

LL.B. 3 yrs. III SEMESTER

COMMERCIAL LAW

**SYLLABUS-UNIT-1-** Indian Partnership Act- History, Nature and Definitions & Kinds of Partnership, Test to determining, Distinction from company and Joint Family Business, Co-ownership (Sec. 4 to 8), General and Specific duties of Partner, Rights of Partner to each other (Sec. 9 to 17), Partners to be agent of the firm: Implied authority, Emergency Power, Effect of Admission & Notice, Liabilities Joint & Several, Liability for Wrongful acts & Misapplication of Money.

**LECTURE 1- HISTORY, NATURE AND DEFINITION, TYPES OF PARTNERSHIP, DIFFERENCE BETWEEN : PARTNERSHIP AND COMPANY, PARTNERSHIP AND JOINT HINDU FAMILY, PARTNERSHIP AND CO-OWNERSHIP**

**YOUTUBE LINK** - <https://youtu.be/ZiBcVI21dnM>, <https://youtu.be/Vu5EmMaj1bw>

[https://youtu.be/aTG\\_-YF9WRY](https://youtu.be/aTG_-YF9WRY), [https://youtu.be/i\\_qzeyUUqi0](https://youtu.be/i_qzeyUUqi0)

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

- Q.1-Define Partnership and state its essentials. (2015,17)  
Q.2-“Sharing of profit is not conclusive proof of partnership.” discuss the elements of partnership with reference to principle of mutual agency. (2013)  
Q.3-Who is Sleeping Partner? (2013,15,16)  
Q.4-Distinguish between Partnership and Company. (2013, 2015, 2018)  
Q.5-Distinguish between Partnership and Joint Hindu Family carrying on business. (2015)

**NOTES**

**DEFINITION-**A Partnership is defined in section 4 of Indian Partnership Act, 1932.

**ESSENTIAL INGREDIENT OF PARTNERSHIP-**

- 1-The partnership is the result of an agreement
- 2- The aim of the agreement must be to carry on a business
- 3- The purpose of the business of Partnership is to share the profits of business
- 4- The business of the firm must be carried on by all or any of them acting for all.

**Case- Cox v Hickman (1860)(House of Lords)-** The Court held that **Sharing of profit is only a prima facie evidence and not the conclusive proof of the existence of partnership. Mutual agency is the conclusive test for the determination of the partnership.**

- **Sleeping/Dormant partner-**Partner who does not participate in the daily functioning of the partnership firm i.e. he doesn't take an active part in the daily activities of the firm.

**DISTINCTION BETWEEN PARTNERSHIP AND COMPANY**

<b>PARTNERSHIP</b>	<b>COMPANY</b>
<ul style="list-style-type: none"><li>• Partnership is created by agreement. Registration of partnership isn't necessary</li></ul>	<ul style="list-style-type: none"><li>• Company is formed by registration under the provisions of the Companies Act.</li></ul>
<ul style="list-style-type: none"><li>• Partnership is not a legal Person</li></ul>	<ul style="list-style-type: none"><li>• Company is a legal person.</li></ul>
<ul style="list-style-type: none"><li>• In a partnership there should not be more than 100 members in a partnership firm and minimum members should be 2.</li></ul>	<ul style="list-style-type: none"><li>• In company, maximum no. of members is 200 in private limited company and unlimited in public limited company.</li></ul>

<ul style="list-style-type: none"> <li>• Minimum members should be 2.</li> </ul>	<ul style="list-style-type: none"> <li>• There should be at least 7 members in a public company and 2 members in a private company.</li> </ul>
<ul style="list-style-type: none"> <li>• Liability of Members In a partnership firm is unlimited</li> </ul>	<ul style="list-style-type: none"> <li>• In a company, liability of its members (shareholders) is limited.</li> </ul>

