Q.1 Explain Bailment by quoting an appropriate example and discuss the Essentials/Features of Bailment vis-à-vis the quoted example?

Ans:

Bailment is the process of placing personal property or goods in the temporary custody or control of another. The custodian or holder of the property, who’s responsible for the safe keeping and return of the property, is known as the bailor. The person who delivers or transfers the property to the bailee is known as the bailor. For a bailment to be valid, the bailee must have actual physical control of the property with the intent to possess it. The bailee is generally not entitled to the use of the property while it’s in his possession. A bailor can demand to have the property returned to him at any time.

Example: Ram drops off his clothes for dry cleaning. Ram is the bailor and the purpose of bailment is to have the particular set of clothes cleaned. The dry cleaner is the bailee – he is the temporary custodian of the clothes and is responsible for keeping them safe and to return them to the bailor once they have been cleaned.

Explanation to Section 148 states that if a person already in possession of the goods of another person contracts to holds the goods as a bailee, he becomes the bailee even though the goods may not have been delivered to him by way of bailment in the first place. For example, a seller of goods becomes a bailee if the goods continue to be in his possession after sale is complete. Here the original possession of goods was with the seller as the owner of the said goods and after the sale, his possession is converted into a contract of bailment.

**ESSENTIAL FEATURES**

Section 148 of the Indian Contract Act, 1872 makes it very clear that there are three essential features of Bailment, namely:

1) Delivery of Possession
2) Delivery upon Contract
3) Delivery for a purpose and Return of Goods

1) **Delivery of Possession**: The delivery of possession of goods is essential for bailment. There must be transfer of possession of the bailed goods from bailor to bailee and the goods must be handed over to the bailee for whatever is the purpose of bailment. Here, possession means control over goods and an intention to exclude others from exercising similar control over the same goods. Thus, the bailee must have actual physical control of the property with the intent to possess it for a valid bailment. As per Section 149, the delivery can also be made to the bailee by doing anything which has the effect of putting the bailed goods in the possession of the intended bailee or any person authorized by him for this purpose.
Thus, the delivery of possession can be actual or constructive. The delivery may either put the bailee in the actual physical possession of the goods or put the bailee in a position of power over such goods that may be possessed later. The essential of a bailment is the delivery of goods for a temporary purpose.

Example: Upmanyu hired a locker in a bank and kept some of his valuables in it. Upmanyu was given one key to open the locker. But the bank manager of the particular branch had fraudulently filed the levers of the locks of the lockers. Thus, the lockers could be opened even without the key of the customers. Upmanyu’s valuables went missing. Upmanyu’s control over the valuables in that locker had gone because the locker could be operated even without his key. The bank was liable for the loss of Upmanyu’s belongings from the locker as it became a bailee. This example is similar to the case of National Bank of Lahore vs. Sohan Lal [AIR 1962 Punj. 534]

Thus, it is clear that the nature of possession is very important to determine whether a delivery is for bailment or not. If the owner continues to have control over the goods, there can be no bailment. To create a bailment, the bailee must intend to possess and in some way physically possess or control the bailed goods or property. In a situation where a person keeps the goods in possession of another person but in fact, continues to have control over such goods, there is no delivery for the purpose of bailment.

The delivery of possession does not mean that the bailee now represents the bailor with respected to the bailed goods. The bailee only has certain power over the property of the bailor with his permission. The bailee has no power to make contracts on behalf of the bailor or make the bailor liable for his own acts with the goods bailed.

2) Delivery upon Contract: It is necessary that the goods are delivered to the bailee and returned to the bailor when the purpose is accomplished upon a contract. This means there should a contract between the two parties for such transaction of delivery and subsequent return. If there is no contract, there is no bailment. The contract giving rise to bailment can be express or implied.

Property deposited in a court under orders is not property delivered under a contract. Such delivery or transfer does not constitute bailment.

Exception to the delivery upon contract: A finder of goods is treated as a bailee even if there is no contract of Bailment or delivery of goods under a contract. A finder of the goods is a person who finds the goods belonging to some other person and keeps them under his protection till the actual owner of the goods is found. An involuntary contract of bailment arises and the finder automatically becomes bailee even in absence of bailment by the bailor – the owner of the lost goods. Since the person is in the position of the bailee, he has all the rights and duties of a bailee.

