


Name:			
Enrolment No:			
<b>UPES</b> <b>End Semester Examination, May 2024</b>			
<b>Course: Law of Contract-II</b> <b>Program: BA. LL.B. (H), B.com, LL.B. (H), BBA, LL.B. (H) and LL.B. (H)</b> <b>Course Code: CLCC-1004</b>		<b>Semester: II</b> <b>Time:03 hrs.</b> <b>Max. Marks: 100</b>	
<b>Instructions: Attempt all questions carefully.</b>			
<b>SECTION A</b> <b>(5Qx2M=10Marks)</b>			
S. No.		Marks	CO
Q 1	State the condition for the application of right of stoppage in transit by an unpaid seller?	2	CO1
Q 2	What is Caveat Venditor?	2	CO1
Q 3	Agent appointed in place of an original agent is known as .....	2	CO1
Q 4	Condition and warranty can be used interchangeably. Defend or refute.	2	CO1
Q 5	“All Contracts of insurance are based on principle of indemnity”- Defend or refute.	2	CO1
<b>SECTION B</b> <b>(4Qx5M= 20 Marks)</b>			
Q 6	Briefly explain the principle of – “Nemo dat quad non habet”. OR Differentiate between contract of guarantee and contract of indemnity.	5	CO2
Q 7	Discuss the various essentials of a valid ratification (Agency by ratification). OR Briefly explain various modes of creation of an agency.	5	CO2
Q 8	Briefly explain a few situations wherein a sub-agent can be appointed.	5	CO2
Q 9	Describe how the principle of holding out is applicable on a retiring partner with the help of a case law. OR	5	CO2

	Briefly explain the status of a minor in a partnership firm.		
<b>SECTION-C</b> <b>(2Qx10M=20 Marks)</b>			
Q 10	Partnership firm is not a 'legal entity' or 'person' and has no separate and distinct existence apart' from the partners composing it but is merely an association of individuals and the firm is only a collective name of those individuals who compose the firm. Analyze the given statement and point out the various essentials of a partnership.	<b>10</b>	<b>CO3</b>
Q 11	"The contract of sale includes both "sale" as well as "agreement to sell". Analyze the given statement by clearly pointing out the difference (any 4 points) between sale and agreement to sell. Distribution of assets among partners after the dissolution of partnership firm, whether it amounts to sale? Give reason in support of your answer.	<b>10</b>	<b>CO3</b>
<b>SECTION-D</b> <b>(2Qx25M=50 Marks)</b>			
Q 12	X and Y are active and dormant partners, respectively in a firm carrying out trade activities. Y has left the entire responsibility of the business in the hands of X. Within a short period of his management X- <ul style="list-style-type: none"> <li>a) loses temper with a customer and gives vent to it by assaulting him.</li> <li>b) Deals in stolen goods and appropriates the profit to himself; and</li> <li>c) Borrows money in the name of the firm and spends the whole amount on the marriage of his daughter.</li> </ul> <p>Discuss the liability of Y for each of these acts of X with reference to the provisions of law and decided cases on the point (if any).</p>	<b>25</b>	<b>CO4</b>
Q 13	A lady buys synthetic pearls for a high price thinking that they are natural pearls. The seller does not correct her mistake. Has she any remedies against the seller? Would your answer be different if the lady had told the seller: "I think they are natural pearls and therefore, agree to buy them at your price", and the seller was silent?	<b>25</b>	<b>CO4</b>

## Relevant legal Provisions

### INDIAN CONTRACT ACT, 1872

124. Contract of indemnity defined. - A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.

125. Rights of indemnity-holder when sued. - The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

126. Contract of guarantee, surety, principal debtor and creditor. - a contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the surety; the person in respect of whose default the guarantee is given is called the principal debtor, and the person to whom the guarantee is given is called the creditor. A guarantee may be either oral or written.

127. Consideration for guarantee. - Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

128. Surety's liability. - The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

129. Continuing guarantee. - a guarantee which extends to a series of transactions is called a continuing guarantee.

148. Bailment, bailor and bailee defined. - a bailment is 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 directions of the person delivering them. The person delivering the goods is called the bailor. The person to whom they are delivered is called the bailee.

Explanation. If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. Delivery to bailee how made. - 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.