### **DISTINCTION BETWEEN PARTNERSHIP AND JOINT HINDU FAMILY**

<b>PARTNERSHIP</b>	<b>JOINT HINDU FAMILY</b>
<ul style="list-style-type: none"> <li>• A Partnership is created by a contract between the partners</li> </ul>	<ul style="list-style-type: none"> <li>• Joint Hindu Family is not created by a contract but by status i.e. by his birth in the family. (Section 5)</li> </ul>
<ul style="list-style-type: none"> <li>• In Partnership, business members are known as partners</li> </ul>	<ul style="list-style-type: none"> <li>• In Joint Hindu Family Business, members are known as coparceners.</li> </ul>
<ul style="list-style-type: none"> <li>• In case of introduction of new partner into the existing partnership firm, the consent of all the partners in the existing firm is essential .(Section 31)</li> </ul>	<ul style="list-style-type: none"> <li>• In case of Joint Hindu Family, no consent of existing members of the family is necessary.</li> </ul>
<ul style="list-style-type: none"> <li>• In Partnership business, liability of partners is joint and several (Section 25)</li> </ul>	<ul style="list-style-type: none"> <li>• In Joint Family Business, Karta is personally liable for the debt of the family and liability of the other members is limited to their respective shares in the Joint Family Business.</li> </ul>

### **ASSIGNMENT**

Q.1- What are the 4 essential ingredient of Partnership?

Q.2-Sharing of profit is only a prima facie evidence and not the conclusive proof of the existence of partnership. Explain.

Q.3- What do you understand by Sleeping Partner?

Q.4- Point out the 4 difference between Partnership and Company?

Q.5- Differentiate between Partnership and Joint Hindu Family?

**UNIT -1**

**LECTURE 2- GENERAL AND SPECIFIC DUTIES OF PARTNER**

**YOUTUBE LINK-**<https://youtu.be/6uPmdSHh-Z4>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

Q.1-Discuss the duties of the firm? (2013,15)

**NOTES**

**DUTIES OF PARTNER**

- **The duties of partners (Firm) are**
- **Duty of absolute good faith [Section 9]**- Partners are bound to carry on the business of the firm to the greatest common advantage,
  - To be just and faithful to each other, and
  - To render true accounts and full information of all things affecting the firm to any partner or his legal representative.
- **Duty not to compete**- It is the duty of partner not to carry on any business similar to or in competition with the business of the firm.
  - If the Partner does this, he is bound to pay to the firm all profits made by him in that business.
- **Duty of due diligence**-Every partner is bound to attend diligently to his duties in the conduct of the business.
- A partner shall indemnify the firm for any loss caused to it by willful neglect in the conduct of the business of the firm.
- **Duty to indemnify for fraud**-If any partner commits fraud due to which firm suffers loss then he shall indemnify the firm for the same.

- **Duty to render true accounts-** Partners are bound to render true accounts and full information of all things affecting the firm to any partner or his legal representative
- **Proper use of property [Section 15 and Section 16(a)]-**The property of the firm shall be held and used by the partners exclusively for the purpose of the business.
- **Duty to account for personal benefits-**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 the profit and pay it to the firm.

### **ASSIGNMENT**

Q1-Mention the 7 duties of Partner?

Q2-What is the duty of absolute good faith?

Q3- What do you understand by duty of due diligence?

Q4-What Section 15 and Section 16(a) provides about?

**UNIT 1**

**LECTURE 3- RIGHTS OF PARTNER**

**YOUTUBE LINK-** <https://youtu.be/HNq82qIFef0>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

**NOTES**

**RIGHTS OF PARTNERS**

1. **Right to take part in business (Section 12(a))**- Every Partner has a right to take part in the conduct of the business of the firm.
2. **Majority rights (Section 12(c))**- Any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners
  - every partner shall have the right to express his opinion before the matter is decided.
  - No change may be made in the nature of the business without the consent of all the partners.
3. **Access to books [Section 12(d)]**- Every partner has a right to have access to and to inspect and copy any of the books of the firm.
  - A partner may exercise this right himself or his agent.
4. **Right to indemnity [Section 13(e)]**- Every Partner has a right to recover indemnity in the following cases:
  - A partner is entitled to recover from the firm any expenses incurred by him in the ordinary and proper conduct of the business
  - When a partner has done an act involving expenditure in order to protect the property of the firm from a loss threatened by an emergency.
5. **Right to profits [Section 13(b)]**-Partners are entitled to share equally in the profits earned by the firm
  - They are bound to contribute equally in the losses sustained in the course of the business of the firm.