Under English Law: There can be bailment without a contract. If a person deposits or delivers the goods under stressful circumstance like fire flood, riots or if the person who is depositing the goods is incapable of appreciating the value of the action, it is still regarded as bailment despite the absence of a contract. Delivery of goods to another under a mistake of identity of the person is also treated as bailment without a contract as long as the bailor took reasonable care to ascertain the identity.

Present Position in India: The Law Commission of India in its 13th report suggested that bailment without contract should also be included in the Indian Contract Act, 1872 but no concrete steps have been taken as yet. Presently, the Indian Courts have taken the position that bailment can exist without a contract. In some of these cases, even the government has been held liable as a bailor despite the absence of a contract.

The case of Lasalgoan Merchants Bank vs. Prabhudas Hathibhai is one the first where the Courts started imposing the obligations of a bailee even without a contract. In State of Gujarat vs. Memom Mohammed, the Supreme Court of India accepted this view and stated that “…Bailment is dealt with by the Contract Act only in cases where it arises from a contract, but it is not correct to say that there cannot be bailment without an enforceable contract.”

3) Delivery for a purpose and Return of Goods: There has to be a purpose for the bailment of goods and it is mandatory that once such purpose is accomplishes, the goods have to be returned to the bailor
or be disposed off per his instructions. Bailment cannot arise if the goods are not to be specially accounted for after completion of such task or purpose. This is a feature of bailment that distinguishes it from other relations like agency, etc.

The third essential of bailment is two fold –

a) The delivery of goods must be for some specific task or performance. Delivery of goods in bailment is not permanent. There has to be a purpose for the bailment of goods and it is mandatory that once such purpose is accomplishes, the goods have to be returned to the bailor or be disposed off per his instructions. A tailor is given a cloth for stitching a shirt, a watch repair shop is given a watch to mend it.

b) That the goods must be returned to the bailor or be taken care of as per the instructions of the bailor. If a person is not bound to return the goods to another, then the relationship between them is not of bailment. If there is an agreement to return the equivalent and not the same goods, it is not bailment. An agent who collects money on behalf of his principal is not a bailee because he is not liable to return the same money and coins.

Example: A tailor who receives a cloth for stitching is the bailee in this case. The tailor is supposed to return the finished garment to the customer, the bailor, once the garment has been stitched.

c) Return of goods in specie is also essential. The same goods that were bailed must be returned to the bailor in the same condition after the accomplishment of purpose as they were handed over to the bailee in the beginning. Any accruals to the goods must also be handed over. If an animal gives birth during the period of bailment, the bailee must return the animal with the offspring at the conclusion of the bailment.

Q.2. ‘X’ had visited a leading E-Commerce Website to purchase a Mobile Smartphone for Rs.35, 000/-.

The steps of the transaction were as follows:

i. X visits the E-Commerce Website (“Website”) and searches for a Mobile Smartphone listed on the Website;

ii. X selects the desired Mobile Smartphone and checks the price, which displays at Rs.35, 000/-. The price is an all inclusive price and includes taxes and other charges.

iii. X then adds the selected product to the E-shopping Cart and fills in the relevant details for registration and purchase. Thereafter, ‘X’ proceeds to do the payment for the selected Mobile Smartphone;
iv. On completing the payment formalities, the Website displayed the message “Product Unavailable at the selected Price”. The Price for the Mobile Smartphone had increased. The Amount for the Mobile Smartphone was not deducted from the account of ‘X’.

a) Is the Contract between ‘X’ and the Website initiated? Can ‘X’ sue the E-Commerce Website for not making available the Mobile Smartphone at the price selected by ‘X’.

If yes, give reasons? If no, give reasons?

Ans:
A contract is an agreement between two or more parties to perform a service, provide a product or commit to an act, and is enforceable by law. There are several types of contracts, and each have specific terms and conditions.

**Contract**

When a salesperson asks you to sign on the dotted line, it is important to understand the contents of the agreement you are signing. After all, the agreement you are entering into is a contract!

