



J.K. SHAH[®]
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SUGGESTED SOLUTION
INTERMEDIATE N'19 EXAM
SUBJECT- LAW
Test Code – CIM 8132
BRANCH - () (Date :)

Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

ANSWER-1

(10*1 = 10 MARKS)

1. B
2. A
3. A
4. D
5. C
6. C
7. C
8. D
9. D
10. D

ANSWER-2

ANSWER-A

Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. **(1 MARK)**

On applying the above provision in the given cases—

- (i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name. **(1 MARK)**
- (ii) No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein. **(1 MARK)**
- (iii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name. **(1 MARK)**
- (iv) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name. **(1 MARK)**
- (v) No, B is not a holder because he is in wrongful possession of the instrument. **(1 MARK)**

ANSWER-B

As per the provisions of **Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:**

- (i) properly addressing,
- (ii) pre-paying, and
- (iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. **(2 MARKS)**

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by

'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of *In United Commercial Bank v. Bhim Sain Makhija*, AIR 1994 Del 181 : A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law. (2 MARKS)

ANSWER-3

ANSWER-A

Principles of Grammatical Interpretation and Logical Interpretation : In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning : Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court : In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

(5 MARKS)

ANSWER-B

Calculation of maturity of a Bill of Exchange : The maturity of a bill, not payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable (Section 22, of Negotiable Instruments Act, 1881). Three days are allowed as days of grace. No days of grace are allowed in the case of bill payable on demand, at sight, or presentment.

When a bill is made payable at stated number of months after date, the period stated terminates on the day of the month which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance. When it is payable a stated number of months after a certain event, the period terminates on the day of the month which corresponds with the day on which the event happens (Section 23).

When a bill is made payable a stated number of months after sight and has been accepted for honour, the period terminates with the day of the month which corresponds with the day on which it was so accepted.

If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month (Section 23).

In calculating the date a bill made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or the day of presentment for acceptance or sight or the day of protest for non-accordance, or the day on which the event happens shall be excluded (Section 24).

Three days of grace are allowed to these instruments after the day on which they are expressed to be payable (Section 22).

When the last day of grace falls on a day which is public holiday, the instrument is due and payable on the next preceding business day (Section 25). **(4 MARKS)**

Answer to Problem : In this case the day of presentment for sight is to be excluded i.e. 4th May, 2017. The period of 100 days ends on 12th August, 2017 (May 27 days + June 30 days + July 31 days + August 12 days). Three days of grace are to be added. It falls due on 15th August, 2017 which happens to be a public holiday. As such it will fall due on 14th August, 2000 i.e. the next preceding business day. **(1 MARK)**

ANSWER-4

ANSWER-A

‘Read the Statute as a Whole’: It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

(3 MARKS)

ANSWER-B

“Provision as to offence punishable under two or more enactments” [Section 26]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Thus, Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence. **(2 MARKS)**

ANSWER-C

Problem on Negotiable Instrument made without consideration : Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. **(2 MARKS)**

- (i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration. **(1.5 MARKS)**
- (ii) As regards to the second part of the problem, the prior parties before D i.e., A, B, and C have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration. **(1 MARK)**

ANSWER-5

ANSWER-A

The rules regarding interpretation of deeds and documents are as follows :

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by a ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken

in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one. (5 MARKS)

ANSWER-B

MEANING OF NEGOTIABLE INSTRUMENTS:

Negotiable Instruments is an instrument which is transferable (by customs of trade) by delivery, like cash, and is also capable of being sued upon by the person holding it for the time being. The property in such an instrument passes to a *bona fide* transferee for value.

The Act does not define the term 'Negotiable Instruments'. However, section 13 of the Act mentions only three kinds of negotiable instruments namely, bills, notes and cheques. Section 13 says, "A "**negotiable instrument**" means a promissory note, bill of exchange or cheque payable either to order or to bearer".

The section also provides that, a negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. (2 MARKS)

Mode of Transfer of negotiable instruments :

A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

But it does not necessarily follow that there can be no other negotiable instruments than those enumerated in the Act. Some examples of instruments that which are for the time being, by law of custom, usage or trades are negotiable:

- Government promissory notes
- Shah Jog Hundis
- delivery orders
- railway receipts for goods
- Draft- A banker draft

(3 MARKS)