6. **Right to interest on capital [Section 13(c) and (d)]**- When a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits.
- A partner making, for the purposes of business, any payment or advance beyond the amount of capital he has agreed to subscribe
  - Entitled to interest at the rate of 6 percent per annum
7. **Right to remuneration [Section 13(a)]**- A partner is not entitled to receive remuneration for taking part in the conduct of the business.
- Partnership agreement may however provide for the payment of remuneration to the working partner.
  - He is entitled to pay out of profits.

### **ASSIGNMENT**

Q1- What is the right to take part in business?

Q2- What is the majority rights of Partner?

Q3- What is the right to profit?

Q4- What are the 7 rights of partner?

COMMERCIAL LAW

UNIT-1

LECTURE 4- IMPLIED AUTHORITY OF PARTNER

YOUTUBE LINK- <https://youtu.be/kYJ7mNSpw7s>

PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC

Q1-What do you understand by Implied Authority of a Partner? Is such authority subject to any condition? What are the restrictions imposed on implied authority?(2014,15,16)

Q2-What do you understand by 'Partnership by holding out'? When a person can be held liable as such a partner? (2013, 17)

Q3-Can a minor become a partner of the firm? What are the rights and liabilities of a minor who has been admitted for the benefits of partnership?(2014,16,17)

NOTES

DOCTRINE OF IMPLIED AUTHORITY

- **Section 18** provides that Partners to be agent of the firm.
- **Section 25** provides that Every Partner is liable jointly and severally for all the acts of the firm.

CONDITIONS AND RESTRICTIONS OF IMPLIED AUTHORITY

- **Section 19** provides that Act of the Partner done as an agent in the usual course of business is the act of the firm and it binds the firm.
- **Section 22** provides that in order to bind the firm, an act done or instrument executed by a partner or other person on behalf of the firm shall be done or executed in the firm name.
- **Section 21** provides that If a Partner has done something to protect the firm from loss threatened by the emergency, the firm is bound by his act.
- **Section 23** provides that an admission by a partner concerning the affairs of the firm is evidence against the firm.
- **Section 26** provides that if a wrongful act or omission is done by a partner acting in the ordinary course of the business of a firm, the firm is liable to the same extent as the partner.
- **Section 27** provides that the firm is liable for misapplication by partners.

DOCTRINE OF HOLDING OUT

**Section 28** provides about the Doctrine of Holding out

ESSENTIAL INGREDIENTS OF HOLDING OUT

(a)**Representation**-Representation must be express and implied.

**(b) Knowledge of Representation**-The person seeking to hold another liable by Holding Out or Estoppel must show that he had knowledge of the representation.

#### **LIABILITY OF A PARTNER IN CASE OF HOLDING OUT**

- (i) When a Partner makes representation expressly or impliedly , he is made liable.
- (ii) The person making representation must have knowledge of the representation, the partner would be liable.

#### **ADMISSION OF PARTNER**

**SECTION 30(1)** - A Minor can be admitted to the benefits of the Partnership firm.

#### **RIGHTS AND LIABILITIES OF THE MINOR**

##### **(I) Rights and liabilities before attaining Majority**

(a) Minor's right to receive share/profit/Inspect book of accounts. **[Section 30(2)]**

(b) No personal liability accrues **[Section 30(3)]**

(c) A minor has no right to sue against co-partners **[Section 30(4)]**

##### **(ii) Rights and Liabilities after attaining majority**

(a) Public notice on attaining majority **[Section 30(5)]**

(b) Burden of proving that minor had no knowledge of the admission until a particular date after the expiry of 6 months of his attaining majority shall lie on the person asserting that fact. **[Section 30(6)]**

(c) Rights and liabilities when a person is elected as a Partner **[Section 30(7)]**

(d) Rights and liabilities when a person is not elected as a Partner **[Section 30(8)]**

**Section 30(9)**-Doctrine of Holding Out prevails over Section 30(7) and (8).

#### **ASSIGNMENT**

Q1-What do you understand by Doctrine of Implied Authority?

