BUSINESS LAW

UNIT I

Section A

1. When does an offer come to an end?

An offer may come to an end by revocation or lapse or rejection.

2. Distinguish between a sale and a Hire purchase agreement.

SALE	HIRE PURCHASE AGREEMENT
Ownership is transferred from the seller to the buyer, as soon as the contract is entered.	Ownership is transferred from the seller to the hire-purchaser only when certain agreed number of installments is paid.
The position of the buyer is that of the owner.	The position of the hire purchase is that of the bailee.
The buyer cannot terminate the contract and as such is bound to pay the price of the goods.	The hire purchaser has an option to terminate the contract at any stage, and cannot be forced to pay the further installments.

3. What are necessaries? When is a minor liable on a contract of necessaries?

The term “necessaries” is not defined in the Indian Contract Act. The Sales of Goods Act, 1983, defines it in sec 2, as “goods suitable to the condition in life of such infant or other person and to his actual requirement at the time of sale and delivery”.

Necessaries include,

- Necessary goods
- Services rendered

A minor is liable to pay out of his property for necessaries supplied to him or to anyone whom he is legally bound to support sec 68. The claim arises not out of contract but out of what are called quasi contracts.

4. Discuss the rules regarding enforcement of contingent contract.

- If a contingent contract is to be performed if an uncertain future event happens, it cannot be enforced until the event has happened.
- If a contingent contract depends for its performance on doing of an act by the promisor, the contract becomes void where the promisor makes the performance impossible.
- If a contingent contract contemplates doing of a thing if a specified event happens within a fixed time, it becomes void if the event does not happen within that time.
- If a contingent contract contemplates to do anything if impossible events happen, it is void.

5. Distinguish between a Condition and a Warranty.

- Difference as to value
- Difference as to breach
- Difference as to treatment

6. What do you mean by consideration in contract?

Consideration means something in return. Sec 2(d), defines “when at the desire of the promisor, the promise or any other person has done or abstained from doing or does or abstains from doing something, such act is called consideration for the promise.

7. Enumerate the rules regarding enforcement of contingent contract.

- Contingent contract dependent on the happening of an uncertain future event cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void Sec 32
- Where the contingent contract is to be performed if a particular event does not happen, its performance can be enforced when the happening of that event becomes impossible Sec 33
- If the contract is contingent upon how a person will act at an unspecified time the event shall be considered to become impossible when such person does anything which renders it impossible that should so act within any definite time or otherwise than under further contingencies sec 34
- Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if the event does not happen or its happening becomes impossible before the expiry if that time.
- Contingent agreements to do or not do anything, if an impossible event happens, are void, whether or not the fact is known to the parties sec 36.

8. State the rule of a valid offer.

- It must be intended to create legal relations
- It must be certain
- It must be distinguished from,
    a) A declaration of intention
    b) Invitation to make offer
- It must be communicated to the offeree
- It must be made with a view to obtaining the assent of the offeree
- It must cannot a term the non-compliance of which would amount to acceptance
- A statement of price is not an offer.

9. Define consideration and point out the salient features of the term consideration as defined in the Indian contract act?

Definition:

Sec 2, defines consideration as; "when at the desire of the promisor, the promise or any other person has done or abstained from doing or does or abstains from doing of promises to do or to abstain from doing, something, such act or abstinence or promise is called consideration for the promise.

Salient features:

- It is essential to support every contract
- It must move at the desire of the promisor
- It may move from the promise or from any other person
- It may be past, present or future
- It need not be adequate
- It must be real and not illusory
- It must not be something which the promisor is already legally or contractually bound to do
- It must not be illegal, immoral or opposed to public policy

Section B

1. Explain the legal aspect relating to communication of offer, acceptance and revocation. When does an offer come to an end?

An offer, its acceptance and their revocation to be completed must be communicated.

- **Mode of communication (sec 3)**

The communication of offer, its acceptance and their revocation respectively are deemed to be made by any (a) act or (b) omission, of the party offering, accepting or revoking.

- **When the communication complete (sec 4)**

Communication of offer sec 4(1), the communication of an offer is complete when it comes to the knowledge of the person to whom it is made.

Communication of acceptance sec 4(2), the communication of acceptance is complete as against the proposer when it is put into a course of transmission to him, so as to be out of the power of the acceptor; as against the acceptor when it comes to the knowledge of the proposer.

Communication of revocation sec 4(3), revocation means "taking back", "recalling" or "withdrawal". It may be a revocation of offer or acceptance.

The communication of revocation is complete as against the person who makes it. When it is put into a course of transmission to the person to whom it is made, so as to be out of the power that makes it.

- **When does an offer come to an end**

An offer may come to an end by revocation or lapse or rejection;

Revocation or lapse of offer sec 6, deals with various mode they are,

- By communication of notice sec 6(1)
- By the lapse of time
- By the non- fulfillment
- By the death or insanity
- If a counter- offer
- If an offer is not accepted
- If the law is changed

Rejection of offer

- Express rejection
- Implied rejection

2. Explain the law relating to validity of contract by minors.

According to "Indian Minority Act, 1875", a minor is a person who has not completed eighteen years of age.

The position of a minor as regards his agreements is given below:

- An agreement with or by a minor is void and inoperative
- He can be a promisee or a beneficiary
- His agreement cannot be ratified by him on attaining the age of majority
- If he has received any benefit under a void agreement
- He can always plead minority
- There can be no specific performance of the agreements entered into by him as they are void
- He cannot enter into a contract of partnership
- He cannot be adjusted insolvent
- He is liable for "necessaries"
- He can be an agent
- His parents/ guardian are/ is not liable for the contract entered into by him
- A minor is liable in tort

3. Explain the meaning of contingent contract. What are the rules relating to contingent contract?

Meaning:

A contingent contract is a contract to do or not to do something. If some event, collateral to such contract, does or does not happen sec 31.

Rules relating to contingent contract:

- Contingent contract dependent on the happening of an uncertain future event cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void Sec 32

- Where the contingent contract is to be performed if a particular event does not happen, its performance can be enforced when the happening of that event becomes impossible Sec 33
- If the contract is contingent upon how a person will act at an unspecified time the event shall be considered to become impossible when such person does anything which renders it impossible that should so act within any definite time or otherwise than under further contingencies sec 34
- Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if the event does not happen or its happening becomes impossible before the expiry if that time.

  Contingent agreements to do or not do anything, if an impossible event happens, are void, whether or not the fact is known to the parties sec 36.

4. What are the various ways in which a contract may be discharged?

A contract may be discharged,

- By performance
- By agreement or consent
- By impossibility
- By lapse of time
- By operation of law
- By breach of contract

Discharge by performance:

Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner which is prescribed. In such a case, the parties are discharged and the contract comes to an end. Performance of a contract is the most usual mode of its discharge. It may be (i) actual performance (ii) attempted performance.

Discharge by agreement or consent:

It is the agreement of the parties which binds them, so by their further agreement or consent the contract may be terminated. In various cases of discharge of a contract by mutual agreement are dealt with Sec 62, 63.

- Novation Sec 62
- Rescission Sec 62
- Alteration Sec 62
- Remission Sec 63
- Waiver
- Merger

Discharge by impossibility:

According to Sec 56, impossibility of performance may fall into the following categories;

- Impossibility existing at the time of agreement
    a) Known to the parties
    b) Unknown to the parties
- Impossibility arising subsequent to the information of contract

Discharge by lapse of time:

If contract is not performed within the period of limitation and if no action is taken by the promise in a law Court, the contract is discharged.