182. Agent and principal defined. - An agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal.

183. Who may employ agent. - Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

184. Who may be an agent. - As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

185. Consideration not necessary. - No consideration is necessary to create an agency.

186. Agents authority may be expressed or implied. - The authority of an agent may be expressed or [implied.]

187. Definitions of express and implied authority. - An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

190. When agent cannot delegate. - An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

191. Sub-agent defined. - a sub-agent is a person employed by, and acting under the control of, the original agent in the business of the agency.

192. Representation of principal by sub-agent properly appointed. - Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agents responsibility for sub-agent. - The agent is responsible to the principal for the acts of the sub-agent.

Sub-agents responsibility. - The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

193. Agents responsibility for sub-agent appointed without authority. - Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the persons so employed, nor is that person responsible to the principal.

194. Relation between principal and person duly appointed by agent to act in business of agency. - Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

195. Agents duty in naming such person. - In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in

his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

196. Right of person as to acts done for him without his authority Effect of ratification. - Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or implied. - Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

198. Knowledge requisite for valid ratification. - No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

199. Effect of ratifying unauthorised act forming part of a transaction. - a person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. Ratification of unauthorised act cannot injure third person. - An act done by one person on behalf of another, without such other persons authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

201. Termination of agency. - An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

202. Termination of agency, where agent has an interest in subject-matter. - Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

## **INDIAN PARTNERSHIP ACT, 1932**

### **Section 1: SHORT TITLE EXTENT AND COMMENCEMENT.**

- (1) This Act may be called the Indian Partnership Act, 1932.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on the 1st day of October, 1932, except section 69 which shall come into force on the 1st day of October, 1933.

### **Section 2: DEFINITIONS.**

In the Act, unless there is anything repugnant in the subject or context,

- (a) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;
- (b) "business" includes every trade, occupation and profession;
- (c) "prescribed" means prescribed by rules made under this Act;

(c-1) "Registrar" means the Registrar of Firms appointed under sub-section (1) of section 57 and includes the Deputy Registrar of Firms and Assistant Registrar of Firms appointed under sub-section (2) of that section;

(d) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and

(e) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872, shall have the meanings assigned to them in that Act.

**Section3: APPLICATION OF PROVISIONS OF ACT IX OF 1872.**

The unrepealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to firms.

**Section4: DEFINITION OF "PARTNERSHIP", "PARTNER", "FIRM" AND "FIRM-NAME".**

"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.

Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name".

**Section5: PARTNERSHIP NOT CREATED BY STATUS.**

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, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

**Section6: MODE OF DETERMINING EXISTENCE OF PARTNERSHIP.**

In determining whether a group of persons is or is not a firm, or whether a person is or is 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.

Explanation I : The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation II : The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share or payment -

(a) by a lender of money to persons engaged or about to engage in any business

(b) by a servant or agent as remuneration,

(c) by the widow or child of a deceased partner, as annuity, or

(d) by a previous owner or part-owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

**Section7: PARTNERSHIP-AT-WILL.**

Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership-at-will".

**Section8: PARTICULAR PARTNERSHIP.**

A person may become a partner with another person in particular adventures or undertakings.

**Section11: DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS.**

(1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

(2) AGREEMENTS IN RESTRAINT OF TRADE.

Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

**Section12: THE CONDUCT OF THE BUSINESS.**

Subject to contract between the partners -

- (a) every partner has a right to take part in the conduct of the business;
- (b) every partner is bound to attend diligently to his duties in the conduct of the business;
- (c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners;
- (d) every partner has a right to have access to and to inspect and copy any of the books of the firm;
- (e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

**Section13 MUTUAL RIGHT AND LIABILITIES.**

Subject to contract between the partners -

- (a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- (b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

- (c) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;
- (d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;
- (e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him
  - (i) in the ordinary and proper conduct of the business; and
  - (ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- (f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

#### Section14 THE PROPERTY OF THE FIRM.

Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

#### Section15 APPLICATION OF THE PROPERTY OF THE FIRM.

Subject to the contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

#### Section19 IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM.

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to -

- (a) submit a dispute relating to the business of the firm to arbitration,
- (b) open a banking account on behalf of the firm in his own name,
- (c) compromise or relinquish any claim or portion of a claim by the firm,
- (d) withdraw a suit or proceeding filed on behalf of the firm,
- (e) admit any liability in a suit or proceeding against the firm,
- (f) acquire immovable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or



(h) enter into partnership on behalf of the firm.

