP Act, 2008]: The conditions to be fulfilled by a LLP to be qualified as a small LLP are enumerated as under:

(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.

(ii) Incorporation document (Section 11): The most important document needed for registration is the incorporation document.

The incorporation document shall—

(a) be in a form as may be prescribed;

(b) state the name of the LLP;

(c) state the proposed business of the LLP;

(d) state the address of the registered office of the LLP;

(e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;

(f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;

(g) contain such other information concerning the proposed LLP as may be prescribed.

Question 3

(a) 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 ₹ 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 ₹ 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 ₹ 50 Lakh from 1st December 2024 to 31st December 2024

(i.e. after retirement of Alex till his death ₹ 2 crore and from his death till the date of claim ₹ 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. ***(7 Marks)***

(b) *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 ₹ 50 Crores comprising of equity shares of ₹ 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.

(7 Marks)

(c) "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) he 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.

(6 Marks)

Answer

(a) Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either:

(1) Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or

(2) Interest at the rate of 6 per cent per annum on the amount of his share in the property of the firm.

1st Settlement:

Referring to the above provision, Tom can claim the following maximum amount:

(i) 30% share of 30 crores (i.e. share of the value of total partnership property including the profits earned by the firm till Alex's retirement) = ₹ 9 crore; and

(ii) Higher of (Since maximum amount has been asked in the question):

(a) 30% of ₹ 2 crore (i.e. the share of profit from the date of retirement till the date of death/claim made) = ₹ 60 lakh OR

(b) 6% interest per annum on 9 crores (as calculated above) for the period from the date of retirement till the date of death/claim made, i.e. for one month) = ₹ 4.5 lakh

Therefore Tom can claim a maximum amount of ₹ 9 crore + ₹ 60 Lakh = ₹ 9.60 crore.

2nd Settlement:

In the next situation, when Tom approached the Firm for settlement of his father's claim on 31st December 2024, Tom can claim the following maximum amount:

(i) 30% share of 30 crores (i.e. share of the value of total partnership property including the profits earned by the firm till Alex's retirement) ₹ 9 crore; and

(ii) Higher of (Since maximum amount has been asked in the question):

(a) 30% of ₹ 2.5 crore (i.e. the share of profit from the date of retirement till the date of claim made) = ₹ 75 lakh OR

(b) 6% interest per annum on 9 crores for the period from the date of retirement till the date of claim made, i.e. from 31st October 2024 to 31st December 2024, i.e. for 2 months) = ₹ 9 lakh

Therefore, Tom can claim a maximum amount of ₹ 9 crore + ₹ 75 Lakh = ₹ 9.75 crore.

Continuing Guarantee: 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.

In the instant case, as there is a change in the constitution of the firm on 31st October due to retirement of Alex, the continuing guarantee given to Asif (third party) can be revoked by Neel and Dhruv, the remaining partners of the firm.

Hence, the contention of the Asif is not tenable.

(b) According to section 5(3) of the Companies Act, 2013, the articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

As per section 5(4), 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.

(i) Whether the Company can include the proposed entrenchment clause: In the instant case, the proposed entrenchment clause seeks to impose a condition more restrictive than the statutory requirement applicable to the investment of company funds under Section 186 of the Companies Act, 2013.

Section 186 permits investment beyond the prescribed limits only with the approval of the members by a prior special resolution.

The proposed entrenchment clause requires a prior unanimous resolution of all the members before such power can be exercised.

Hence, the Company can include the proposed entrenchment clause in its Articles of Association being more restrictive.

(ii) Whether a special resolution is sufficient and whose contention is tenable: Under Section 5(4), in the case of a private company, the provisions for entrenchment can be made only by an agreement between all the members of the company.

Therefore, in the instant case, Smooth Panels Private Limited can include the entrenchment clause in the Articles only by an agreement

between all the members of the company. Special resolution is not required.

Contention of Mr. Yogesh is not tenable that only an ordinary resolution will be enough to include the entrenchment clause.

Contention of Mr. Zitesh is tenable that the entrenchment clause can be included if it is agreed to by all the members of the company.

(c) Sometimes, a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts. In such cases, the payment is appropriated (i.e. adjusted against the debts) as per Section 59 to 61 of the Indian Contract Act, 1872.

(i) Debtor expressly intimates or implies which debt should be discharged (Section 59): Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

(ii) 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, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits. However, he cannot apply the payment to the disputed debt.

