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**SUGGESTED SOLUTION**

CA FOUNDATION

SUBJECT- LAW

**Test Code – CFN 9123**

**BRANCH - () (Date :)**

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**Answer 1:**

**(A)**

**Right of stoppage of goods in transit:** The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the **right of stoppage of the goods in transit available to an unpaid seller**. The section states that the right is exercisable by the seller **only if** the following conditions are fulfilled.

- (i) The seller must be unpaid
- (ii) He must have parted with the possession of goods
- (iii) The goods must be in transit
- (iv) The buyer must have become insolvent
- (v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit. **(4 marks)**

**(B)**

According to section 2(68) of the Companies Act, 2013, "**Private company**" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its **members to two hundred**.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that -

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

Shall not be included in the number of members.

In the instant case, Flora Fauna Limited may be converted into a private company only if the total members of the company are limited to 200.

**Total Number of members**

(i)	Directors and their relatives	190
(ii)	5 Couples (5*1)	5
(iii)	Others	5
	Total	200

Therefore, there is **no need for reduction in the number of members** since existing number of members are 200 which does not exceed maximum limit of 200. **(6 marks)**

**Answer 2:**

**(A)**

**Difference between Condition and Warranty**

- (i) A condition is a **stipulation essential to the main purpose** of the contract whereas a warranty is a **stipulation collateral to the main purpose** of the contract.
- (ii) **Breach of condition** gives rise to a **right to treat the contract as repudiated**

whereas in case of **breach of warranty**, the aggrieved party can **claim damage only**.

- (iii) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

- (i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,
- (ii) Where the buyer elects to treat the breach of condition as breach of a warranty.
- (iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
- (iv) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise. **(5 marks)**

**(B)**

Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such company intends to apply its profit in

- promoting its objects and
- prohibiting the payment of any dividend to its members.

The Central Government has the power to issue license for registering a section 8 company.

- (i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.
- (ii) The registrar shall on application register such person or association of persons as a company under this section.
- (iii) On registration the company shall enjoy same privileges and obligations as of a limited company. **(5 marks)**

**Answer 3:**

**(A)**

The following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930;

- (a) That the **bulk** shall correspond with the **sample in quality**;
- (b) That the **buyer** shall have a **reasonable opportunity of comparing** the bulk with the sample.
- (c) That the goods shall be **free from any defect**, rendering them un-merchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)]. **(2 marks)**

### Implied Warrants :

1. **Warranty of quite possession** [Section14(b)]: In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way distributed in the enjoyment of the goods in consequence of the seller's defective title to sell, he can claim damages from the seller.
2. **Warranty of freedom from encumbrances** [Section 14(c)]: The buyer is entitled to a further warranty that the goods are not subject to any charge or encumbrance in favour of a third party. If his possession is in any way disturbed by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.
3. **Warranty as to quality or fitness by usage of trade** [Section16(3)]. An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.
4. **Warranty to disclose dangerous nature of goods**: Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages. **(4 marks)**

### (B)

As per Section 2(87) provides that a company shall be subsidiary of another, if any of the following conditions are satisfied:

- (a) That other controls the composition of its Board of Directors;
- (b) That other exercises or – controls more than one – half of the total share capital either at its own or together with one or more of its subsidiary companies; or
- (c) The first – mentioned company is a subsidiary of any company which is that other's subsidiary

In this case XYZ Pvt Ltd. and BCL Pvt. Ltd. together hold a majority of equity shares in AVS Pvt. Ltd. and both these companies are subsidiaries of TSR Pvt Ltd. it will have a majority stake in the composition of the Board of Directors of AVS Pvt. Ltd. Hence, TSR Pvt, Ltd will be treated as the holding company of AVS Pvt Ltd. **(4 marks)**

### Answer 4:

#### (A)

A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where –

- (i) The goods have been sold without any stipulation as to credit ;
- (ii) The goods have been sold on credit, but the term of credit has expired;
- (iii) The buyer becomes insolvent.

The **unpaid seller can exercise 'his right of lien' even if the property in goods has passed on to the buyer.** He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer. **(3 marks)**

**Termination of lien** : An unpaid seller losses his right of lien thereon –

- (i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(ii) When the buyer or his agent lawfully obtains possession of the goods. **(1 mark)**

**(B)**

Basis	Public Company	Private Company
1. Minimum Paid – up Capital	Rs. 5 Lakhs (upto 28.05.2015) As Prescribed (w.e.f. 29.05.2015)	Rs. 1 Lakh (upto 28.05.2015) As Prescribed (w.e.f. 29.05.2015)
2. Acceptance of Public Deposits	Free to accept deposits from the public subject to provisions of the Act.	Cannot accept deposits except from its Directors. (also subject to conditions).
3. Minimum Members [S.3]	7 persons.	2 persons.
4. Maximum Members	No restriction	Shall not exceed 200, excluding present and past Employee Members.
5. Transferability of Shares	Freely transferable.	Restricts the right to transfer by its AOA.
6. Prospectus	Can invite the general public to subscribe for its Securities by issue of a Prospectus.	Cannot issue a Prospectus inviting subscription to Securities.
7. Min. Director [S. 149]	3 Directors.	2 Directors.
8. Independent Director	Required to appoint Independent Directors.	Not Applicable.
9. Retirement of Director	Not less than 2/3 <sup>rd</sup> of Directors shall retire by rotation at each AGM.	Directors need not retire by rotation.
10. Quorum for General Meetings [Sec. 103]	Minimum 5 Members personally present, from the quorum, for membership upto 1,000.	Minimum 2 Members personally present, form the quorum, in all cases.
11. Managerial Remuneration	Total Managerial Remuneration cannot exceed 11% of Net Profits. Remuneration payable to each Managing / Whole Time Director or Manager cannot exceed 5% of NP.	There are no restrictions on Managerial Remuneration.
12. Filing of Returns, etc.	Various Returns are required to be periodically filed with the ROC.	Number of Returns to be filed is comparatively less than that of a Public Co.