Discharge by operation of law:

A contract may be discharged independently of the wishes of the parties, i.e, by operation of law. This includes discharge,

- By death
- By merger
- By insolvency
- By unauthorized alteration by rights and liabilities

Discharge by breach of contract:

Breach of contract means a breaking of the obligation which a contract imposes. It occurs when a party to the contract without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it.

Breach of contract may discharge at,

- Actual breach of contract
- Anticipatory breach of contract

5. What do you understand by "Quantum of meruit "? When the claim on Quantum on meruit does arise?

The phrase "quantum meruit" literally means "as much as earned". A right to sue on a quantum meruit arises where a contract, partly performed by one party, has become discharged by the breach of the contract by the other party. The right is founded not on the original contract which is discharged or is void but on an implied promise by the other party to pay for what has been done.

The claim for quantum meruit arises in the following cases:

- When an agreement is discovered to be void Sec 65
- When something is done without any intention to do so gratuitously Sec 70
- When there is an express or implied contract to render services
- When the completion of the contract has been prevented by the act of the other party to the contract

- When the contract is divisible
- When an indivisible contract is completely performed but badly.

6. What are the reciprocal promises? Explain the rules regarding performance of reciprocal promises.

Promises which form the consideration or part of the consideration for each other are called “Reciprocal Promise”.

Rules regarding performance of reciprocal promise:

- When reciprocal promises have to be simultaneously performed the promisor is not bound to perform, unless the promise is ready and willing to perform his promise.
- The reciprocal promises must be performed in the order fixed by the contract
- Where the nature of reciprocal promises is such that one cannot be performed unless the other party performs his promise in the first place, then if the latter fails to perform he cannot claim performance from the other, but must make compensation to the first party for his loss.

UNIT II

Section A

1. State the provision of the partnership act regarding expulsion of a partner.

A partner may be expelled from partnership subject to the following three conditions:

- The power of expulsion of a partner should be conferred by the contract between the partners
- The power should be exercised by a majority of the partners
- The power should be exercised in good faith Sec 33(1).

2. Define the term "goods". What are the different types of goods?

According to Sec 2(7), 'Goods' means every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Types of goods:

- Existing goods
    a. Specific goods
    b. Ascertained goods
    c. Unascertained or generic goods
- Future goods
    a. Contingent and future goods

3. What is the effect of destruction of specific goods in a contract of sale?

- Goods perishing before making of contract Sec 7, a contract for a sale of specific goods are void if at the time when the contract was made, the goods have, without the knowledge of the seller, perished.

- Goods perishing after the agreement to sell but before the sale is effected Sec 8, an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer.

4. Bring out the distinction between a sale and an agreement to sell.

Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.

But where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

5. State the rules governing settlement of account of the firm, and sale of goodwill, after dissolution.

The mode of settlement of accounts between partners after the dissolution of a firm is determined by the partnership agreement. In the absence of any specific agreement between them in this regard, provisions of Sec 48, 49 & 55.

Sale of goodwill:

In settling the accounts of a firm after dissolution, the goodwill shall be included in the assets and it may be sold either separately or along with other property of the firm Sec 55(1)

Sharing of deficiency:

If the assets of the firm are insufficient to discharge the debts & liabilities of the firm, the partners shall bear deficiency in the proportion in which they were entitled to share profits.

6. How and when may a partner retire? What are the rights and liabilities of retiring partner?

A partner may retire from a firm,

- With the consent of all the other partners
- In accordance with an express agreement by the partners,
- Where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire Sec 32(1).

Liabilities of the retired partner,

- Liability before retirement
- Liability after retirement

Rights of the retired partner:

- To carry on competing business
- To share subsequent profits

Section B

1. Elaborate the various implied conditions in a contract of a sale.

Conditions as to title:

Under Sec 14(a), in a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that,

- In case of a sale, he has a right to sell the goods
- In the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

Where a seller having no title to the goods at the time of the sale, subsequently acquires a title, that title feeds the defective titles of both the original buyer and the subsequent buyer.

Sale by description:

Where there is a contract for sale of goods by description, there is an implied condition that the goods shall correspond with the description.

Condition as to quality or fitness:

Under Sec 16(1), in a contract of sale there is no implied condition as to quality or fitness of the goods for a particular purpose, the buyer must examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for the purpose for which he is buying them.

Condition as to merchantability:

Under Sec 16(2), where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods are merchantable quality.

Condition implied by custom:

An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade, under Sec 16(3).

Condition as to wholesomeness:

In case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

2. Explain the various modes of reconstitution of a partnership firm.

- Introduction of a new partner Sec 31, subject to contract between the partners, no person can be introduced as a partner into a firm without the consent of all the existing partners. An incoming partner is not liable for any act of the firm done prior to his admission.

- Retirement of a partner Sec 32, a partner may retire from a firm with the consent of all other partners. Where the partnership is at will, a partner may retire by giving notice in writing to all the other partners of his intention to retire.
- Expulsion of partner Sec 38, a majority of partners can expel a partner only if such power is conferred by contract between the partners, and the power is exercised bona fide by the majority of the partners.
- Insolvency of the partners Sec 34, where a partner in a firm is adjudicated insolvent, he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.
- Death of the partner Sec 42, subject to contract between the partners, a firm is dissolved by the death of the partner.

3. Explain the nature of the contract of the sale and bring out clearly the distinction between sale and an agreement to sell.

Nature of the contract of the sale:

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part owner and another under Sec 4(1) and a contract of sale may be absolute or conditional under Sec 4(2).

The term "contract of sale" is a generic term and includes both a sale and agreement to sell.

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a "sale", but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an "agreement to sell".

- Transfer of property
- Type of goods
- Risk of loss

- Consequences of breach
- Right to re- sell
- General and particular property
- Insolvency of the buyer
- Insolvency of the seller.

4. Elaborate the rights of a partner.

- Right to take part in business
- Right to be consulted
- Right of access to accounts
- Right to share in profits
- Right to interest on capital
- Right to interest on advances
- Right to be indemnified
- Right to use of partnership property
- Right of partner as agent of the firm
- No new partner to be introduced
- No liability before joining
- Right to retire
- Right not to be expelled
- Right of outgoing partner to share in the subsequent profits.

5. What is a contract of insurance? How does it differ from wager?

A contract of insurance is a contract by which a person, in consideration of a sum of money, undertakes to make good the loss of another against a specified risk.

- A contract of insurance is a contract of indemnity. It seeks to indemnify the assured for the loss suffered by him on the happening of an uncertain event. In a wagering agreement, however there is no question of indemnity as the parties do not intend to cover any risk.

- The object of a contract of insurance is to protect the assured against losses on the happening of some uncertain events, whereas the object of a wagering agreement is to earn speculative gains.
- A contract of insurance is a contract requiring utmost good faith by the parties to the contract. In a wagering agreement good faith need not be observed.
- In a contract of insurance the assured must have a pecuniary or insurable interest in the subject matter of insurance. In a wagering agreement neither party has any pecuniary interest except that created by the contract itself.
- A wagering agreement is void because it is against public policy. A contract of insurance is legally enforceable and is encouraged as it benefits the community as a whole.
- A contract of insurance is based on scientific and actuarial calculation of risks and the premium is calculated taking into account all the circumstances attending on the risk. A wagering agreement is a mere gamble and there is no scientific calculation of risk.
- An insured event my cause varying degrees of loss or damage. A wager is either won or lost.

