

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: Law of Contracts-II
 (Specific Contracts, Indian Partnership and Sale of Goods)
 Semester-III (Batch: 2013-18)



End Term Examination: Oct-Nov. 2014

Date: 26th October, 2014

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

Part-A

Answer all Questions

Marks
24

- Q.1 a. Mr Smith, is an owner of a stable, with 560 horses and mares. In order to purchase some more breeds of animals, he travelled to Australia by placing all the animals in the stable of his best friend, Mr. Sassoon. Mr. Smith is scheduled to return after a month but due to other business deals and commitments, he had to stay in Australia for one more month. Meantime, two of the mares in Mr. Sassoon's stable, belonging to Mr. Smith delivered foals. One of the foals was not physically fit and it could have died at any time. Mr. Sassoon immediately gives the necessary medical treatment and saves its life by spending considerable amount of money for its medication. On returning from Australia, Mr. Smith came to know about the foals and he demanded all his horses and mares along with foals. Mr. Sassoon denies to return the foals as they were placed at his stable and also that he had spent considerable amount for its treatment. (4x3=12)

Who will succeed in this case? Discuss.

Elucidate the essentials of a Bailment.

- b. Chellaram Shippers Limited, a shipping company receives the consignment of eggs from Sky Ltd at Calcutta on 1st June, 2014. The consignment is to be unloaded at Mumbai Port on or before 7th June, 2014. During the voyage, due to heavy rain, the ship has to be in the port of Kerala for 3 days. On 6th June, 2014, Mr. Mervin, the captain of the ship found that the eggs shall not be fit for human consumption after 24 hours, so he immediately tried to contact the officers of Sky Ltd, but due to holidays, no one was available at the office. So he sold them on the port of Kerala below the market price. Sky Ltd. sued Chellaram Shippers Ltd. for the loss by claiming that they were not bound by this sale.

Whether Mr. Mervin's action is justifiable as per the provisions of the Indian Contract Act and Sale of Goods Act?

- c. Akhilesh Prasad entered into a contract dated 28th June, 1972 for fabrication, supply erection and installation of Sentinel's Pull and Push type and Reduction Gear type rolling shutters of the Sidheshwar Sahakari Sakar Karkhana belonging to M/s. C. M. Shah & Co. (P) Ltd. The special terms and conditions provided that the actual transportation charges would be in addition to the price stipulated in the contract and the delivery would be in 6/8 weeks from the date of receipt of the final confirmation of the order. The terms of payment also formed part of the special terms and conditions and they provided 25% advance, 65% against delivery and remaining 10% after completion of erection and handing over of shutters to the satisfaction of the company. Mr. Akhilesh Prasad carried out its part of the contract by erecting and installing the rolling shutters.

Whether this is a contract for sale? Elucidate with the help of the relevant case laws and suitable legal provisions of the Sale of Goods Act 1930.

- d. Mr. Joseph is an accountant in Max International Bank. He is responsible and in-charge of the operation of strong room and lockers of the bank. His friends Jason and Joan approached him and demanded the duplicate keys of the bank lockers so that they can misappropriate the money lying in the bank. Mr. Joseph denied the same as he was afraid of being caught. Jason and Joan gave him an undertaking that if any damage would be faced by him, they will be responsible to pay. On being indemnified, he gave them the duplicate keys, and Jason and Joan robbed the bank. On investigation, Mr. Joseph is found responsible for being negligent in keeping the keys safely with him so he was penalised. Mr. Joseph demanded the penalty amount from Jason and Joan, as per their promise.

Whether Jason and Joan are liable to pay? Substantiate your answer with the help of the relevant provisions of the Indian Contract Act, 1872.

- Q.2 The respondent Private Limited Company owned a cinema house. The Board of Directors on September 9, 1955, resolved that the Managing Director would be authorised to negotiate with a buyer for the sale of the entire concern with all its equipment and machinery etc. for a consideration of Rs. 1,20,000. After an agreement had been concluded to effect a sale and had been confirmed in an extraordinary general meeting of the company on October 4, 1955, an "exchange deed" was entered into on February 21, 1956 and the consideration was received by the company in the shape of transfer of certain shares with the face value of Rs. 1,20,000/- owned by the buyer in another company. (1x4= 04)

In the course of its assessment to tax for the year 1956-57, the Income Tax Officer computed the respondent's profits under s. 10(2)(vii) by including an amount of Rs. 43,568/- on account of the excess amount realised over the written down value of the assets sold. The order of the Income Tax Officer was confirmed, in appeal, by the Appellate Assistant Commissioner and subsequently by the Tribunal. However, upon a reference under s. 66(2) of the Act, the High Court answered the question in favour of the respondent.

In the appeal to this Court, it was contended on behalf of the appellant that the money consideration for the assets was fixed at Rs. 1,20,000/- and the mode of payment was by transfer of shares so that the transaction was really a sale and not transfer by way of exchange that the resolution of the Board of Directors and of the shareholders reproduced in the preamble of the exchange deed which showed clearly that what was authorised was the sale of the entire concern; and that in revenue matters it was the



substance of the transaction which must be looked at and not the form in which the parties have chosen to clothe the transaction.