A contract is a written or expressed agreement between two parties to provide a product or service. There are essentially six elements of a contract that make it a legal and binding document.

In order for a contract to be enforceable, it must contain:

- An offer that specifically details exactly what will be provided
- Acceptance, which is the agreement by the other party to the offer presented
- Consideration, money or something of interest being exchanged between the parties
- Capacity of the parties in terms of age and mental ability
- The intent of both parties to carry out their promise
- Legally enforceable terms and conditions, also called object of the contract

In other words, a contract is enforceable when both parties agree to something, back the promise up with money or something of value, both are in sound mind and intend to carry out their promise and what they promise to do is within the law.

Most commonly, a contract is written and signed by the parties. However, there are several other types of contracts that are considered enforceable. There are even some that are not considered enforceable and serve only as a way for a court to determine the obligation on the part of either party.

*As per the definition of contract we know there must be “Consideration, money or something of interest being exchanged between the parties” hence the Contract between ‘X’ and the Website doesn’t initiate? Similarly ‘X’ can’t sue the E-Commerce Website for not making available the Mobile Smartphone at the price selected by ‘X’.*

b) Assuming if the amount of Rs.35,000/- was deducted from the account of ‘X’ and the amount was received by the Website. Is the Contract between ‘X’ and the Website initiated? Can ‘X’ sue the Website for not making available the Mobile Smartphone at the price selected by ‘X’ even after deducting the amount?

Ans:
If the amount of Rs.35,000/- has been paid by X and received by the website then there is a valid contract initiated between both the parties. Yes, X can sue the party for not making available the delivery of Smartphone even at the price selected by the X even after making of payment by X. In this case there was an offer and acceptance and is legally enforceable.

A party to a contract is one who holds the obligations and receives the benefits of a legally binding agreement. When two parties enter into an agreement, there are two distinct roles each play: the promisor and the promisee. The promisor is the party that makes the promise, while the promisee is on the receiving end of the promise.
Q.3: Describe in detail at least 6 changes (amendments) brought about with the Introduction of the Companies Act, 2013. Please discuss the impact (pros and cons) of each change on today’s Indian businesses?

Ans:

A company, in common parlance, means a group of persons associated together for the attainment of a common end, social or economic. It has “no strictly technical or legal meaning.”

According to sec. 3 (1) (ii) of the Companies Act, 1956 a company means a company formed and registered under the Companies Act, 1956 or any of the preceding Acts. Thus, a Company comes into existence only by registration under the Act, which can be termed as incorporation.

**Important changes regarding Incorporation relating matters**

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<th>S.No</th>
<th>Particulars</th>
<th>Provision contained in existing Companies Act, 1956</th>
<th>Provision contained in Companies Bill 2013</th>
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<tr>
<td>1.</td>
<td>Types of companies</td>
<td>Private Company</td>
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<td>Public Company</td>
<td>Public Company</td>
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<td>2.</td>
<td>Maximum number of members for private companies</td>
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<td>A private company can have a maximum of 200 members</td>
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<td>Public company to have minimum seven members</td>
<td>Company introduced which will be a private company</td>
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<td>and private companies to have minimum two members</td>
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<td>Provision is applicable only to public limited companies</td>
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<td>3.</td>
<td>One Person Company</td>
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<td>New concept of one person company</td>
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<td>introduced which will be a private company</td>
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<td>4.</td>
<td>Commencement of Business</td>
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<td>Now applicable to all companies having share capital</td>
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5. Registered Office

Companies are required to furnish the details of the Registered Office of the company by filing Form 18 at the time of incorporation.

A company shall, on and from the 15th day of its incorporation to have a registered office capable of receiving and acknowledging communications and notices as may be addressed to it. The company is also required to furnish to the Registrar verification of its registered office within a period of 30 days of its incorporation in a prescribed manner. Notice of every change of the situation of the registered office, shall be given to the Registrar within fifteen days of the change, who shall record the same.

6. Object Clause of MO

Object clause bifurcated into Main Objects, Incidental or Ancillary Objects and Other Objects.