(iii) Neither the debtor not the creditor makes any specific appropriation (Section 61): Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

Question 4

(a) 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 ₹ 2,000 per meter, with the delivery scheduled for 1st December 2025. Mr. Samrat required this silk to fulfill an export order worth 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 ₹ 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 ₹ 2,500 per meter. By 1st December 2025, the market price had risen to ₹ 3,000 per meter. Mr. Samrat could not fulfill his order, and he had to pay ₹ 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. ***(7 Marks)***

(b) 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. ***(7 Marks)***

(c) *The Ministry of Home Affairs (Grha Mantralaya) 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.* ***(6 Marks)***

Answer

(a) (i) **Section 39 of the Indian Contract Act, 1872 deals with anticipatory breach of contract and provides as follows:** "When a party to a contract has refused to perform or disable 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."

Effect of anticipatory breach: The promisee is excused from performance or from further performance. Further he gets an option to either treat the contract as rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance;

In the instant case, on 15th October 2025, Vogue Fabrics Limited informed Mr. Samrat, before the date fixed for performance, that it would be unable to supply the silk as agreed. This amounts to an anticipatory breach of contract.

Also, Mr. Samrat was legally entitled to treat the contract as repudiated and sue for damages before 1st December 2025.

(ii) In terms of the provisions of Section 73 of the Indian Contract Act, 1872, on the breach of contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach. Compensation can be claimed for any loss or damage which naturally arises in the usual course of events (Ordinary damages).

Compensation can also be claimed for any loss or damage which the party knew when they entered into the contract, as likely to result from the breach (Special damages). That is to say, special damage can be claimed only on a previous notice. But the party suffering from the breach is bound to take reasonable steps to minimise the loss. No compensation is payable for any remote or indirect loss.

The Explanation to Section 73 further provides that in estimating the loss, the means which existed of remedying the inconvenience caused by non-performance must be taken into account — i.e., there is a duty to mitigate loss.

This provision incorporates the twin principles from *Hadley vs. Baxendale*, as consistently applied by Indian courts: damages are of two kinds —

1. **Ordinary/General Damages** — those naturally arising in the usual course of things from the breach; and
2. **Special Damages** — those arising from special circumstances, recoverable only if such special circumstances were communicated to and known by the party at the time of entering the contract.

In terms of the above provisions, ordinary damages will be the amount suffered due to price hike of the products, i.e. for 1,000 meters of silk @ ₹ 500 per bundle (2,500 hiked price on the date of filing suit less 2,000 normal price at the time of contract) = ₹ 5,00,000.

In the given situation since Mr. Samrat has already informed Vogue Fabrics Limited that the export contract is worth ₹ 30 Lakhs, he is also eligible to claim for special damages, i.e. the loss which he suffered due to non-performance of the export contract. The amount of special damages will be ₹ 30 Lakhs less the amount of the ordinary damages already claimed ₹ 5 Lakhs towards ordinary damages, i.e. ₹ 25 Lakhs.

(b) (i) Section 20 of the Negotiable Instruments Act, 1881, provides that where a person signs and delivers a paper (either wholly blank or having written upon it an incomplete negotiable instrument), and thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp (if any) affixed thereon, such person is termed to have made an "Inchoate Instrument."

Inchoate Instrument: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it incomplete particulars / amount. Such an instrument is

called an inchoate instrument, and this gives power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it. The principle of this rule of an inchoate instrument is based on the principle of estoppel.

Liability on drawing inchoate instrument: The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course. However, there is a difference in their respective rights:

The holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor.

The holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.

(ii) All cheques are bills while all bills are not cheques.

Section 5 of the Negotiable Instruments Act, 1881, defines a Bill of Exchange as: "An instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

Section 6 of the Negotiable Instruments Act, 1881 defines a Cheque as: "A bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and includes the electronic image of a truncated cheque and a cheque in the electronic form."

Therefore, a cheque satisfies the basic characteristics of a bill of exchange, but has the following two additional requirements:

a. Must be drawn on a specified banker.

b. It must be payable on demand.

These two additional features distinguish a cheque from bill.

The relationship is one of genus and species. "Bill of Exchange" is the broader genus (the category), while "Cheque" is a specific species (a subset) within it. A cheque is simply a bill of exchange that has been restricted to a banking environment, stripped of grace periods, and made strictly payable on demand. Thus, while every single cheque

qualifies as a bill, the vast majority of bills of exchange lack the specific banking traits required to be called a cheque.