6. Write note on,

a) Double Insurance
b) Over Insurance
c) Reinsurance

Reinsurance:

If an insurer has injured a venture in which the risk involved is beyond his capacity, he may insure the same risk either wholly or partially with other insurer. This is called reinsurance. Reinsurance can be resorted to in all kinds of insurance. The insurer has an insurable interest in the subject matter insured to the extent of the amount insured by him because a contract of reinsurance is also a contract of indemnity.

Double insurance:

Where the assured insures the same risk with two more independent insurer and the total sum insured exceeds the actual value of the subject matter, the assured is said to be over insured by double insurance. But in case of loss the assured cannot recover more than the actual amount of loss. This is because a contract of insurance is a contract of indemnity.

UNIT III

Section A

1. Define bill of exchange. What are the essential elements of a bill of exchange?

A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Elements of BOE:

- It must be in writing
- It must contain an order to pay
- The order must be unconditional
- It requires three parties, i.e., the drawer, drawee & the payee
- The parties must be certain
- It must be signed by the drawer
- The sum payable must be certain
- It must contain an order to pay order.

2. Enumerate the important rules of agency.

- Whatever a person can do personally, he can do through an agent
    - This rule of course subject to certain well known exceptions as when the act to be performed is personal in character or is annexed to a public office.
- He who does an act through another does it by himself
    - This means the acts of an agent, subject to certain conditions, are acts of the principal. Under sec 226 clearly provides that an agent acts and contracts will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

3. Explain various types of Negotiable Instruments.

- **Negotiable by statue**

  The NI act mentions only three kinds of negotiable instruments. These are;

  - Bill of Exchange
  - Promissory Notes and
  - Cheque.

- **Negotiable by custom or usage**

  There are certain other instruments which have acquired the character of negotiability by the usage or custom of trade.

4. Distinguish between Bill and a note.

- In a note there are two parties, the maker & the payee. In a bill there are three parties, the drawer, the drawee & the payee.
- A note contains an unconditional promise to pay. A bill contains an unconditional order to pay.
- The maker of a note is the debtor and he himself undertakes to pay. The drawer of a bill is the creditor who directs the drawee to pay.
- The maker of the note cannot undertake to pay conditionally whereas the acceptor may accept the bill conditionally because he is not the originator of the bill.
- The liability of the maker of a note is primary and absolute, whereas the liability of the drawer of a bill is secondary and conditional.
- A note cannot be made payable to the maker himself, whereas in a bill the drawer and the payee may be one and the same person.
- A note cannot be drawn payable to bearer. A bill can be so drawn.

5. What is Special crossing and its implication?

A cheque bears across its face an addition of the name of a banker, either with or without the word “not negotiable”, the cheque is deemed to be crossed specially. Transverse line is not necessary in case of a special crossing.

The payment of a specially crossed cheque can be obtained only through the particular banker whose name appears across the face of the cheque or between the transverse lines.

Where a cheque is crossed specially the banker on whom it is drawn shall pay it only to the banker on whom it is crossed, or his agent for collection.

6. Distinguish between Sub agent and Substituted agent.

A "sub agent" is a person employed by and acting under the control of the original agent in the business of the agency. This means he is the agent of the original agent.

A "substituted agent" is a person who is named by the agent on an express or implied authority from the principal, to act for the principal. He is not an agent of the principal for such part of the business of the agency is entrusted to him.

7. What is Promissory note? What are its essential elements?

A "promissory note" is an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to order of, a certain person, or to the bearer of the instrument.

Elements of the promissory note:

- Writing
- Promise to pay
- Definite and unconditional
- Signed by the maker
- Certain parties
- Certain sum of money
- Promise to pay money only
- Bank note or currency note is not a promissory note

8. Define holders in due course. What are his privileges under the NI act?

The "holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque, if payable to bearer, or the payee or

indorsee thereof if payable to order, before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

Privileges of a holder in due course:

- A holder in due course can fill in an inchoate stamped instrument for any amount provided the stamp is sufficient to cover the amount.
- Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.
- If a bill or note is negotiated to a holder in due course, the other parties to the bill or note cannot avoid liability on the ground that the delivery of the instrument was conditional or for a specific purpose only.
- Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of all its defects.
- The defences on the part of a person liable on a negotiable instrument that it has been lost or obtained from him by means of an offence or fraud or unlawful consideration, cannot be set up against a holder in due course.
- The law presumes that every holder is a holder in due course, although the presumption is rebuttable.
- In a suit on a negotiable instrument by a holder in due course, the validity of the instrument as originally made or drawn cannot be denied.
- No indorser of a negotiable instrument is in a suit thereon by a subsequent holder, permitted to deny the signature or capacity to contract of any prior party to the instrument.

Section B

1. What is meant by negotiation? How is it affected? Why it is better to take a NI under an endorsement than under an assignment?

A negotiable instrument is one the property in which is acquired by anyone who takes it bona fide and for value, notwithstanding any defect of title in the person from whom he took it.

2. Describe the position of a principal and his agent in relation to third parties.

The position of a principal and his agent as regards contracts made by the agent with third parties may be discussed under the following three heads;

- Where the principals existence and name are disclosed by the agent, i.e., where the principal is named
- Where the principals existence is disclosed but not his name, i.e., where the principal is unnamed
- Where the both the existence and the name of the principal are not disclosed, i.e., where the principal is undisclosed

Named principal:

The position of the named principal for the acts of his agent is as follows:

- Acts of the agent are the acts of the principal
- When the agent exceeds his authority
- Notice given to agent as notice to principal
- Principal including belief that agent's unauthorized acts were authorized
    a. Misrepresentation or fraud of agent

Unnamed principal:

When an agent contracts as an agent for a principal but does not disclose his name, the principal is liable for the contract of the agent, unless there is a trade custom or a term, express or implied, to the effect which makes the agent personally liable.

Undisclosed principal:

An agent not only conceals the name of the principal but also the fact that he is an agent.

a. The position of principal
b. The position of agent
c. The position of third parties

3. Explain to what extent a minor can be a Party to a NI.

A minor may draw, indorse, deliver and negotiate a negotiable instrument so as to bind all parties except himself that is he may operate as a channel to convey title and liability but not to originate it.

As a minor agreement is void, he cannot bind himself by becoming a party to a negotiable instrument.

4. What is meant by crossing a cheque? Who cross a cheque? What is the difference between general crossing and special crossing?

A cheque which is payable in cash across the counter of a bank is called an open cheque. When such a cheque is in circulation, a great risk attends it. If its holder loses it, its finder may go to the bank and get payment unless its payment has already been stooped. It was to prevent the losses incurred by open cheques getting into the hands of wrong persons that the custom of crossing was introduced.

A cheque may be crossed by,

- The drawer – he may cross the cheque generally or specially
- The holder – where the cheque is uncrossed, the holder may cross it generally or specially.
- The banker – where a cheque is crossed specially, the banker to whom it is crossed may again cross it especially to another banker for collection.

General crossing:

- The word "& co." or any abbreviation thereof, between two parallel transverse lines, either with or without the words "not negotiable"
- Two parallel transverse lines simply, either with or without the words "not negotiable"

Special Crossing:

- Where a cheque bears across its face an addition of the name of the banker, either with or without the words "not negotiable", the cheque is deemed to be crossed specially.

- Transverse lines are not necessary in case of a special crossing. The payment of a specially crossed cheque can be obtained only through the particular banker whose name appears across the face of the cheque or between the transverse line

5. Explain the privileges of holders in due course.

The special privileges of a holder in due course are as follows:

- Inchoate stamped instrument
- Liability of prior parties
- Fictitious payee
- Negotiable instrument without consideration
- Conditional delivery
- Instrument cleansed of all defects
- Instrument obtained by unlawful
- Every holder is a holder in due course
- Estoppel against denying original validity of instrument
- Estoppel against denying capacity of payee to indorse
- Indorser not permitted to deny the capacity of prior parties.