Q2- What are the 2 essential ingredients of 'Partnership by holding out'?

Q3- Mention the liability of a partner in case of holding out?

Q4- What are the 3 rights and liabilities of a minor before attaining majority?

Q5-What are the 4 rights and liabilities of a minor after attaining majority?



**LL.B.(3 YEAR)(III SEMESTER)**

**COMMERCIAL LAW**

**UNIT-1**

**LECTURE 5- EMERGENCY POWER, EFFECT OF ADMISSION&NOTICE,  
LIABILITIES, JOINT&SEVERAL**

**YOUTUBE LINK-** [https://youtu.be/yMRrgfJUK\\_s](https://youtu.be/yMRrgfJUK_s)

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

**NOTES**

**PARTNER'S AUTHORITY IN AN EMERGENCY**

**Section 21** provides for the authority of partner in an emergency.

- Following are the requirements to invoke the authority in emergency:-
- There should be an emergency,
- Acts must be done to protect the interest of the firm from loss caused by emergency,
- All the acts of the partner must be reasonable in the given circumstances.

**EFFECT OF ADMISSION BY A PARTNER**

- **Section 23** provides that If an admission or representation is made by a partner concerning the affairs of the firm
- Such representations is made in the ordinary course of business
- The above admission or representation becomes evidence against the firm.

**EFFECT OF NOTICE TO ACTING PARTNER**

- **Section 24** provides that if a partner habitually acts in the business of the firm
- Such action is relating to the affairs of the firm
- Notice to the partner operates as notice to the firm.
- It will not act as a notice in case of fraud committed by or with the consent of the partner.

**LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER**

- **Section 26** provides where by a wrongful act or omission of a partner acting in the ordinary course of 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 to same extent as the partner.
- In case the conduct of the partner is not in the ordinary course of business and it is his private affair then firm is not liable.

#### **LIABILITY OF THE FIRM FOR MISALICATION BY PARTNERS**

- **Section 27** provides following two conditions when the firm will be liable for misapplication by partners:
  - (a) If the partner acting within his apparent authority receives money or property from third party misapplies it.
  - (b) firm, in the course of 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.

#### **ASSIGNMENT**

Q1-What is the 2 Partner's authority in an emergency?

Q2-What is the effect of admissions by a partner?

Q3- What is the liability of the firm for wrongful acts of the partner?

Q4- What are the 2 liability of firm for misapplication by partner?

**LL.B. 3 yrs. III SEMESTER  
COMMERCIAL LAW**

**SYLLABUS-UNIT-2-Incoming & Outgoing Partners(Sec. 31 to 38), Dissolution of Firm(Sec. 39 to 55),  
Registration of Firm(Sec. 56 to 71)**

**LECTURE 1- INCOMING AND OUTGOING PARTNER**

**YOUTUBE LINK-** <https://youtu.be/SVCEsDqwFA>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS  
TOPIC**

Q.1-Who is Incoming Partner? (2014,16)

Q.2-Procedure of Admission of new partner in a firm?(2017)

Q.3- Who is Outgoing Partner? How can a partner go out from a firm? Discuss the rights and liability of an outgoing partner? (2013,14,15,17)

**NOTES**

**INCOMING PARTNER**

- A person who is admitted in a pre-constituted firm is called Incoming Partner.