#### Section20 EXTENSION AND RESTRICTION OF PARTNER'S IMPLIED AUTHORITY.

The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

#### Section21 PARTNER'S AUTHORITY IN AN EMERGENCY.

A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

#### Section22 MODE OF DOING ACT TO BIND FIRM.

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm-name, or in any other manner expressing or implying an intention to bind the firm.

#### Section23 EFFECT OF ADMISSION BY A PARTNER.

An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

#### Section24 EFFECT OF NOTICE TO ACTING PARTNER.

Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

#### Section25 LIABILITY OF A PARTNER FOR ACTS OF THE FIRM.

Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner

#### Section26 LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER.

Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

#### Section27 LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS.

Where -

- (a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- (b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

#### Section28 HOLDINGOUT.

- (1) Anyone who by words spoken or written or by conduct represent himself, or

knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after partner's death the business continued in the old firm-name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

#### Section 29 RIGHTS OF TRANSFEREE OF A PARTNER'S INTEREST.

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or, by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business or to require accounts or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners, to receive the share of the assets of the firm to which the transferring partner is entitled and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

#### Section 30 MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP.

(1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48 :

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date

is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm :

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact.

(7) Where such person becomes a partner -

(a) his rights and liabilities as a minor continue upto the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner, -

(a) his rights and liabilities shall continue to be those of a minor under the section upto the date on which he gives public notice;

(b) his share shall not be liable for any acts for the firm done after the date of the notice; and

(c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

Section39

**DISSOLUTION OF A FIRM.**

The dissolution of a partnership between all the partners of a firm is called the "dissolution of the firm".

Section40

**DISSOLUTION BY AGREEMENT.**

A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Section41

**COMPULSORY DISSOLUTION.**

A firm is dissolved

(a) by the adjudication of all the partners or of all the partners but one as insolvent, or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership :

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the

firm in respect of its lawful adventures and undertakings

#### Section 42

#### DISSOLUTION ON THE HAPPENING OF CERTAIN CONTINGENCIES.

Subject to contract between the partners a firm is dissolved

- (a) if constituted for a fixed term, by the expiry of that term;
- (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- (c) by the death of a partner; and
- (d) by the adjudication of a partner as an insolvent.

#### Section 43

#### DISSOLUTION BY NOTICE OF PARTNERSHIP AT WILL.

- (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
- (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

#### Section 44

#### DISSOLUTION BY THE COURT.

At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely :-

- (a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;
- (b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;
- (c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business regard being had to the nature of the business;
- (d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business; or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
- (e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;
- (f) that the business of the firm cannot be carried on save at a loss; or

(g) on any other ground which renders it just and equitable that the firm should be dissolved.

#### Section 69

#### EFFECT OF NON-REGISTRATION.

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on a behalf of any persons suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm :

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(2A) No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm :

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realise the property of a dissolved firm.

(3) The provisions of sub-sections (1), (2) and (2A) shall apply also to a claim of setoff or other proceedings to enforce a right arising from a contract but shall not affect

(a) the firms constituted for a duration upto six months or with a capital upto two thousand rupees; or;

(b) the powers of an official assigned, receiver or Court under the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner.

(4) This section shall not apply

(a) to firms or partners in firm which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under section 56 this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which,

in the presidency towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

Section 72

#### MODE OF GIVING PUBLIC NOTICE.

A public notice under this Act is given

- (a) Where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates, has its place or principal place of business, and
- (b) in any other case, publication in the Official Gazette, and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business

### **THE SALE OF GOODS ACT, 1930**

1. Short title, extent and commencement.—(1) This Act may be called the 2

\*\*\* Sale of Goods Act,

1930.