6. What is meant by agency by ratification? Explain the pre-requisite of valid ratification.

A person may act on behalf of another without his knowledge or consent.

The effects of ratification is to render the acts done by one person(agent)on behalf of another (principal), without his (principal)knowledge or authority, as bindings on the other person(principal) as if they had been performed by his authority.

Pre-requisite of valid ratification:

- The agent must support to act as agent for a principal who is in contemplation and is identifiable at the time of contract
- The principal must be in existence at the time of contract
- The principal must have contractual capacity both at the time of the contract and at the time of ratification

- Ratification must be with full knowledge of facts
- Ratification must be done within a reasonable time of the act purported to be ratified
- The act to be ratified must be lawful and not void or illegal or ultra vires
- The whole transaction can be ratified
- Ratification must be communicated
- Ratification can be of the acts which the principal had the power to do
- Ratification should not put a third party to damages.

7. In what different ways may a NI be dishonored / what steps should be taken by the holder of a dishonored bill?

- Dishonor by non- acceptance
- Dishonor by non- payment

Dishonor of a bill either by non- acceptance or by non- payment, due notice of dishonor must be given to all the persons who are to be made liable to pay. This includes the drawer and the prior indorsers. But in the case of dishonor of a note on such notice is required to be given to the maker.

UNIT IV

Section A

1. Bring out the exception to the doctrine of indoor management.

- **Knowledge of irregularity:**

Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management.

- **Negligence:**

Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of indoor management.

- **Forgery:**

The rule in Turquand‘s case does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery.

- **Acts outside the scope of apparent authority:**

If an officer of a company enters into a contract with a third party and if he act of the officer is beyond the scope of his authority the company is not bound.

2. Discuss the content of Memorandum of association.

The memorandum of every company shall contain the following:

- The name of the company with “Limited” as the last word of the name in the case of a public limited company and with “Private Limited” as the last word of the name in the case of a Private limited company
- The state in which the registered office of the company is to be situate
- The objects of the company
- In the case of companies with object not confined to one state, the states to whose territories the object extend
- Limited liability – the memorandum of a company limited by shares or by guarantee shall also state the liability of its members is limited
- Company having a share capital, the amount of share capital with which the company is to be registered and division thereof into shares of a fixed amount.

3. Discuss the powers and duties of a director of a company under the companies act, 1956.

Power of directors:

- **General powers of the board:**

First, the board shall not do any act which is to be done by the company in general meeting

Second, the board shall exercise its power subject to the provisions contained in the Companies Act, or in Memorandum or the Article of the company or in any regulations made by the company in general meeting.

- **Powers to exercise at Board meetings:**
  - make calls on shareholders in respect of money unpaid on their shares
  - issue debentures
  - borrow moneys otherwise than on debentures
  - invest the funds of the company
  - make loans

The board may pass the resolution at a meeting, delegate the last three powers to a committee or directors.

- **Powers to be exercised with the approval of company in general meeting:**
  - To sell, lease or otherwise dispose of the whole, or substantially whole, of the undertaking of the company
  - To remit or give time for repayment of any debt due to the company by a director except in case of renewal or continuance of an advance made by a banking company
  - To invest the amount of compensation received by the company in respect of the compulsory acquisition of any undertaking or property of the company
  - To borrow moneys where the moneys to be borrowed are more than the paid- up capital of the company and its free reserves
  - To contribute to charitable and other funds not directly relating to the business of the company

Duties of the directors:

- **Fiduciary duties**
  - Exercise their powers honestly and bona fide for the benefit of the company as a whole
  - Not place them in a position in which there is a conflict between their duties to the company and their personal interests.

- **Duties of care, skill and diligence**
    - The type and nature of work
    - Division of powers between directors and other officers
    - General usages and customs in that type of business
    - Whether directors work gratuitously or remuneratively
- **Other duties**
    - To attend board meetings
    - Not to delegate his functions except to the extent authorized by the act or by the constitution of the company
    - To disclose his interest

4. A promoter stands in fiduciary relation towards the company ne promotes – Elucidate.

The fiduciary position of a promoter:

- Not to make any profit at the expense of the company
    - The promoter must not make, either directly or indirectly, any profit at the expense of the company which is being promoted
- To give benefit of negotiations to the company
    - The promoter must, when once he has begun the act in the promotion of a company, give to the company the benefit of any negotiations or contracts into which he enters in respect of the company
- To make a full disclosure of interest or profit
    - If the promoter fails to make a full disclosure of all the relevant facts, including any profits and his personal interest in a transaction with the company
    - The disclosure must be made to an independent board of directors. Where there is no independent board, disclosure must be made to the intended shareholders as a whole
- Not to make unfair use of position
    - The promoter must not to make an unfair or unreasonable use of his position and must take care to avoid anything which has the appearance of undue influence or fraud

5. What are the fiduciary duties of the directors of the company?

Fiduciary duties, the director must –

- Exercise their powers honestly and bona fide for the benefit of the company as a whole
- Not place them in a position in which there is a conflict between their duties to the company and their personal interests.

- Fiduciary duties owed to the company, the duties of directors are owed to the company and not to the individual shareholders.

6. under what circumstances can accompany reduce, increase or reorganize its Share capital?

Reduction in share capital:

A company limited by shares or a company limited by guarantee and having a share capital may reduce its share capital, subject to confirmation by the tribunal, in any following three ways:

- It may extinguish or reduce the liability on any of its shares in respect5 of share capital not paid up
- It may either with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capital which is lost, or is unrepresented by available assets
- It may either with or without extinguishing or reducing liability on any of its shares, pay off any paid up share capital which is in excess of the wants of the company

Increase in share capital:

Where the central Government issues an order for conversion of debentures issued by a company to the Government or loans obtained by the company from the Government into shares, the authorized share capital of the company, where the conversion has the effect of increasing the authorized share capital of the company, shall stand increased by an equal amount and the company's memorandum altered accordingly.

Reorganization of share capital:

The reorganization of share capital of a company may take place;