**PROCEDURE OF ADMISSION OF NEW PARTNER IN A FIRM**

- The provision related to the admission of a Partner in a firm is given in Section 31 of the Indian Partnership Act.
- **Section 31(1)** provides that a new partner can be admitted to a firm with the consent of all the persons.
- But admission of a new partner is subject to contract between the partners.

**OUTGOING PARTNER**

- An outgoing partner means a partner who has ceased to be a partner in the firm and the business is continued with remaining partner.

**MODES OF RETIREMENT(SECTION 32)**

- A partner may retire from the firm in the following ways:-
  - (a) **By consent-** A Partner may retire at any time with the consent of all the partners.
  - (b) **By agreement-** A Partner may retire in accordance with the terms of agreement if there is agreement between the partners.
  - (c) **By notice-**When a partnership is at will, a partner may retire by giving to his partners a notice of his intention to retire.
  - (d) **By insolvency-**When a partner is adjudicated as an insolvent, a partner ceases to be a partner.
  - (e) **By death-** The partner ceases to be a partner on his death.

(f) **By expulsion-** A partner may be expelled in the exercise of good faith of the power of expulsion, if given to the partners by their mutual agreement.

### **RIGHTS OF AN OUTGOING PARTNER**

- **Section 36** provides that an outgoing partner may carry on a business competing with that of the firm and he may advertise such business but subject to the contract to the contrary
- he may not
  - (a) use the firm's name;
  - (b) represent that he is carrying on the business of the firm
  - (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner

### **LIABILITY OF OUTGOING PARTNER**

- (a) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with third party and the partners of reconstituted firm.
- (b) Section 33 provides that power of expulsion of partner must be exercised in good faith and in accordance with the contract between the partners
- (c) Section 34 provides that where a partner in the firm is adjudicated as insolvent he ceases to be a partner on the date on which the order of adjudication is made.
- (d) If the firm is not dissolved after the insolvency of the partner the estate of the insolvent partner is not liable for any act of the firm done after the order of adjudication of insolvency.
- (e) Section 35 provides that if the firm is not dissolved after the death of the partner, the estate of the deceased partner is not liable for any act of the firm done after his death.

### **ASSIGNMENT**

Q1-Who is an incoming partner?

Q2-What is the procedure of Admission of a Partner in a firm?

Q3- Who is on outgoing partner?

Q4- What are the 6 modes of retirement?

Q5- What are the 3 rights of an outgoing partner?

Q6- What are the 5 liabilities of an outgoing partner?

LL.B. 3 yrs. III SEMESTER  
COMMERCIAL LAW

**UNIT-2**

**LECTURE 2-DISSOLUTION OF FIRM**

**YOUTUBE LINK-** <https://youtu.be/8NCocpj4t4w>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS**

**TOPIC**

- Q.1-Define dissolution of a firm? (2013, 2016)  
Q.2-What are the various modes in which a firm can be dissolved? Discuss. (2015, 2018)  
Q.3-Discuss consequences of dissolution of a firm. (2013, 2016)  
Q.4- Compulsory dissolution of firm? (2014, 2016)  
Q.5- Dissolution of firm by Court? (2017)

**NOTES**

**DISSOLUTION OF A FIRM**

- **Section 39** provides that the dissolution of partnership between all the partners of a firm is called dissolution of the firm'

**MODES OF DISSOLUTION**

- **Dissolution by consent/agreement [Section 40]-Section 40** provides that a firm may be dissolved either with the **consent of all partners** or in accordance **with a contract between the partners.**
- **Compulsory dissolution [Section 41]-Section 41** provides that a firm may be dissolved in the following manner:
  - (a) Adjudication of all partners or all partners but one as insolvent
  - (b) By happening of an 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.
- **Contingent dissolution [Section 42]-Section 42** provides that a firm is dissolved in the following manner
  - (a) If it is constituted for the **fixed term then after expiry of the term;**
  - (b) If it is constituted to carry out one or more adventures or undertakings, **by completion of those undertakings**
  - (c) By the **death of the partner;**
  - (d) By **adjudication of partner as insolvent**
- **By notice in case of partnership at will [Section 43]-Section 43** provides that where a partnership is at will, the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm.
- **Dissolution by court [Section 44]- Section 44** provides that on the suit of a partner the court may dissolve a firm on any of the following grounds
  - (a) A partner has become **of unsound mind;**
  - (b) Partner, other than partners become **permanently incapable of performing his duties as a partner;**

