Mock Test Paper - Series I: August 2026

Date of Paper: 12th August 2026

Time of Paper: 2 P.M. to 5 P.M.

FOUNDATION COURSE

Paper 2: Business Laws

Time: 3 Hours **Marks: 100**

1. (a) (i) As per Section 2(h) of the Indian Contract Act, 1872 a contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation which means duly enforceable by law.

As per Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

In the given case, Mr. AT and Mrs. Priya had not entered into an agreement which is legally enforceable by law.

As per the facts of the case, Mr. AT agreed to pay to his wife Mrs. Priya ₹ 30,000 per month while he was abroad. Mr. AT failed to pay the promised amount. Mrs. Priya sued him for the recovery of the amount.

In view of the above, Mrs. Priya cannot recover any amount as it was a social agreement and the parties did not intend to create any legal relationships.

(ii) Invitation to Offer: The offer should be distinguished from an invitation to offer. In terms of Section 2(a) of the Indian Contract Act, 1872, an offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it.

Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of items with a price in it in a self-service system is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract.

In this case, Mr. X by selecting some items and approaching the cashier for payment simply made an offer to buy the items selected by him. If the cashier does not accept the price, Mr. X cannot compel him to sell.

Accordingly, in view of the above, Mr. X cannot compel the Cashier / Cosmo Mega Mall to sell the 10th article.

(b) (i) **Small Company:** Small company given under the Section 2(85) of the Companies Act, 2013 which means a company, other than a public company:

(i) paid-up share capital of which does not exceed ten crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed one hundred crores rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

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 given case, although the paid-up capital and turnover of Aaradhya Cosmetics Private Ltd. is within the terms of small company but, Aaradhya Cosmetics Private Limited (ACPL) is the holding company of Pooja Fashions Private Limited (PFPL) and as per the proviso (A) to Section 2(85), holding company shall not be treated a small company. Hence ACPL Cosmetics Private Ltd. cannot avail the status of a small company. Contention of directors of ACPL is incorrect.

(ii) **Government Company [Section 2(45)]:** Government Company means any company in which not less than 51% of the paid-up share capital is held by-

- the Central Government, or
- by any State Government or Governments, or
- partly by the Central Government and partly by one or more State Governments.
- and the Section includes a Company which is a Subsidiary Company of such a Government Company.

In the instant case, Abhinav Natural Gases Ltd. (ANGL) cannot be tagged as a Government Company as the total holding of Central Government and State Government is ₹ 70.30 crores (₹ 40.10 crores + ₹ 30.20 crores) which is less than 51% of the paid-up share capital of ANGL i.e. ₹ 71.40 crores (51% of ₹ 140 crores).

Hence ANGL shall not be tagged as Government company. Directors of ANGL cannot quote it as Government Company.

(c) (i) Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved.

1. There was an agreement between all the persons concerned
2. The agreement was to share the profits of a business and
3. the business was carried on by all or any of them acting for all.

1. Agreement: Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.

2. Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

3. Agency: Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

(ii) Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

According to section 16, subject to contract between the partners:

(a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) If a partner carries on any business of the same nature and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

2. (a) 1. According to section 44 of the Sale of Goods Act, 1930, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

Risk of loss of goods prima facie follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.

2. If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

(a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]

(b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

(b) (i) Meaning of Common Seal

Common seal is the official signature of a company, which is affixed by the officers and employees of the company on its every document. The common seal is a seal used by a corporation as the symbol of its incorporation.

Is it necessary for a Company to have a Common Seal?

Having a common seal is optional now. The Companies (Amendment) Act, 2015 has made the common seal optional by omitting the words "and a common seal" from Section 9 of the Companies Act, 2013 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. This amendment provides that the documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

(ii) Whether the phrases 'Company Limited by Shares" and "Company Limited by Guarantee" are same?

No, the phrases 'Company Limited by Shares' and 'Company Limited by Guarantee' are not same.

Distinction between "Company Limited by Shares" and "Company Limited by Guarantee" is tabulated as under:

S. No.	Company Limited by Shares	Company Limited by Guarantee
1.	It is defined under Section 2(22) of the Companies Act, 2013.	It is defined under Section 2(21) of the Companies Act, 2013.

