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CA FOUNDATION

PAPER – 2: BUSINESS LAWS

Q.1

(a) (i) **Section 39** provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified, by words or conduct his acquiescence in its continuance. Further, in term of **Section 40**, the promisee shall be required to perform personally, if there is such an apparent intention of the parties. Also, as per **Section 75** of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Therefore, in the instant case

(a) Since, Saraswati could not perform as per the terms of contract, Gauri Vidya Mandir can terminate the contract.

(b) In the second situation, the management of Gauri Vidya Mandir informed Saraswati about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.

(c) As per **Section 75**, Gauri Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

(ii) **Section 148** of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to **Section 149** of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Yudha's shop, when Mr. Shiva himself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149.

Therefore, in this case there is no contract of bailment as Mr. Shiva did not deliver the complete possession of the good by keeping the keys with himself.

(b) (i) **Provision: Section 2(87)** defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

For the purposes of this section —

(i) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in **sub-clause (i) or sub-clause (ii)** is of another subsidiary company of the holding company;

(ii) "layer" in relation to a holding company means its subsidiary or subsidiaries.

Fact of the case: In the instant case, Bombay Private Limited together with its subsidiary Kalyan Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of Pune Private Limited.

Conclusion: Hence, Pune Private Limited is subsidiary of Bombay Private Limited.

(ii) **Separate Legal Entity:** Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the

corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company. The leading case law of Saloman Vs Saloman and Company Limited, laid the foundation of concept of corporate veil or independent corporate personality. A company is a person distinct and separate from its members.

Based on the above discussion and provisions, Mr. Raj was entitled to the assets of the company as he was a secured creditor of the company and the contention of the creditors that Mr. Raj and the company are one and same person is wrong.

(c) According to sub-section (3) of Section 32 of the Indian Partnership Act, 1932, a retiring partner along with the continuing partners continue to be liable to any third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was a partner.

As per the provisions of Section 28, where a man holds himself out as a partner or allows others to do it, when in fact he is not a partner, he is liable like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.

In the instant case, since Mr. Singh has not given the public notice of his retirement from the partnership firm and Mr. Tivari believes that Mr. Singh is a partner, Mr. Singh will be liable to Mr. Tridev under the provisions of Section 32.

Also Mr. Emirates, who has been introduced as a partner of the firm to which Mr. Emirates has not presumably denied, will also be liable for the payment of 25 fans supplied to the firm on credit along with other partners in terms of the provisions of Section 28 as stated above.

Over and above Singh and Emirates, Qureshi and Rathor being the partners of the firm along with the firm will also be held liable to Tridev.

Therefore, Tridev can recover the payment from the Firm, Qureshi, Rathor, Singh & Emirates.

Q2

(a) (i) According to Section 15 of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.

Further, as per Section 16(l) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose. In the given case, Mr. Mario had revealed Mr. Toy that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. Toy was unfit for the purpose for which Mr. Mario wanted the fan, therefore, Toy cannot refuse to exchange the fan.

(ii) When one party does not fulfil his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr. Mario is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr. Toy to replace it with the fan he wanted.

(ii) **Provision:** The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien.

But under two exceptional cases these rights of the seller are affected:-

1. When the buyer has made the transaction with the consent of the seller.

2. When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.

Fact of the case: In the given case, Jay has sold the machine to Kay and Kay gave a cheque for the payment. But the cheque was dishonoured that means Jay, the seller is an unpaid seller.

Conclusion: So, he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So, Ray who has purchased the machine from Kay can demand the delivery of the machine.

(b) The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

Object of registering a memorandum of association:

- It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
- It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in. A memorandum is a public document under **Section 399** of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
- The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

A company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power conferred on it by the memorandum. If it does so, it would be ultra vires the company and void.

Contents of the memorandum:

The memorandum of a company shall state—

- (a) the name of the company (**Name Clause**) with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. This clause is not applicable on the companies formed under **section 8** of the Act.
- (b) the State in which the registered office of the company (**Registered Office clause**) is to be situated;
- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (**Object clause**);
- (d) the liability of members of the company (**Liability clause**), whether limited or unlimited
- (e) the amount of authorized capital (**Capital Clause**) divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.
- (f) the desire of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.

(c) Incorporation by registration (Section 12 of LLP Act, 2008):

(1) When the requirements imposed by **clauses (b) and (c) of sub-section (1) of section 11** have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by **clause (a)** of that sub-section has not been complied with, he shall, within a period of 14 days—

- (a) register the incorporation document; and
- (b) give a certificate that the LLP is incorporated by the name specified therein.

- (2) The Registrar may accept the statement delivered under **clause (c) of sub-section (1) of section 11** as sufficient evidence that the requirement imposed by **clause (a)** of that sub-section has been complied with.
- (3) The certificate issued under **clause (b) of sub-section (1)** shall be signed by the Registrar and authenticated by his official seal.
- (4) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Essential elements to incorporate Limited Liability Partnership (LLP)

Under the LLP Act, 2008, the following elements are very essential to form an LLP in India:

- (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
- (iii) To have registered office in India to which all communications will be made and received; (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India.
- (v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs.
- (vi) To execute a partnership agreement between the partners, inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in **First Schedule of LLP Act, 2008** will be applied.
- (vii) LLP Name.