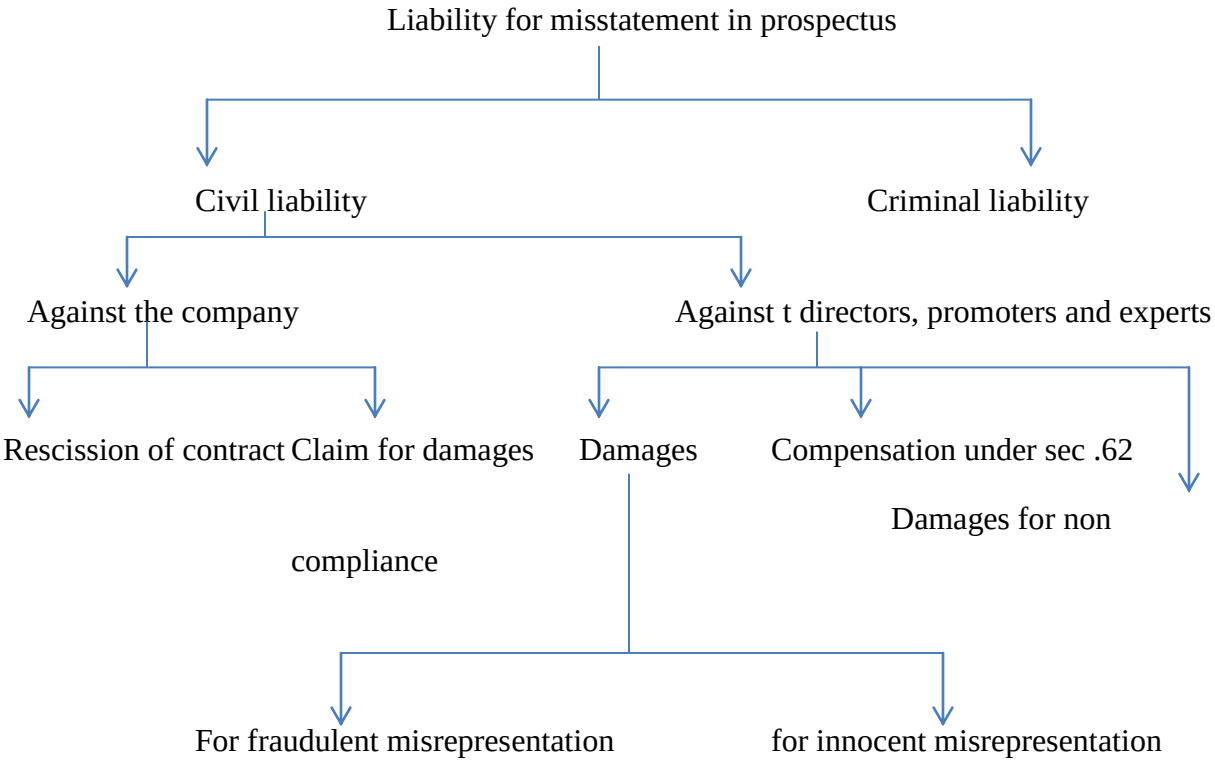
- By the consolidation of shares of different classes
- By the division of shares of one class into shares of different classes
- By both these methods

The reorganization of the share capital of a company may be proposed;

- Between a company and its creditors or any class of them
- Between a company and its members or any class of them.

Section B

1. Elaborate the consequences of Misstatement in a prospectus.



Civil Liability:

A person who has been induced to subscribe for shares on the faith of a misleading prospectus has remedies against the company and the directors, promoters and experts.

Remedies against the company:

If there is a misstatement or withholding of a material information in a prospectus, and if it has induced any shareholder to purchase shares.

a. Rescission of the contract:

Any person, who takes shares on the faith of statements of fact contained in a prospectus, can apply to the court for the rescission of the contract if those statements are false or fraudulent or if some material information has been withheld.

- The statement must be a material representation of fact
- The statement must have induced the shareholder to take the shares
- The statement must be untrue

- The deceived shareholder is an allottee and he must have relied on the statement in the prospectus
- The omission of material fact must be misleading before rescission is granted
- The proceedings for rescission must be started as soon as the allottee comes to know of a misleading statement

b. Damages for deceit:

Any person induced by a fraudulent statement in a prospectus to take shares in entitled to sue the company for damages.

Remedies against the directors, promoters and experts:

The people who are liable to pay compensation for any loss or damage to subscriber for any shares or debentures on the faith of a prospectus containing untrue statements are,

- Directors at the time of the issue of the prospectus
- Person who have authorized themselves to be named as directors in the prospectus
- Promoters
- Persons who have authorized the issue of the prospectus.

2. In what circumstances can accompany reduces its share capital? Describe the formalities to be compiled with and the procedure to be followed.

The general principle of law founded on principles of public policy and rigidly enforced by tribunal is that no action resulting in a reduction of capital of a company should be permitted unless the reduction is effected,

- Under statutory authority or by forfeiture
- In strict accordance with the procedure, if any, laid down in that behalf in the Articles of Association.

The reduction of share capital may happens at,

- Reduction of capital with the consent of the tribunal
- Reduction of capital without the sanction of the tribunal

Procedure for reduction of share capital:

- Special resolution
- Application to the tribunal
    i) Conflict of interests
    ii) Interest of shareholders
- Registration of order of tribunal with registrar

3. Explain the legal provisions regarding the payment of dividend.

- **Resolution at the annual general meeting:**

The dividend is declared by a company by a resolution passed at the annual general meeting. The board of directors determines the rate of dividend to be declared and recommends it to the meeting of shareholders.

- **Payment of dividend in proportion to paid up capital:**

A company may, if authorized by its articles, pay dividends in proportion to the amount paid up on each share. Where unequal amounts have been paid on some shares, the dividend may be unequal as among different shareholders.

- **Dividend to be paid only out of profits:**
    a. Out of profits of the company for that year arrived at after providing for depreciation in the manner laid down in the act,
    b. Out of the profits of the company for any previous financial year or years arrived at after providing for depreciation, and remaining undistributed,
    c. Out of both
    d. Out of money provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government.
- **Unpaid dividend to be transferred to special dividend account:**

Where a dividend has been declared by a company but has not been paid to or claimed by any shareholder within a period of 30days from the date of declaration, the company shall, within 7 days from the date of expiry of the 30days transfer the unpaid or unclaimed dividend to a special account.

- **Payment of unpaid or unclaimed dividend:**

Any person claiming to be entitled to any money transferred to the investor's protection fund established under sec 205(c) may apply to the authority or the committee under the fund, for the refund of the money due to him.

- **Establishment of investor education and protection fund:**

The Central Government shall establish a fund to be called the investor education and protection fund.

- **Dividend to be paid to the registered shareholder:**

  The dividend shall be paid only (a) to the registered shareholder or to his order or to his bankers, (b) in case a share warrant has been issued, to the bearer of such share warrant or to his bankers.

- **Right to dividend, right shares and bonus shares to be held in abeyance pending registration of transfer of shares:**

  It is a well settled principle of company law that only a person who is a registered shareholder of a company is eligible to receive dividend and offers for rights or bonus shares.

4. Must a limited company under the companies act have directors. What are the qualifications of a director? When is a person disqualified for appointment as director of a company?

Yes, every limited company or public limited companies have at least 3 directors.

However the public company having,

- A paid up capital of Rs.5crore or more
- One thousand or more small shareholders

Shall have at least one director elected by such small shareholders in the manner as may be prescribed. "Small holder" means a shareholder holding shares of nominal value of Rs.20000 or less in a public company. The article of the company may prescribe the maximum and minimum number of directors for its board of directors.

Qualifications of a director:

A director must be,

- An individual
- Competent to contract
- Hold a share qualification, if so, required by the articles

The Companies Act does, however, limit the specified share qualification of Directors which can be prescribed by a public company or a private company that is a subsidiary of a public company, to be five thousand rupees (Rs. 5,000/-)

Disqualification for appointment of directors:

The following persons are disqualified for appointment as directors of a company:

- A person of unsound mind
- An discharged insolvent
- A person who has applied to be adjudicated as an insolvent and his application is pending
- A person who has been convicted by a tribunal of any offence involving moral turpitude and a period of 5 years has not elapsed from the date of expiry of the sentence
- A person whose calls in respect of shares of the company held for more than 6 months, have been in arrear
- A person who is disqualified for appointment as director by an order of the tribunal under sec 203 on the ground of fraud or misfeasance in relation to the company
- A person who is already a director of a public company

5. 'The MOA is a fundamental law or a charter defining the object and limiting the powers of a company" - Explain.

The object of a company shall be clearly set forth in the memorandum, for a company can do what is within, or incidental to, the objects stated in the memorandum.