Citing appropriate case laws and relevant provisions of the Sale of Goods Act, 1930, discuss the merits of the respondent's argument.

- Q.3 The plaintiffs who were commission agents had purchased certain goods according to the defendant's instructions and stored a portion of the goods in a godown in Bombay, pending receipt of a permit from the Government authorities for consigning the same to the defendants. Before the goods could be dispatched, an explosion occurred in the Bombay Harbour and the goods stored were destroyed either by the fire or the explosion. (1x3=3)

A few months later the Governor-General promulgated the Bombay Explosion (Compensation) Ordinance, 1944, which provided, inter alia,

- (i) *that the Government shall pay a compensation of 50 per cent of the damage caused in respect of uninsured goods, and the entire damage in respect of insured goods;*
- (ii) *that no person shall have or be deemed ever to have had, otherwise than under the Ordinance any rights whether in contract or in tort or otherwise to any compensation for damage to or loss of property arising out of the explosion and no suit or other legal proceeding for any such compensation or damage shall be maintainable in any civil courts.*

The plaintiffs received 50 per cent of the value of the destroyed goods as they were not insured and alleging that as agents they had the right to be indemnified by the defendants, sued the defendant for the recovery of the remaining 50 per cent of the value of the goods. The defendants pleaded, and it was found as a fact, that they had instructed the plaintiffs, and the latter had agreed, to insure the goods but had omitted to do so, and they claimed that in as much as they would have been entitled to receive the full value of the goods as compensation under the Ordinance if the plaintiffs had insured, they were entitled to set off or counter claim the value of the goods as damages caused to them by the neglect or breach of duty of the plaintiffs.

Referring to the provisions of the Indian Contract Act 1872, an agent is always bound to act with reasonable diligence and use such skill as he possesses; to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct."

Discuss if the Commission Agents are justified in their claim of recovering the remaining 50 per cent amount from the defendant.

- Q.4 Blue Fox Associates is the owner of suit premises consisting of ground floor of a building situated at Marquis Street, Calcutta. The said premises were rented to the Hussain Abdul Karim on a monthly rent of Rs. 2045/- by a registered lease dated 16.03.1964. This lease was for a period of 21 years commencing from 16.03.1964 and ending on 15.03.1985. On the expiry of the said period, Blue Fox Associates alleging to be a registered partnership firm, filed the aforesaid suit praying for a decree for possession as well as damages @ Rs. 200 per day for illegal occupation of the premises by Hussain Abdul Karim. The defence of Hussain Abdul Karim was that after the expiry of the lease period, it had continued to be a tenant by acceptance of rent by Blue Fox Associates and hence it had become a tenant by holding over under section 116 of the Transfer of Property Act, 1882 (for short 'the Property Act'). Further defence was taken by Hussain Abdul Karim by way of a separate application seeking dismissal of the suit (1x3=3)

under Order 7 Rule 11 (d) of CPC (for short 'CPC') on the ground that the suit for possession as filed by Blue Fox Associates, which was an unregistered partnership firm, was not maintainable.

On the question of maintainability of the suit, the Trial Court held that the suit was not hit by Section 69 Sub-section (2) of the Indian Partnership Act, 1932. Accordingly, a decree for possession was passed.

Discuss the issue in the light of the decision of the Trial Court. Support your answer with relevant case laws.

- Q.5 (a) 'X', 'Y' and 'Z' were joint owners of a bus and possession of the said bus was with 'Y'. 'P' purchased the bus from 'Y' without knowing that 'X' and 'Z' were also owners of the bus. Whether the sale between 'Y' and 'P' is valid or not? Discuss in the light of provisions of the Sale of Goods Act, 1930. (2x1=02)
- (b) 'P', 'Q', and 'R' are partners in a business for purchase and sale of second hand goods. 'R' purchases a second-hand car on behalf of the firm, from 'S'. After purchasing the car he comes to know that the car is a stolen one and it actually belongs to 'X'. 'P' and 'Q' are ignorant about it.
- Would 'R' be personally liable?

Part-B
Answer all Questions

Marks
26

- Q6 Write short notes on the following (**Any four**): (4x3=12)
- a. Effect of Destruction of Goods under the Sale of Goods Act 1930
 - b. Creation of Agency
 - c. Rights of an Indemnity Holder
 - d. Nature of Limited Liability Partnership
 - e. Rights of a Pawnee
- Q7 Differentiate between the following (**Any four**): (4x2=08)
- a. 'Contract of Indemnity' and 'Contract of Guarantee'
 - b. 'Company' and 'Partnership'
 - c. 'Bailment' and 'Pledge'
 - d. 'Sale' and 'Agreement to Sell'
 - e. 'Partnership' and 'HUF'
- Q8 Answer the following: (2x3=06)
- a. Who is an unpaid seller? Explicate with the help of statutory provisions, the rights of an unpaid seller?
 - b. Explain in detail the exceptions to the general rule of *Nemo dat quod non habet*?