Q3

(a) (i) Provision: As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

Fact of the case: The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely, (a) the suit must be instituted by or on behalf of the firm which had been registered; (b) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by Bakki and Cakki against X in the name and on behalf of Akki & Co. is maintainable.

Now, in 2017, Bakki and Cakki had taken a new partner, Dakki, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms.

Conclusion: Therefore, the firm cannot sue as Dakki's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

(ii) It is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in **Section 33** of the Indian Partnership Act, 1932.

The essential conditions before expulsion can be done are:

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) It has been exercised in good faith. The test of good faith includes:
 - (a) that the expulsion must be in the interest of the partnership;

- (b) that the partner to be expelled is served with a notice; and
- (c) that the partner has been given an opportunity of being heard.

Thus, in the given case Avi and Bhavi the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.

(b) (i) Small Company: Small Company as defined under Section 2(85) of the Companies Act, 2013 means a company, other than a public company—

- (i) paid-up share capital of which does not exceed ₹4 crore or such higher amount as may be prescribed which shall not be more than ₹10 crore; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed ₹40 Crore or such higher amount as may be prescribed which shall not be more than ₹100 crores.

Exceptions: This clause shall not apply to:

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

In the instant case, since the paid-up capital of ITC Private Limited is ₹2 crore and turnover is ₹25 crore, it can avail the status of a small company as both the requirements with regard to paid-up share capital as well as turnover are fulfilled by the Company.

(ii) (i) Perpetual Succession – A company on incorporation becomes a separate legal entity. It is an artificial legal person and has perpetual succession which means even if all the members of a company die, the company still continues to exist. It has a permanent existence. The existence of a company is independent of the lives of its members. It has a perpetual succession. In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members.

(ii) The statement given is incorrect. A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have a banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with a company, acquire rights against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practise a learned profession. Hence, it is a legal person in its own sense.

(c) Agent's duty to disclose all material circumstances & his duty not to deal on his own account without principal's consent. The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction.

On the other hand, section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then the principal may claim any benefit which may have accrued to the agent from such a transaction.

Hence, in the first instance, though Pradeep had given his consent to Shru permitting the latter to act on his own account in the business of agency, Pradeep may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him. In the second instance, Pradeep had knowledge that Shru was acting on her own account and also that the mine was in existence; hence, Pradeep cannot repudiate the transaction under section 215.

Also, under Section 216, he cannot claim any benefit from Shru as he had knowledge that Shru was acting on her own account in the business of the agency.

Q.4

(a) (i) According to section 131 of Indian Contract Act 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.

In this question, 'Sun' was surety for the transactions to be done between 'Venus' & 'Jupiter' during the month of March'2024. 'Venus' supplied goods of Rs. 30,000, Rs. 20,000 and of Rs. 40,000 on 01.03.2024, 03.03.2024 and 10.03.2024 respectively. 'Sun' died in a road accident but this was not in the knowledge of 'Venus'. When 'Jupiter' defaulted in payment, 'Venus' filed suit against legal heirs of 'Sun' for recovery of full amount i.e. Rs. 90,000.

On the basis of above, it can be said in case of death of surety ('Sun'), his legal heirs are liable only for those transactions which were entered before 05.03.2024 i.e. for Rs. 50,000. They are not liable for the transaction done on 10.03.2024 even though Venus had no knowledge of death of Sun. Further, if the worth of the estate of deceased is only Rs. 45,000, the legal heirs are liable for this amount only.

(ii) According to section 17 of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case,

- (a) This contract is valid since as per section 17 mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.
- (b) This contract is not valid since as per section 17 it becomes Pia's duty to tell Qia about the unsoundness of the horse because a fiduciary relationship exists between Pia and his daughter Qia. Here, Pia's silence is equivalent to speech and hence amounts to fraud.
- (c) This contract is not valid since as per section 17, Pia's silence is equivalent to speech and hence amounts to fraud.

(b) As per section 117 of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

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

(c) Indian Judicial System is a branch which through the enforcement of Law resolves dispute between citizens or between citizens and the Government.

The functions of judiciary system of India are:

- Regulation of the interpretation of the Acts and Codes,
- Dispute Resolution,
- Promotion of fairness among the citizens of the land.

Indian Judicial System performs his functions through the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts, District Courts and Metropolitan Courts. Decisions of a High Court are binding in the respective state but are only persuasive in other states.

Decisions of the Supreme Court are binding on all High Courts under Article 141 of the Indian Constitution. In fact, a Supreme Court decision is the final word on the matter.