The objects in the memorandum of every company has to state,

- Main object of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects
- Other objects of the company not included in the above object

The purpose of the objects is,

- To enable subscribers to the memorandum to know the uses to which their money may be put,
- To enable creditors and persons dealing with the company to know what its permitted range of enterprise or activities.

6. 'Every Shareholder of a company is also known as a member while every member may not know as a shareholder "– Comment.

A registered shareholder is a member but a registered member may not be a shareholder because the company may not have a share capital.

A person who owns a bearer share warrant is a shareholder but he is not a member as his name is struck off the register of members. This means that a person can be a holder of shares without being a member.

A legal representative of a deceased member is not a member until he applies for registration. He is however, a shareholder even though his name does not appear in the register of members.

7. How is a company formed under the company act, 1956?

The company which is incorporated under companies act, 1956 are mostly business companies but they may also be formed for promoting art, charity, research, religion, commerce or any other useful purpose.

The act has been amended several times since it was codified. Major amendments to the act were made in 2002.

- A company is in law regarded as a separate entity form its members.
- A company has limited shares and limited guarantee.
- A company is a juristic person with a perpetual succession.
- A company has no physical existence. So the common seal is acts as the official signature.
- The capital of a company is divided into parts, called shares.
- A company is a legal person distinct from its members; it is capable of owing, enjoying and disposing of property in its own name.
- A company can sue and be sued in its corporate name.

UNIT V

Section A

1. What do you understand by proxy? What are the statutory provisions regarding Proxies?

A proxy is an authority to represent and vote for another person at a meeting. It is also an instrument appointing a person as proxy.

- A proxy can vote only on a poll
- A member of a private company cannot appoint more than one proxy to attend on the same occasion.
- A member of a company not having a share capital cannot appoint a proxy.

Proxy to be in writing: the instrument appointing a proxy shall be in writing and signed by the appointer or his attorney duly authorized in writing.

Proxy to be deposited 48hours before the meeting: a proxy, in order to be effective, shall be deposited with the company 48hours before the meeting.

Any provision in the article of a public company or of a private company which is subsidiary of a public company which requires a longer period than 48hours before a meeting of the company for depositing a proxy shall have effect as if a period of 48hours had been specified for such deposit.

There is nothing in law to exclude Sunday in the computation of the 48hours before a meeting before which proxies have to be delivered. Therefore, a proxy delivered on Sunday for a meeting to be held on Tuesday, that is, 48 hours later, would be valid, and provided the receipt of the proxy at the time stated could be identified in the same way.

2. What are the exceptions to the rule in Foss Vs. Harbottle principle of majority India?

- **Where the act done is illegal or ultra vires the company:**

Every shareholder has a right, by injunction, to restrain the company from doing any acts which are ultra vires the company or are illegal. These acts cannot be adopted even by a unanimous vote of the shareholders.

- **Where the majority are perpetrating a fraud on the minority:**

  Where the majority of a company's members use their power to defraud or oppress the minority, the Tribunal will interfere at the instance of the minority.

- **Where the company is doing an act which is inconsistent with the articles:**

The minority shareholders can restrain the company from doing an act which is inconsistent with the articles. They can also bring an action to restrain the alteration of the articles which is not made bona fide for the benefit of the company as a whole.

- **Where the act can only be done by a special resolution, but in fact has been done by a simple majority by passing only an ordinary resolution:**

  Any member or members can bring action and get injunction restraining the majority.

- **Where the personal rights of an individual member have been infringed:**

Every shareholder has certain rights against the company. Some of these rights have been conferred by the companies Act itself; some arise out of the articles or general law.

- **Where there is breach of duty:**

The minority shareholders may the directors and majority shareholders to the detriment of the company. The action will be allowed even where there is no fraud.

- **Where there is oppression of minority or mismanagement of the affairs of the company:**

Which provide for prevention of oppression and mismanagement is also an exception to the rule in Foss v. Harbottle.

3. Discuss the different modes of winding up.

Modes of winding up:

There are two modes of winding up:

- Winding up by the Tribunal
- Voluntary winding up
    - Member's voluntary winding up
    - Creditor's voluntary winding up

Winding up by the tribunal:

Winding up of a company under the order of a Tribunal is also known as Compulsory winding up.

A company may be wound up by the tribunal in the following cases:

a) **Special resolution if the company:**

Winding up order under this head is not common because normally the members of a company prefer to wind up the company voluntarily winding up is far cheaper and speedier than a winding up by the tribunal.

b) **Default in delivering the statutory report to the registrar or in holding statutory meeting:**

A petition on this ground can be made either by the registrar or by a contributory. In the latter case the petition for winding up can be filled only after the expiry of 14 day on which the statutory meeting ought to have been held Sec (439).

c) Failure to commence, or suspension of business:

If a company has not begun to carry on business within a year from its incorporation or suspends its business for a whole year, the tribunal will not wind it up if-

- There are reasonable prospects of the company starting business within a reasonable time, and
- There are good a reason for the delay, i.e., the suspension of business are satisfactorily accounted for and appears to be due to temporary causes.

d) Reduction in membership:

At any time the number of members of a company is reduced in the case of a public company, below 7 or in case of a private company, below 2, the company may be ordered to be wound up by the tribunal.

e) Inability to pay its debts:

A company may be wound up by the tribunal if it is unable to pay its debts. The test is whether the company has reached a stage where it is commercially insolvent – that is to say, that its existing and probable assets would be insufficient to meet the existing liabilities.

4. Explain the remedies available to the minority shareholders of a company against oppression or mismanagement.

Remedies to the minority shareholders of a company against Oppression:

The oppression of minority or mismanagement of a company by majority therefore calls for some remedial action. In such case, the minority shareholders may apply to,

- The tribunal for the winding up of the company on the ground that it is "just equitable" to do so
- The Tribunal for appropriate relief
- The Central Government for appropriate relief.

Sec, 397 provides that a requisite number of members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner oppressive to any member or members, may apply to tribunal for appropriate relief.

There is oppression – if it justifies winding up. Oppression must be of such a nature as will make it just and equitable for the tribunal to wind up the company, but to order winding up would unfairly prejudice the interest of the oppressed member or members, and the remedy of winding up to eliminate oppression may be worse than the disease itself.

Relief by the Tribunal: The Tribunal may give relief if it is of opinion –

- That the company's affairs are being conducted
    i. In a manner prejudicial to public interest, or
    ii. In a manner oppressive to any member or members.
- That the facts justify the compulsory winding up order on the ground that it is just and equitable that the company should be wound up
- That to wind up the company would unfairly prejudice the applicants.

The Tribunal may pass such order as it thinks fit with a view to bringing an end to the matter complained of. This provision would help salvage an otherwise sound concern which would have been, but for this principle, forced to go into winding up.

Prevention of mismanagement:

Under sec, 398 provides for relief against mismanagement:

Application to the Tribunal:

A requisite number of members of a company may apply to the Tribunal for appropriate relief on the ground of mismanagement of the company.

Relief by the Tribunal:

The tribunal may give relief if it is of opinion – (i) That the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interest of the company, or (ii) That by reason of a material change in the management or

control of the company, the affairs of the company are likely to be conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interest of the company.

Order by the Tribunal:

On an application being made under Sec.398, the tribunal may make such order as it thinks fit to prevent or bring an end to the matters complained of or apprehended.

5. Bring out the provisions of the companies act, 1956 regarding minutes of meeting.

Under Sec, 193 to 196 – minutes are a record of what the company and directors do in meetings.