- (c) Partner, other than partner suing, has been **guilty of conduct which will prejudicially affect the business of the firm;**
- (d) Partner, other than partner suing, **willfully or persistently commits breach of agreements to management and affairs of the firm or conduct of the business of the firm.**
- (e) Partner, other than 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 O. 21. R. 49 of the Code or has allowed to be sold in the recovery of arrears of land revenue.**
- (f) The business of the firm cannot be carried except incurring losses;
- (g) Any other ground which renders it just and equitable that the firm may be dissolved.

### **CONSEQUENCES OF DISSOLUTION**

- (a) Partners continue to be liable to the third parties for any act done by any of them which have been an act of the firm if done before dissolution, until public notice is given of the dissolution. **[Section 45]**
- (b) On dissolution of firm every partner or his representative is entitled, as against all other or their representatives, 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. **[Section 46]**
- (c) After the dissolution of a firm the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue 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. **[Section 47]**
- (d) Where a firm is dissolved on account of the death of a partner and it, before its affairs are completely wound up, any transaction is undertaken by the surviving partner or the representative of the deceased partner, which brings him some advantage at the expense of the firm, is bound to share it with other partners. **[Section 50]**
- (e) On dissolution of a firm every partner is entitled to have the property of the firm, and to have the surplus distributed among the partners or their representatives according to the rights. **[Section 46]**
- (f) When the firm is dissolved, every partner or his representative may, restrain any other partner or his representative from carrying on a similar business in the firm's name or from using any property of the firm for his own benefit, until the affairs of the firm have been completely wound up.
- (g) In settling the accounts of the firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm. **[Section 55]**

### **ASSIGNMENT**

- Q1- What do you understand by Dissolution of firm?
- Q2- What are the 5 modes of Dissolution?
- Q3- What do you understand by Compulsory Dissolution?
- Q4- What are the 7 consequences of Dissolution?

**LL.B. 3 yrs. III SEMESTER  
COMMERCIAL LAW**

**UNIT 2**

**LECTURE 3- REGISTRATION OF FIRM**

**YOUTUBE LINK-** <https://youtu.be/QT0Y88i6Fh0>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

Q.1-“Indian Partnership Act renders registration of a firm compulsorily not directly but indirectly by providing certain disabilities for the unregistered firm”. Explain giving exception if any. (2013)

Q.2-Explain the procedure of Registration of a firm. What are the consequences of non-registration of a firm? (2014,2016)

Q.3-Is registration of firms compulsory in India? What are the effects of non-registration of firm?(2017)

**NOTES**

**PROCEDURE FOR REGISTRATION OF FIRM**

- The Partnership Act authorizes the State Government to appoint Registrars of Firms for the purposes of registering firms.
- An office of the Registrar of Firms exists in every State.
- Registration is obtained by filing an application with the Registrar.
- The application should be on the prescribed form and accompanied by the prescribed fee.
- **The application for Registration must contain-**
  - a) the name of the firm
  - b) the place or principal place of business of the firm
  - c) the names of any other places where the firm carries on the business
  - d) the date when each partner joined the firm
  - e) the name in full& permanent addresses of the partners
  - f) the duration of the firm
- The application form should be signed and verified by each partner or by his duly authorized agent.

**REGISTRATION OF FIRM IS COMPULSORY IN INDIA**

- Registration of partnership firms is not necessary. There is no penalty for non-registration.