2.	It is a company when the liability of the members of a company is limited by its Memorandum of Association to the amount (if any) unpaid on the shares held by them.	It is a company having the liability of its members limited by the Memorandum to contribute to the assets of the company in the event of its being wound up.
3.	The members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions.	The members may be called upon to discharge their liability at any time, either during the company's life-time or during its winding up.
4.	This company can raise its initial working funds from its members.	This company does not raise its initial working funds from its members.
5.	For meeting the debts of the Company, the shareholder may be called upon to contribute only to the extent of the amount which remains unpaid on his shareholdings. His separate property cannot be encompassed to meet the Company's debt.	The liability of a member of a guarantee company is limited to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

(c) (i) Whether EDUDED LLP can be formed for educating the poor as a non-profit organization?

According to Section 11 of the Limited Liability Partnership Act, 2008, the essential requirement of forming LLP is carrying on a lawful business with a view to earn profit. EDUDED LLP cannot be formed for educating poor children as a non-profit organization.

In view of the above, a LLP cannot be formed for charitable or non-economic purpose.

(ii) Whether Mr. A and Mr. B can be appointed as designated partners in EDUDED LLP?

Designated Partners (Section 7 of the Limited Liability Partnership Act, 2008): Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a Resident in India.

For the purpose of this section, the term Resident in India means a person who has stayed in India for a period of not less than 120 days during the financial year.

As EDUDED LLP cannot be formed because its purpose is for non-profit organization, the question of appointing Mr. A and Mr. B as designated partners does not arise.

Note: However, if the EDUDED LLP can be formed, Mr. A and Mr. B cannot be appointed as designated partners in EDUDED LLP as both are Non-Resident and the condition that at least one designated partner must be a resident in India is not fulfilled. Therefore, one designated partner must be either Ms. C or Ms. D or Ms. E as all three of them are resident.

3. **(a)** **(i)** **Liability of D:** As per section 31 of the Indian Partnership Act, 1932, the liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. The mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In the instant case, D would not be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors.

(ii) **If D was minor at the time of admission:** As per section 30, the liability of the minor is confined only to the extent of his share in the profits and the property of the firm.

Minor has no personal liability for the debts of the firm incurred during his minority.

Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

Hence, D would not be liable in this case also.

(iii) **Liability of D upon becoming major:** A minor partner on attaining majority becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

Moreover, a mere agreement amongst partners cannot operate as

Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

Hence, D would not be liable to pay the existing debt upon becoming major.

(b) (i) Government Company [Section 2(45) of the Companies Act, 2013]: Government Company means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

In the instant case, 51% of the shares of State Power Corp Limited is held by the Central Government. Therefore, the company shall be treated as a Government Company. The fact that it is incorporated as a private company does not affect its status as a Government Company. Therefore, the contention of some directors that a private company cannot be a Government Company is incorrect.

In view of the above, State Power Corp Private Limited is a Government Company under Section 2(45) despite being incorporated as a private company.

(ii) Public Financial Institutions (PFI) [Section 2(72)]: A "PFI" includes institutions specified in Schedule I of the Act (like IDBI, LIC, UTI, IFCI, ICICI, etc.) and such other institution as may be notified by the Central Government. A Government Company does not automatically become a PFI merely because 51% shares are held by the Central Government. Since State Power Corp Pvt Ltd was incorporated for infrastructure/IT purposes, there is no indication that State Power Corp Private Limited has been specifically established as a PFI under the Act or notified by the Central Government for this purpose, it cannot be regarded as a PFI. Hence, the view of the directors claiming it to be a PFI is not correct.

In view of the above, State Power Corp Private Limited cannot be considered a Public Financial Institution.

(iii) Dormant Company (Section 455): Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

"Inactive Company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

Since State Power Corp Private Limited has neither conducted business nor filed the required returns during the last two financial years, it qualifies as an inactive company and is eligible to apply for the status of a Dormant Company.

(c) Under Section 23 of the Indian Contract Act, 1872 in each of the following cases the consideration or object of an agreement is said to be unlawful:

(i) **When consideration or object is forbidden by law:** Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulations or orders made in exercise of the authority conferred by the legislature.

(ii) **When consideration or object are of such a nature that if permitted it would defeat the provisions of law:** If the consideration or the object of an agreement is of such a nature that not directly but indirectly, it would defeat the provisions of the law, the agreement is void.