**(1 mark x 6 = 6 marks)**

**Answer 5:**

**(A)**

Particulars	Sale	Agreement to Sell
1. Meaning	Where under a contract of sale, the property (ownership) in the Goods is transferred from the Seller to the Buyer, it is called a Sale.	Where under a contract of sale, the transfer of the property (ownership) in the Goods is to take place at a future time or subject to some condition

		thereafter to be fulfilled, it is called an “agreement to sell.” <b>[Sec. 4(3)]</b>
2. Example	Ram sells 20 bags of rice to Hari for a sum of Rs. 10,000. It is a sale since the ownership in 20 bags of rice has been transferred from Ram to Hari for a consideration of Rs. 10,000.	Mani agrees to buy 1,000 kgs of cement to arrive by a certain ship on a future date. The property in Goods (cement) will pass to the Buyer only when Goods arrive. Also the agreement is subject to condition that the ship arrives in the port with Goods.
3. Transfer of Risk	Buyer becomes the owner of Goods as soon as the contract is made. Hence the Buyer bears the risk.	Seller continues to be the owner till the agreement to sell becomes sale and hence the risk lies with him only.
4. Rights created	Creates a right in rem (right against property).	Creates a right in personam (right against a person).
5. Type of Goods	A Sale can be made only in respect of specific and ascertained Goods.	An agreement to sell may be made for Future and Contingent Goods.
6. Type of Contract	Generally, executed contract.	Executory contract.
7. Remedies available for breach of contract	<b>Buyer’s breach</b> : Seller can (i) sue for price of Goods even if Goods are in his own possession (ii) resell the Goods, (iii) exercise right of lien and (iv) exercise right of stoppage of Goods in transit, if necessary. <b>Seller’s breach</b> : Buyer has double remedy, (i) suit for damages against the Seller, and (ii) recovering of Goods from third parties who bought them.	<b>Buyer’s breach</b> : The Seller can sue only for damages and not for Price. <b>Seller’s breach</b> : The buyer can sue the Seller for damages and sue the third party who bought those Goods.
8. Rights to Re – sell	Once an effective sale is made, Seller cannot resell the Goods, as the property vests in the Buyer. However, if subsequent Buyer has purchased the Goods in good faith, for value, and without knowledge of prior sale, he gets a good title to such Goods.	Where Seller makes a re – sale, the subsequent Buyer, who takes the Goods for consideration and without notice of the prior agreement, gets a good title. The remedy available to the original Buyer is that he can sue for damages.
9. Rights of Buyer	The Buyer can sue the Seller for non – delivery of Goods, when he has paid the price for it.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
10. Risk of loss of Goods	Risk being associated with ownership lies with the Buyer and hence any loss shall be borne by the Buyer only, even though the Goods lie with Seller.	Since risk associated with ownership is not transferred, loss shall be borne by Seller, even though the Goods lie with Buyer.
11. Insolvency of Buyer before	In the absence of any lien over Goods, Seller shall hand them	Seller need not part with the Goods, until he is paid for such

paying for Goods	over to the Official Receiver or Assignee. The Seller can only claim a rateable dividend from the Buyer's estate, as an Unsecured Creditor.	Goods. He can refuse to hand over the Goods to the Official Receiver, unless the full price is paid.
12. Insolvency of Seller after buyer has paid the price	Buyer can claim the Goods from the Official Receiver or Assignee.	Buyer can claim only a rateable dividend for price paid and cannot claim the Goods, since the property has not passed to him.
13. Sales Tax	A Sale is liable to Sales Tax.	An agreement to sell is not liable to sales tax, unless it becomes a "Sale."

(1 mark x 5 = 5 marks)

(B)

Unlimited company means a Company **not having any limit on the liability of its Members.**

(1 mark)

- (a) The Liability of each Member extends to the whole amount of the Company's Debts and Liabilities. Liability of member is unlimited, but to the extent / ratio of the interest of each member.
- (b) An Unlimited Company should have Articles of its own, specifying the number of members with which it is formed.
- (c) Such Company can be formed with or without Share Capital. Where the Company has a Share Capital, the AOA must state the amount of Share Capital and the amount of each Share. The Liability on the Shares, as long as the Company is a Going Concern, is the only liability which can be enforced by the Company, though the liability of Members is unlimited as far as Creditors are concerned.
- (d) An Unlimited Company can later convert itself into a Limited Company by alteration of MOA. Such conversion will not affect its prior debts, liabilities and obligations. (4 marks)