Minutes of proceeding of meetings:

Every company shall be keeping a record of all proceedings of every general meeting and of all proceedings of every meeting of its Board of Directors and of every committee of the board. This is done by making within 30 days of the conclusion of every such meeting concerned, entries of the proceedings in the books kept for that purpose. These records are known as minutes.

Minute's book:

The book in which the record of the proceedings of a meeting is kept is known as the minutes book. Separate minute's books are required to be kept for shareholders general meetings of the company and directors meeting and usually there are also separate minute's books for committee meetings of the Board of Directors.

- **Numbering of pages:**

The pages of every minute's book shall be consecutively numbered. In no case is the attaching or pasting of papers of proceedings of a meeting allowed in minutes book.

- **Signing of minutes:**

Each page of the minute's book which records proceedings of a Board meeting shall be initialed or signed by the chairman of the same meeting or the next succeeding

meeting. The last page of the record of proceedings of each meeting in the minute's book shall be dated and signed.

In the case of a Board or committee meeting, by the chairman or the same or the next succeeding meeting.

In the case of a general meeting, by the chairman of the same meeting within 30 days of the meeting, or in the event of death or inability of that chairman within 30 days of the meeting, by the director duly authorized by the Board for the purpose.

- **Fair and correct summary:**

The minutes of each meeting shall contain a fair and correct summary of the proceedings at the meeting, so that the absentee shareholders may be in a position to form some reliable idea of what transpired at these meetings. All appointments of officers made at any of the meetings aforesaid shall also be included in the minutes of the meeting.

Evidentiary value of minutes:

Minutes of meeting kept in accordance with the provisions of Sec.193 shall be evidence of the proceedings recorded therein and shall be conclusive of the facts stated therein.

6) What the advantages of the principles of majority rule in a company are as laid down in Foss Vs. Harbottle?

Advantages of rule in Foss V. Harbottle:

- **Recognition of the separate legal personality of company:**

  If a company has suffered some injury, and not the individual members, it is the company itself which can seek redress.

- **Need to preserve right of majority to decide:**

  The principle in Foss V. Harbottle preserves the right of majority to decide how the affairs of the company shall be conducted. It is but fair that the wish of the majority should prevail.

- **Multiplicity of futile suits avoided:**

  If every individual member were permitted to sue anyone who had injured the company through a breach of duty, there could be as many actions as there are the members. Legal proceedings would never cease, and there would be enormous wastage of time and money.

- **Litigation at the suit of a minority is futile if majority do not wish it:**

  If the irregularity complained of is one which can be subsequently ratified by the company by the majority. It is futile to have litigation about it except with the consent of the majority in a general meeting.

7) What are the requisite of valid meeting?

A meeting can validly transact any business if the following requirements are satisfied:

- **Proper authority:**

The proper authority to convene a general meeting of a company is the Board of Directors. The Board should pass a resolution to call the general meeting, at a duly convened meeting of the Board. If the directors do not call the meeting, the members or the Company Law Board may call the meeting.

- **Notice of meeting:**

A proper notice of the meeting should be given to the members and all others who are entitled to attend the meeting.

Length of the notice:

A general meeting of a company may be called by giving not less than 21 days' notice in writing to the members.

Notice to whom:

Notice of every meeting of a company shall be given to –

- Every member of the company entitled to vote

- The persons on whom the shares of any deceased or insolvent members may have devolved
- The auditors of the company

Contents of notice:

Every notice of a company calling a meeting shall specify the place and the day and hour of the meeting. It shall also contain a statement of the business to be transacted at the meeting.

A.Quorum for meeting:

"Quorum" means the minimum number of members who must be present in order to constitute a valid meeting and transact business thereat.

- 5 members personally present in the case of a public company and 2 in case of any other company shall be the quorum for a meeting of the company.
- If within half an hour a quorum is not present, the meeting. If called upon the requisition of members, shall stand dissolved. In any other case, it shall stand adjourned to the same day, place and time in the next week. The Board of Directors may adjourn the meeting to be convened on any particular day, time and place to be fixed on the date of the meeting itself or at least before the commencement of the same in the next week.
- If at the adjourned meeting also, a quorum is not present within half an hour, the members present shall be the quorum.

B.Chairman of the meeting:

Presiding officer of the meeting:

A chairman is necessary to conduct a meeting. He is the presiding officer of the meeting. Unless the Articles of a company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the chairman of the meeting on a show of hands.

Conduct of the meeting:

The way in which a meeting is to be conducted is a matter for the chairman, with the assent of the persons properly presents, to be determined in the light of the general law and the company's Articles of Association.

Minutes of meeting:

Minutes are a record of what the company and directors do in meetings.

Minutes of proceeding of meetings:

Every company shall be keeping a record of all proceedings of every general meeting and of all proceedings of every meeting of its Board of Directors and of every committee of the board. This is done by making within 30 days of the conclusion of every such meeting concerned, entries of the proceedings in the books kept for that purpose. These records are known as minutes.

Minute's book:

The book in which the record of the proceedings of a meeting is kept is known as the minutes book. Separate minute's books are required to be kept for shareholders general meetings of the company and directors meeting and usually there are also separate minute's books for committee meetings of the Board of Directors.

- Numbering of pages
- Signing of minutes
- Fair and correct summary

Evidentiary value of minutes:

Minutes of meeting kept in accordance with the provisions of Sec.193 shall be evidence of the proceedings recorded therein and shall be conclusive of the facts stated therein.

Section B

1. Explain the provision of the companies act 1956 regarding managerial remuneration.

Remuneration not to exceed 11%, the total managerial remuneration of the directors and the manger in respect of any financial year shall not exceed 11% of the net profit of the company for that financial year computed in the manner laid down in Sec 349 to 351.

Rules regarding remuneration:

- The remuneration payable to the directors shall be determined in accordance with the provisions of Sec 198 to 309, either by article or by a resolution passed by the company in the general meeting.
- A director may receive remuneration by way of a fee for each meeting of the Board or a committee of the Board. But fees for attending the meetings of the Board cannot be paid on a monthly basis.
- A whole time or managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.
- A part time director may be paid remuneration either –
    - By way of a monthly, quarterly or annual payment with the approval of the Central Government,
    - By way of commission if the company by a special resolution authorizes such payment.
- The special resolution shall remain in force for a maximum period of 5 years. It may however, be renewed, from time to time, by a special resolution for further periods of 5 years but no renewal can be effected earlier than 1 year from the date on which it is to come into force.
- The net profits of the company for the purpose of director's remuneration shall be computed in the prescribed manner without deducting the director's remuneration from the gross profits.

- If any director receives any sum in excess of remuneration due to him, he shall hold the excess amount in trust for the company and shall refund it to the company.
- A whole – time director or a managing director who receives a commission from the company shall not be entitled to receive a commission or remuneration from any subsidiary of the company.
- The above rules do not apply to a private company unless it is a subsidiary of a public company.
- Prohibition of tax free payment: A company shall not pay to any officer or employee remuneration free of tax.

2. Explain the provisions of the companies act, 1956 applicable to creditor's voluntary winding up.

Under Sec 490 to 498, shall apply in relation to a member's voluntary winding up:

- **Appointment and remuneration of liquidators:**

  The company in general meeting shall appoint one or more liquidators for the purpose of winding up its affairs and distributing its assets. It shall also fix the remuneration, if any, to be paid to the liquidators.
- **Board's powers to cease on appointment of a liquidator :**

  On the appointment of liquidators, all the powers of the Board of Directors, the managing or whole time directors and manager, shall cease except when the company in general meeting or the liquidator may sanction them to continue.
- **Power to fill vacancy in office of liquidator:**

  If a vacancy occurs of death, resignation or otherwise in the office of any liquidator appointed by the company, the company in general meeting may fill the vacancy.
- **Notice of appointment of liquidator to be given to registrar:**

  The company shall give notice to the registrar of the appointment of a liquidator. It shall also give notice of every vacancy occurring in the office of

liquidator and of the names of the liquidators appointed to fill every such vacancy.