(iii) **When it is fraudulent:** Agreements which are entered into to promote fraud are void.

(iv) The general term "injury" means criminal or wrongful harm. In some cases, the object or consideration is unlawful as it involves injury to the person or property of another.

(v) **When consideration is immoral:** In some cases, the object or consideration is unlawful, being immoral.

(vi) **When consideration is opposed to public policy:** The expression 'public policy' can be interpreted either in a wide or in a narrow sense. The freedom to contract may become illusory, unless the scope of 'public policy' is restricted. In the name of public policy, freedom of contract is restricted by law only for the good for the community.

4. **(a)** **Bailment:** As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Bailor's duty to disclose faults in goods bailed in case of non- gratuitous bailment (Section 150): If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Duty to pay necessary expenses in case of non-gratuitous bailment [Section 158]: The bailor is liable to pay the extraordinary expenses incurred by the bailee.

Bailor's responsibility to indemnify losses [Section 164]: It is the duty of bailor to indemnify all the losses and expenses, which bailee has to pay on account of defective goods.

In the instant case, Y took a car on lease from X for 10 days for ₹ 50,000. During the journey, Y has to spend ₹ 10,000 for repair of engine and paid ₹ 50,000 for hospital expenses due to accident because of fault in brakes of car. These are the extraordinary expenses and losses and it is the bailor's duty to bear such expenses and losses.

Therefore, the answers are:

(i) Y can withhold the hire charges of ₹ 50,000 on account of non-payment of damages and claim an additional ₹10,000, from X.

(ii) X is liable for the full ₹ 60,000 (₹10,000 repair + ₹ 50,000 hospital) as it is the bailor's duty to supply a car fit for the purpose for which it was hired.

(b) Difference between promissory note and bill of exchange:

S. No.	**Basis**	**Promissory Note**	**Bill of Exchange**
1.	**Definition**	"A Promissory Note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.	"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.
2.	**Nature of Instrument**	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.

3.	**Parties**	In a promissory note, there are only 2 parties namely: i. the maker and ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer ii. the drawee iii. the payee
4.	**Acceptance**	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bill of exchange needs acceptance from the drawee.
5.	**Payable to bearer**	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

(c) **Meaning of Law:** Law is a set of obligations and duties imposed by the government for securing welfare and providing justice to society. India's legal framework reflects the social, political, economic, and cultural aspects of our vast and diversified country.

The Process of Making a Law

- When a law is proposed in parliament, it is called a Bill.
- After discussion and debate, the law is passed in Lok Sabha.
- Thereafter, it has to be passed in Rajya Sabha.
- It then has to obtain the assent of the President of India.
- Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- The law will become applicable from the date mentioned in the notification as the effective date.
- Once it is notified and effective, it is called an Act of Parliament.

5. **(a)** **(i)** **Condition as to quality or fitness [Section 16(1) of the Sale of Goods Act, 1930]:** There is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

(a) The buyer should have made known to the seller the particular purpose for which goods are required.

(b) The buyer should rely on the skill and judgement of the seller.

(c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

Similarly, where the goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of mercantile quality [Section 16(2)].

In the instant case, Rishi informed the dealer about the heavy and strong clay of his farmhouse and relied upon the dealer's expertise for selecting the tractor and seed planter machines. Therefore, the implied condition as to fitness for purpose under Section 16(1) applies.

As regards the tractor, it broke down within 16 days because it was unsuitable for the intended purpose. This amounts to breach of the implied condition regarding fitness for purpose.

Breach of a condition gives the buyer the right to treat the contract as repudiated and reject the goods and claim refund of price.

Hence, Rishi is entitled to reject and return the tractor and repudiate the contract relating to the tractor.

(ii) In case of the six seed planter machines, only one machine was defective and unsuitable, whereas the remaining five machines were suitable and had already been used by Rishi. Further, the bill contained separately itemized pricing and serial numbers, indicating a severable contract.

The seed planter that broke down on the same day (16th day) was also found unsuitable for the specific field/purpose. This is essentially breach of implied condition of fitness for purpose under Section 16(1). Therefore, Rishi can return this one machine and claim refund.

Also, according to Section 37(3), where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject or may reject the whole.