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[(2) It extends to the whole of India 4

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(3) It shall come into force on the 1st day of July, 1930.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) “buyer” means a person who buys or agrees to buy goods;

(2) “delivery” means voluntary transfer of possession from one person to another;

(3) goods are said to be in a “deliverable state” when they are in such state that the buyer would under the contract be bound to take delivery of them;

(4) “document of title to goods” includes a bill of lading, dockwarrant, warehouse keeper’s certificate, wharfingers’ certificate, railway receipt, 5

[multimodal transport document,] warrant or

order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

(5) “fault” means wrongful act or default;

(6) “future goods” means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(7) “goods” means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(8) a person is said to be “insolvent” who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency

or not;

(9) “mercantile agent” means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods,

or to raise money on the security of goods;

(10) “price” means the money consideration for a sale of goods;

(11) “property” means the general property in goods, and not merely a special property;

(12) “quality of goods” includes their state or condition;

(13) “seller” means a person who sells or agrees to sell goods;

(14) “specific goods” means goods identified and agreed upon at the time a contract of sale is made; and

(15) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872 (9 of 1872), have the meaning assigned to them in that Act.

3. Application of provisions of Act 9 of 1872.—The unrepealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of this Act, shall continue to

apply to contracts for the sale of goods.

## CHAPTER II

### FORMATION OF THE CONTRACT

#### Contract of sale

4. Sale and agreement to sell.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of

sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer,

the contract is called a sale, but where the transfer of the property in the goods is to take place at a future

time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to, sell becomes a sale when the time elapses or the conditions are fulfilled subject

to which the property in the goods is to be transferred.

Formalities of the contract

11. Stipulations as to time.—Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any

other Stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

12. Condition and warranty.—(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the

construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

13. When condition to be treated as warranty.— (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof,

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\*\*\* the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty

and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term

of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

14. Implied undertaking as to title, etc.—In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

(a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of



any third party not declared or known to the buyer before or at the time when the contract is made.

15. Sale by description.—Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as

well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the

goods do not also correspond with the description.

16. Implied conditions as to quality or fitness.—Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness

for any particular purpose of goods supplied under a contract of sale, except as follows:—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or

judgment, and the goods are of a description which it is in the course of the seller's business to supply

(whether he is the manufacturer or producer or not), there is an implied condition that the goods shall

be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall

be of merchantable quality:

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

17. Sale by sample.— (1) A contract of sale is a contract for sale by sample where there is a term in

the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there is an implied condition—

(a) that the bulk shall correspond with the sample in quality;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

27. Sale by person not the owner.—Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:  
Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

28. Sale by one of joint owners.— If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

29. Sale by person in possession under voidable contract.—When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872 (9 of 1872), but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

30. Seller or buyer in possession after sale.—(1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale

shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

#### RIGHTS OF UNPAID SELLER AGAINST THE GOODS

45. “Unpaid seller” defined.—(1) The seller of goods is deemed to be an “unpaid seller” within the meaning of this Act—

- (a) when the whole of the price has not been paid or tendered;
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

46. Unpaid seller’s rights.—(1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid

seller of goods, as such, has by implication of law—

- (a) a lien on the goods for the price while he is in possession of them; (b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;
- (c) a right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and

stoppage in transit where the property has passed to the buyer.

Unpaid seller’s lien

47. Seller’s lien.—(1) Subject to the provisions of this Act, the unpaid seller of goods who is in

possession of them is entitled to retain possession of them until payment or tender of the price in the

following cases, namely:—

- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit, but the term of credit has expired;
- (c) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as

agent or bailee for the buyer.

48. Part delivery.—Where an unpaid seller has made part delivery of the goods, he may exercise his

right of lien on the remainder, unless such part delivery has been made under such circumstances as to

show an agreement to waive the lien.

49. Termination of lien.—(1) The unpaid seller of goods loses his lien thereon—

- (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has

obtained a decree for the price of the goods.

Stoppage in transit

50. Right of stoppage in transit.—Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of

stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the

course of transit, and may retain them until payment or tender of the price.

51. Duration of transit.—(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his

agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession

of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

52. How stoppage in transit is effected.—(1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

Transfer by buyer and seller

53. Effect of sub-sale or pledge by buyer.—(1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way a sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by

way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can

only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or

securities of the buyer in the hands of the pledgee and available against the buyer

54. Sale not generally rescinded by lien or stoppage in transit.—(1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien

or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right

of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if

the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable

time and recover from the original buyer damages for any loss occasioned by his breach of contract, but

the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the

unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if

any, on the re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods,

the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the

re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and,

on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but

without prejudice to any claim which the seller may have for damages.