MOA to contain the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.
Advantages of incorporation

Incorporation offers certain advantages to a company as compared with all other kinds of business organizations. They are

1) Independent corporate existence- the outstanding feature of a company is its independent corporate existence. By registration under the Companies Act, a company becomes vested with corporate personality, which is independent of, and distinct from its members. A company is a legal person. The decision of the House of Lords in Salomon v. Salomon & Co. Ltd. (1897 AC 22) is an authority on this principle:

One S incorporated a company to take over his personal business of manufacturing shoes and boots. The seven subscribers to the memorandum were all his family members, each taking only one share. The Board of Directors composed of S as managing director and his four sons. The business was transferred to the company at 40,000 pounds. S took 20,000 shares of 1 pound each n debentures worth 10,000 pounds. Within a year the company came to be wound up and the state if affairs was like this: Assets- 6,000 pounds; Liabilities-Debenture creditors-10,000 pounds, Unsecured creditors- 7,000 pounds.

It was argued on behalf of the unsecured creditors that, though the co was incorporated, it never had an independent existence. It was S himself trading under another name, but the House of Lords held Salomon & Co. Ltd. must be regarded as a separate person from S.

2) Limited liability- limitation of liability is another major advantage of incorporation. The company, being a separate entity, leading its own business life, the members are not liable for its debts. The liability of members is limited by shares; each member is bound to pay the nominal value of shares held by them and his liability ends there.

3) Perpetual succession- An incorporated company never dies. Members may come and go, but the company will go on forever. During the war all the members of a private company, while in general meeting, were killed by a bomb. But the company survived, not even a hydrogen bomb could have destroyed it (K/9 Meat Supplies (Guildford) Ltd., Re, 1966 (3) All E.R. 320).

4) Common seal- Since a company has no physical existence, it must act through its agents and all such contracts entered into by such agents must be under the seal of the company. The common seal acts as the official seal of the company.

5) Transferable shares- when joint stock companies were established the great object was that the shares should be capable of being easily transferred. Sec 82 gives expression to this principle by providing that “the shares or other interest of any member shall be movable property, transferable in the manner provided by the articles of the company.”

6) Separate property- The property of an incorporated company is vested in the corporate body. The company is capable of holding and enjoying property in its own name. No members, not even all the members, can claim ownership of any asset of company’s assets.

7) Capacity for suits- A company can sue and be sued in its own name. The names of managerial members need not be impleaded.

8) Professional management- A company is capable of attracting professional managers. It is due to the fact that being attached to the management of the company gives them the status of business or executive class.

Disadvantages of incorporation

1) Lifting of corporate veil- though for all purposes of law a company is regarded as a separate entity it is sometimes necessary to look at the persons behind the corporate veil.
a) Determination of character- The House of Lords in Daimler Co Ltd. v. Continental Tyre and Rubber Co., held that a company though registered in England would assume an enemy character if the persons in de facto control of the company are residents of an enemy country.
b) For benefit of revenue- The separate existence of a company may be disregarded when the only purpose for which it appears to have been formed is the evasion of taxes. – Sir Dinshaw Maneckjee, Re / Commissioner of Income Tax v. Meenakshi Mills Ltd.
c) Fraud or improper conduct- In Gilford Motor Co v. Horne, a company was restrained from acting when its principal shareholder was bound by a restraint covenant and had incorporated a company only to escape the restraint.
d) Agency or Trust or Government company- The separate existence of a company may be ignored when it is being used as an agent or trustee. In State of UP v. Renusagar Power Co, it was held that a power generating unit created by a company for its exclusive supply was not regarded as a separate entity for the purpose of excise.

e) Under statutory provisions- The Act sometimes imposes personal liability on persons behind the veil in some instances like, where business is carried on beyond six months after the knowledge that the membership of company has gone below statutory minimum(sec 45), when contract is made by misdescribing the name of the company(sec 147), when business is carried on only to defraud creditors(sec 542).

2) Formality and expense- Incorporation is a very expensive affair. It requires a number of formalities to be complied with both as to the formation and administration of affairs.

3) Company not a citizen- In State Trading Corporation of India v. CTO, the SC held that a company though a legal person is not a citizen neither under the provisions of the Constitution nor under the Citizenship Act.

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