The remaining 5 seed planters were used and found to be suitable for the field. Since they performed as expected, there is no breach of any condition or warranty for these 5 machines.

Therefore, Rishi can reject and return only the defective seed planter machine (breach of fitness condition), but he cannot return all six seed planter machines since the remaining five machines were suitable and already accepted by use.

(b) (i) Right of partners to have business wound up after dissolution (Section 46 of the Indian Partnership Act, 1932):

On the dissolution of a firm, every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

This means every partner has a right to ensure that the firm's debts are paid first from firm assets and only then, the remaining surplus is distributed. This right is enforceable against co-partners.

(ii) Continuing authority of partners for purposes of winding up (Section 47): After the dissolution of a firm, the authority of each partner to bind the firm and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

(iii) Mode of Settlement of partnership accounts (Section 48): In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed: -

(A) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(B) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:

(a) in paying the debts of the firm to third parties;

(b) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(c) in paying to each partner rateably what is due to him on account of capital; and

(d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits. If firm assets are insufficient to pay debts, the partners must contribute in proportion to their loss-sharing ratios (Section 49) to meet the deficiency.

(c) According to section 73 of the Indian Contract Act, 1872, on the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach.

The following are the types of damages that may be awarded for breach of contract:

(i) **Ordinary damages:** When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage cause to him thereby, which naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reasons of the breach.

(ii) **Special damages:** Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

(iii) **Vindictive or Exemplary damages**

These damages may be awarded only in two cases -

(a) for breach of promise to marry because it causes injury to his or her feelings; and

(b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him.

(iv) **Nominal damages:** Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. It is awarded just to establish the right to decree for the breach of contract. The amount may be a rupee or even 10 paise.

(v) **Damages for deterioration caused by delay:** In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

(vi) **Pre-fixed damages:** Sometimes, parties to a contract stipulate at the time of its formation that on a breach of contract by any of them, a certain amount will be payable as damage. It may amount to either liquidated damages (i.e., a reasonable estimate of the likely loss in case of breach) or a penalty (i.e., an amount arbitrarily fixed as the damages payable). Section 74 provides that if a sum is named in a contract as the amount to be paid in case of a breach, the aggrieved party is entitled to receive from the party at fault a reasonable compensation not exceeding the amount so named (Section 74).

6. (a) (i) Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. However, where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

In the instant case, Advik issued a promissory note to Bhanu payable on demand without mentioning any specific place for payment. On maturity, the promissory note was not presented by Bhanu for payment.

On the basis of the above provisions and facts of the case, although non-presentment of promissory note for payment results in discharge of maker from liability but the given case is covered under the exception to section 64. Hence, Advik would not be discharged from liability even the non-presentment by Bhanu as the promissory note was payable on demand and no specific place for payment was mentioned.

(ii) Section 138 of the Negotiable Instruments Act, 1881 provides where any cheque drawn by a person for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid due to insufficiency of fund, the drawer is punishable with imprisonment upto 2 years or fine upto 2 times the amount of cheque or Both. In other words, the liability under section 138 arises only if the drawer had issued the cheque to discharge a legally enforceable debt or other liability. Thus, where the drawer issues a cheque as a gift or charity, he is not liable under section 138 even if cheque is dishonoured.

In the instant case, Shiva gifted a cheque of ₹ 21,000 to his sister. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment.

On the basis of above, as the cheque was given as gift, provisions of section 138 will not be applicable on Shiva.

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

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

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

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

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

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

Where a party to a contract acknowledges or admits that he holds money or property for a third party, or where his conduct creates an estoppel, the third party can enforce the obligation. Example: A owes money to B. A receives money from C for B. B can directly claim from A.

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

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

(c) (i) Sale of unascertained goods and Appropriation (Section 23 of the Sale of Goods Act, 1930): Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

(a) There is a contract for the sale of unascertained or future goods.

(b) The goods should conform to the description and quality stated in the contract.

(c) The goods must be in a deliverable state.

(d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.

(e) The appropriation must be made by:

(i) the seller with the assent of the buyer; or

(ii) the buyer with the assent of the seller.

(f) The assent may be express or implied.

(g) The assent may be given either before or after appropriation.

(ii) (A) Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930): In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void, if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.

(B) Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930): Where there is an agreement to sell specific goods, and 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, the agreement is thereby avoided or becomes void.