Thus, all cheques are bills while all bills are not cheques.

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

The various Departments of Ministry of Home Affairs are

i. Department of Border Management

ii. Department of Internal Security

iii. Department of Jammu, Kashmir and Ladakh Affairs

iv. Department of Home

v. Department of Official Language

   a. Central Translation Bureau

   b. Central Hindi Training Institute

   c. Directorate of Census Operations

vi. Department of States

Question 5

(a) 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 ₹200 per Kg and 10,000 cans of apple juice at ₹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 ₹ 75 per can to another party M/S New Fruit Private Limited and the rest of 1800 cans at ₹ 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 (₹ 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 Sale 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 ₹ 25 per can from Fresh Tropical Limited and how would the profit of ₹ 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? ***(7 Marks)***

(b) 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. ***(7 Marks)***

(c) 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. ***(6 Marks)***

Answer

(a) M/S Kashmir Apples and Juice Limited qualifies as an "Unpaid Seller" under Section 45 of the Sale of Goods Act, 1930, since the whole or part of the price of the goods sold to Fresh Tropical Limited remained unpaid.

An unpaid seller, even after the property in the goods has passed to the buyer, enjoys certain rights against the goods, including:

1. Right of Lien (Section 47) — right to retain possession of goods until payment of the price;
2. Right of Resale (Section 54) — right, in certain circumstances, to resell the goods.

Right of re-sale [Section 54 of the Sale of Goods Act, 1930]: The unpaid seller can exercise the right to re-sell the goods under the following conditions:

(i) **Where the goods are of a perishable nature**: In such a case, the buyer need not be informed of the intention of resale.

(ii) **Where he gives notice to the buyer of his intention to re-sell the goods:** If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

On the resale of the goods, the seller is also entitled to:

(a) Recover the difference between the contract price and resale price, from the original buyer, as damages.

(b) Retain the profit if the resale price is higher than the contract price.

If the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him.

Applying the above provisions, the answers are:

(i) Yes, the act of selling raw apples by M/S Kashmir Apples and Juice Limited without any notice to the buyer was valid as Mr. Gulfam, a representative from M/S Kashmir Apples and Juice Limited found out that the stored apples would soon start to rot because of their perishable nature.

(ii) Yes, M/S Kashmir Apples and Juice Limited can recover the difference between the contract price @ ₹ 100 and resale price @ ₹ 75 from the original buyer, as damages i.e. the sustained loss of ₹ 25 per can for 1200 cans i.e. ₹ 30,000 from Fresh Tropical Limited as the seller gave a notice to the buyer of his intention to resell the goods.

Also, the seller is entitled to retain the profit if the resale price (₹ 105) is higher than the contract price (₹ 100). In this case, the seller can retain the profit of ₹ 5 per can for 1800 cans i.e. ₹ 9,000.

(iii) In case no notice of resell was given by the seller, the seller cannot recover the loss of ₹ 30,000 suffered on resale from the buyer. Moreover, the seller must return profit on resale i.e. ₹ 9,000 to the original buyer.

(b) According to the provisions of Section 19 (1) of the Indian Partnership Act, 1932, the implied authority of a Partner as agent of the firm is as follows-

Subject to the provisions of section 22, the act of the partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called the "implied authority".

Section 19(2) expressly provides that in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) Submit a dispute relating to the business of the firm to arbitration;

(b) Open a banking account on behalf of the firm in his own name;

(c) Compromise or relinquish any claim or portion of a claim by the firm;

(d) Withdraw a suit or proceedings filed on behalf of the firm;

(e) Admit any liability in a suit or proceedings against the firm;

(f) Acquire immovable property on behalf of the firm;

(g) Transfer immovable property belonging to the firm; and

(h) Enter into partnership on behalf of the firm.

The above will be the limitations of implied authority of R, as a partner.

According to section 21 of the Indian Partnership Act, 1932, 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.

Any such act done by the partner in genuine emergency conditions, to safeguard the firm's interest and prevent loss, will be binding on the firm, even if such act would not ordinarily be considered within the partner's implied authority under Section 19.

R can be explained on his authority during emergency situations based on the above-mentioned provision.

(c) Wagering agreement (Section 30 of the Indian Contract Act, 1872): An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

Transactions resembling with wagering transaction but are not void.

(i) Chit fund: Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.

(ii) Commercial transactions or share market transactions: In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.