Q.5

(a) (i) **Provision:** According to Section 21 of the Sales of Goods Act, 1930, if the goods are not in a deliverable state and the contract is for the sale of specific goods, the property does not pass to the buyer unless:

- (i) The seller has done his act of putting the goods in a deliverable state and
- (ii) The buyer has knowledge of it.

Sometimes the seller is required to do certain acts so as to put the goods in deliverable state like packing, filling in containers etc. No property in goods passes unless such act is done and buyer knows about it.

Fact of the case: In the given case, Xee has agreed to purchase 500 tons of wheat from Yee out of a larger stock. Xee sent his men (agent) to put the wheat in the sacks. Out of 500 tones only 250 tons were put into the sacks. There was a sudden fire and the entire stock was gutted.

Conclusion: In this case, according to the provisions of law, 250 tons sale has taken place. So, buyer Xee will be responsible to bear the loss. The loss of rest of the wheat will be that of the seller Yee. The wheat which was put in the sacks fulfils both the conditions that are: -

- (1) The wheat is put in a deliverable state in the sacks.
- (2) The buyer is presumed to have knowledge of it because the men who put the wheat in the sacks is that of the buyer.

(ii) By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

In the instant case, Megha gives the highest bid in the auction for the sale of antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.

On the basis of above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Megha will not be liable for loss and can avoid the contract.

(b) (i) **Definition of Partnership:** 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. (Section 4 of the Indian Partnership Act, 1932).

The definition of the partnership contains the following five elements which must coexist before a partnership can come into existence:

1. Association of two or more persons
2. Agreement
3. Business
4. Agreement to share Profits
5. Business carried on by all or any of them acting for all

(ii) Elements Of Partnership

The definition of the partnership contains the following five elements which must coexist before a partnership can come into existence:

1. Association of two or more persons:

Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership. The Partnership Act is silent about the maximum number of partners but **Section 464** of the Companies Act, 2013 read with the relevant Rules has now put a limit of 50 partners in any association / partnership firm.

2. Agreement:

It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

3. Business:

In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.

4. Agreement to share profits:

The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

5. Business carried on by all or any of them acting for all:

The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

(c) (i) **Yes**, L can compel only Y to pay ₹1,90,000/- since as per **Section 43** of the Indian Contract Act, 1872, in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

(ii) As per **Section 42**, when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, the representatives of all jointly must fulfil the promise.

In the instant case, if X, Y and Z died then the legal representatives of

all (i.e., X, Y and Z) shall be liable to pay the loan jointly. L cannot compel only the legal representatives of Y to pay the loan of ₹1,90,000.

(iii) According to **Section 44**, where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

In this case, the release of X does not discharge Y and Z from their liability. Y and Z remain liable to pay the entire amount of ₹1,90,000 to L. And though X is not liable to pay to L, but he remains liable to pay to Y and Z i.e., he is liable to make the contribution to the other joint promisors.

Q.6

(a) (i) By virtue of provisions of Section 138 of the Negotiable Instruments Act, 1881, where cheque was issued by a person to discharge a legally enforceable debt was dishonoured by bank due to insufficiency of funds, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque, or with both.

However,

- (a) the cheque has been presented to the bank within three months or validity period of the cheque, whichever is earlier;
- (b) the holder makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the said notice.

In the instant case, Priyanka issued a cheque to Sumit for payment of the price of goods purchased from him. When Sumit presented the cheque in bank, it was returned unpaid due to insufficiency of funds in the account of Priyanka. Sumit sued against Priyanka under section 138 of the Negotiable Instruments Act, 1881.

For filing the suit under section 138, Sumit should have to make a demand of payment by giving a notice in writing to Priyanka upto 18th July, 2024. In case, Priyanka failed in making the payment within fifteen days of the receipt of the said notice, Sumit could sue under section 138.

(ii) Meaning of Negotiable Instruments: Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument is passed to a bonafide transferee for value.

The Act does not define the term 'Negotiable Instruments'. However, Section 13 of the Act provides for only three kinds of negotiable instruments, namely bills of exchange, promissory notes and cheques, payable either to order or bearer.

Essential Characteristics of Negotiable Instruments

1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.

7. The sum payable, the time of payment, the payee, must be certain.
8. The instrument should be delivered. Mere drawing of instrument does not create liability.

(b) (i) Acceptance must be absolute and unqualified: As per section 7 of the Indian Contract Act, 1872 acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

Example: 'A' enquires from 'B', "Will you purchase my car for ₹2 lakhs?" If 'B' replies "I shall purchase your car for ₹2 lakhs, if you buy my motorcycle for ₹50000/-, here 'B' cannot be considered to have accepted the proposal. If on the other hand 'B' agrees to purchase the car from 'A' as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition. Therefore, the acceptance in this case is unconditional.

(ii) Acceptance must be in the prescribed mode: Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.

Example: If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

(c)

Basis of difference	Sale	Hire-Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of the contract	Property in goods passes to the hirer upon payment of the last instalment.
Position of the property	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last instalment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser
Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the instalments.