- **Power of liquidator to accept shares:**

  As the consideration for sale of property.

- **Duty of liquidator to call creditors meeting in case of insolvency:**

  If the liquidator is at any time of opinion that the company will not able to pay its debt in full within the period stated in the declaration, he shall forthwith summon a meeting of the creditors.

- **Duly to call general meeting at the end of each year:**

  In the event of the winding up continuing for more than 1 year, the liquidator shall call a general meeting of the company at the end of the first year from the commencement of the winding up.

- **Final meeting and dissolution:**

  The affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and how the property of the company has been disposed of.

- **Provisions as to annual and final meeting in case of insolvency:**

  In case of a member's voluntary winding up, the liquidator finds that the company is insolvent, Sec 508 & 509 shall apply as if the winding up were a creditor's voluntary winding up and not a member's voluntary winding up.

3. Describe the statutory provisions regarding the holding of an annual general meeting.

Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notice calling it. There shall not be an interval of more than 15 months between one annual general meetings of the company. A company holds its first annual general meeting within a period of 18months from the date of its incorporation.

Time and place of meeting: Every annual general meeting shall be called during business hours on a day that is not a public holiday. It shall be held either at the registered office of the

company or at some other place within the city, town or village in which the registered office of the company is situate.

Power o Tribunal to call annual general meeting:

By a company in holding an annual general meeting in accordance with Sec.166, any member of the company may apply to the Tribunal for calling such a meeting.

Importance of annual general meeting:

It is only at the annual general meeting of a company that the shareholders can exercise may control over the affairs of the company. They can confront the directors, the directors, their elected representatives, at least once a year. They also get an opportunity to discuss the affairs and review the working of the company.

4. Explain the provision of the companies' act 1956 for the prevention of oppression of the shareholders and mismanagement of a company.

Prevention of Oppression:

The oppression of minority or mismanagement of a company by majority therefore calls for some remedial action. In such case, the minority shareholders may apply to,

- The tribunal for the winding up of the company on the ground that it is "just equitable" to do so
- The Tribunal for appropriate relief
- The Central Government for appropriate relief.

Sec, 397 provides that a requisite number of members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner oppressive to any member or members, may apply to tribunal for appropriate relief.

There is oppression – if it justifies winding up. Oppression must be of such a nature as will make it just and equitable for the tribunal to wind up the company, but to order winding up would unfairly prejudice the interest of the oppressed member or members, and the remedy of winding up to eliminate oppression may be worse than the disease itself.

Relief by the Tribunal:

The Tribunal may give relief if it is of opinion –

- That the company's affairs are being conducted
    i. In a manner prejudicial to public interest, or
    ii. In a manner oppressive to any member or members.
- That the facts justify the compulsory winding up order on the ground that it is just and equitable that the company should be wound up
- That to wind up the company would unfairly prejudice the applicants.

The Tribunal may pass such order as it thinks fit with a view to bringing an end to the matter complained of. This provision would help salvage an otherwise sound concern which would have been, but for this principle, forced to go into winding up.

Prevention of mismanagement:

Under sec, 398 provides for relief against mismanagement:

- **Application to the Tribunal:**

A requisite number of members of a company may apply to the Tribunal for appropriate relief on the ground of mismanagement of the company.

- **Relief by the Tribunal:**

The tribunal may give relief if it is of opinion –

- That the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interest of the company, or
- That by reason of a material change in the management or control of the company, the affairs of the company is likely to be conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interest of the company.

- **Order by the Tribunal:**

On an application being made under Sec.398, the tribunal may make such order as it thinks fit to prevent or bring an end to the matters complained of or apprehended.

5. How is an auditor of a company appointed? How is his remuneration fixed?

Appointment in annual general meeting:

Every company shall, at each annual general meeting, appoint auditors to hold office from the conclusion of that meeting to the conclusion of the next meeting. The company shall, within 7 days of the appointment, give information thereof to every auditor so appointed. Before any such appointment in the annual general meeting, a written certificate shall be obtained by the company from the auditor proposed to be appointed that the appointment will be within the number of companies that he can audit.

Restriction on the appointment of auditors:

A company shall not appoint or re appoint any person who is in full time employment elsewhere or firm as its auditor if such person or firm is , at the date of such appointment or re-appointment, holding appointment as auditor of more than the specified number of companies.

- In the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid up share capital of less than Rs.25 lakhs, 20 such companies,
- In any other case, 20 companies out of which not more than 10 shall be companies each of which has a paid up share capital of Rs.25lakhs or more.

Compulsory Re-appointment:

- If he is not qualified for re- appointment
- If he has given to the company notice in writing of his unwillingness to be re-appointed
- If a resolution has been passed to the effect appointing somebody instead of him or providing expressly that he shall not be re- appointed

- Where the notice has been given of an intended resolution to appoint some person or persons in the place of retiring auditor and by death, incapacity or disqualification of that person or all those persons, the resolution cannot be preceded.

Appointment by Central Government:

Where at an annual general meeting, no auditors are appointed or re- appointed, the central Government may appoint a person to fill the vacancy. The company shall, within 7 days of the central Government's power becoming exercisable, give notice of that fact to the Government.

Appointment of auditor by a special resolution:

Under Sec 224-A, puts another restriction on the appointment of auditors.

- A public financial institution or a Government company or Central Government or any State Government,
- Any financial or other institution established by any State act in which a State Government holds not less than 51 percent of the subscribed capital
- A nationalized bank or a general insurance company

Remuneration of auditors:

The remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company n general meeting may determine. But in the case of auditor appointed by the Board of Directors or the Central Government, his remuneration may be fixed by the Board or the Central Government, as the case may be. Any sums paid by the company are respect of the auditor's expenses shall be deemed to be included in the expression remuneration.

6. Explain the consequences of winding up of a company.

Once the Tribunal makes an order for the winding up of a company its consequences date back to the commencement of winding up. The other consequences are;

- **Intimation to official liquidator and registrar:**

Where the tribunal makes an order for the winding up of a company, it shall forthwith cause intimation to be sent to the official liquidator and the Registrar of the order of the winding up.

- **Copy of winding up order to be filled with the Registrar:**

On the making of the winding up order it shall be the duty of the petitioner and of the company to file the registrar within 30 days a certified copy of the order.

- **Order for winding up deemed to be notice of discharge:**

The order for winding up shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued.

- **Suits stayed:**

  When the tribunal has been made, no suit or other legal proceeding shall be commenced against the company except by leave of the Tribunal. Similarly pending suits shall not be proceeded with except by leave of the Tribunal.

Power of the Tribunal:

- Where the Tribunal is winding up of the company, shall have jurisdiction to entertain, or dispose.
- Any suit or proceeding by or against the company
- Any claim made by or against the company
- Any application made under Sec 391, for compromise with creditors

Effect of winding up:

An order for winding up a company shall operate in favor of all the creditors and of all the contributors of the company as if it had been made on their joint petition.

Official liquidator to be liquidator:

On a winding up order being made in respect of a company, the official liquidator shall be virtue of his office, become the liquidator of the company.