(iii) Games of skill and Athletic Competition: Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed ₹ 1,000.

(iv) A contract of insurance: A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

Queston 6

(a) 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.* ***(7 Marks)***

(b) *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 Indian Contract Act, 1872. ***(6 Marks)***

(c) *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. ***(7 Marks)***

Answer

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

Section 11 of the Negotiable Instruments Act, 1881, defines an **"Inland Instrument"** as a promissory note, bill of exchange, or cheque which is:

- drawn or made in India, and
- made payable in, or drawn upon any person resident in, India.

Section 12 of the Negotiable Instruments Act, 1881, defines a **"Foreign Instrument"** as any instrument which is not an inland instrument — i.e., any negotiable instrument that fails to satisfy the twin conditions laid down in Section 11.

In the present case, although the bill is drawn by Mr. Shah in Mumbai, it is:

- drawn upon Mr. Smith, who is resident in London; and
- payable in London.

Therefore, the bill does not satisfy the conditions of an inland instrument. Hence, it is a foreign bill.

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

Excusable Delay (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. When the cause of the delay ceases to operate, presentment must be made within a reasonable time.

In this case, international courier flights were suddenly grounded due to an unforeseen volcanic eruption and the circumstance was beyond Mr. Binod's control. He could not send the bill until May 19, 2026 and he dispatched the bill immediately on May 20, 2026, after the bottleneck was removed.

Therefore, Mr. Binod acted without negligence, and the delay was caused by circumstances beyond his control. Consequently, the delay in presentment for acceptance is excusable ~~ed~~ and Mr. Shah is not discharged from his liability merely because of such delay.

(iii) Components of compensation claimable by Mr. Binod from Mr. Shah: According to 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:

(i) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(ii) 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;

(iii) 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.

Accordingly, Mr. Binod can claim:

1. The amount due upon the bill i.e., 50,000 British pounds, subject to the applicable rules for conversion into Indian currency where compensation is claimed in India.
2. Expenses properly incurred in noting the bill – Since Mr. Binod has incurred expenses for noting the dishonour, such properly incurred expenses are recoverable as compensation.
3. Compensation for exchange-rate loss, where applicable – Since the bill is payable in London and compensation is claimed by a holder in India, the amount payable may be determined with reference to the prevailing rate of exchange applicable under Section 117.

(b) As per the provisions of the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party; but the third party cannot sue on contract. Only a person who is party to a contract can sue on it.

The aforesaid rule, that stranger to a contract cannot sue is known as a "doctrine of privity of contract", is however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

(1) In the case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.

(2) In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.

(3) In the case of certain marriage contracts/arrangements, a provision may be made for the benefit of a person, he may file the suit though he is not a party to the agreement.

(4) In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skill.

(5) Acknowledgement or estoppel – where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.

(6) In the case of covenant running with the land, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

(7) Contracts entered into through an agent: The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

OR

Section 2(d) of the Indian Contract Act, 1872 defines consideration as:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called consideration for the promise."

Following are the Legal Rules regarding Consideration under the provisions of the Indian Contract Act, 1872:

(i) Consideration must move at the desire of the promisor: Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration. Contract of marriage in consideration of promise of settlement is enforceable.

An act done at the desire of a third party is not a consideration.

(ii) Consideration may move from promisee or any other person: In India, consideration may proceed from the promisee or any other person who is not a party to the contract.

(iii) Executed and executory consideration: A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.

(iv) **Consideration may be past, present or future:** The words "has done or abstained from doing" [as contained in Section 2(d)] are a recognition of the doctrine of past consideration. In order to support a promise, a past consideration must move by a previous request. It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.

(v) **Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value. Something in return need not be equal to something given. It can be considered a bad bargain of the party.

(vi) **Performance of what one is legally bound to perform:** The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence, such a contract is void for want of consideration.

(vii) **Consideration must be real and not illusory:** Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.

(viii) **Consideration must not be unlawful, immoral, or opposed to public policy.** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also **cannot be valued as valid consideration.**

(c) Unpaid Seller: According to Section 45 of the Sale of Goods Act, 1930, the seller of goods is deemed to be an 'Unpaid Seller' when-

(a) The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

(b) 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, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Remedies available to an unpaid seller against the buyer:

1. **Suit for price (Section 55)**

   (a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

   (b) Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

2. **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.

3. **Repudiation of contract before due date (Section 60):** Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.

4. **Suit for interest [Section 61]:** Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.