**EFFECTS OF NON-REGISTRATION**

- Registration of firm becomes essential because **Section 69** entails certain effects of non-registration.
- **Section 69** states the following effects of non-registration of firms:

- **(a) Suit between partners and firm [Section 69(1)]**-A partner in an unregistered firm cannot sue the firm or his other partners (present or past) for enforcement of any right arising from a contract or conferred by Partnership Act.
- **(b) Suit between partners and third parties [Section 69(2)]**-An unregistered firm cannot sue any third party for the enforcement of any right arising from contract.
- **Application to set-off or other proceedings [Section 69(3)]**-The disabilities mentioned in Section 69(1) and Section 69(2) also applies to claim of set-off or other proceedings to enforce a right arising from contract.

### **EXCEPTIONS**

- **Section 69** also mentions certain exceptions where the disabilities of non-registration are not attracted. These exceptions are:
  - (a) Unregistered firm and partners can bring an action for dissolution of firm or for accounts of the dissolved firm;
  - (b) Official assignee, receiver or court acting for an insolvent partner may bring an action for realization of insolvent's share, whether the firm is registered or not;
  - (c) Unregistered firm or partners can sue or claim set-off where the subject-matter of the suit does not exceed Rs 100 in value.
  - (d) Statutory or contractual rights are outside the scope of the disability inflicted by the section.
  - (e) Third parties can sue a firm, whether it is registered or un-registered.

### **ASSIGNMENT**

Q1- What is the procedure for the Registration of Firm?

Q2- Whether Registration of firms is compulsory in India?

Q3- What are the 2 effects of non-registration of firm?

Q4- What are the 5 exceptions of Registration of firm?



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COMMERCIAL LAW**

**SYLLABUS- UNIT 3-Definition, Conditions and Performance, Formation of Contract(Sec.4 to 17),  
Effect of Contract(Sec. 18 to 31)**

**LECTURE 1-INTRODUCTION:BASICS &DEFINITIONS**

**YOUTUBE LINK-** <https://youtu.be/e1bWFMphrVI>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS  
TOPIC**

Q1- Define 'goods' under Sales Of Goods Act, 1930.(2013,16,17)

**NOTES**

**INTRODUCTION:EXTENT AND COMMENCEMENT**

- The Act extends to the whole of India and came into force **on 1st July, 1930.**
- **Jammu and Kashmir Reorganization Act, 2019** was passed by both houses of Parliament and re-ceived the assent of the President on 9th August, 2019. The Central Government by a gazette notification appointed 31st October 2019 as the date on which this Act came into force.
- **Section 95(1)** of the Act provides that All Central laws in Table -1 of the Fifth Schedule to the Act, on and from the appointed day, shall apply to the Union territory of Jammu and Kashmir and Union territory of Ladakh,
- **Fifth Schedule, Table 1, S.No. 96** pertain to Sale of Goods Act. It provides that the words "except the State of Jammu and Kashmir" shall be omitted.

**DEFINITIONS [SECTION 2]**-Section 2 provides few definitions..

**BUYER AND SELLER**

- 'Buyer' is defined in **Section 2(1)** and 'Seller' is defined in **Section 2(13).**
- 'Buyer' means a person who buys or agrees to buy goods.
- 'Seller' means a person who sells or agrees to sell goods.

**DELIVERY**

- **Section 2(2)** defines delivery. It means voluntary transfer of possession from one person to another.

**DOCUMENT OF TITLE TO GOODS**

- Section 2(4) defines 'document of title to goods'. It includes a
  - a) Bill of lading;
  - b) Dock warrant;
  - c) Warehouse keeper's certificate;
  - d) Wharfingers' certificate;
  - e) Railway receipt;
  - f) Multimodal transport document;
  - g) Warrant or order for the delivery of goods; and

- h) Any other document
  - Used in the ordinary course of business as proof of the possession or control of goods
  - Authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

### **FUTURE GOODS AND GOODS**

- **Section 2(6)** defines 'future goods' and **Section 2(7)** defines 'Goods'.
- 'Future Goods' means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.
- 'Goods' means every kind of moveable property other than actionable claims and money. They include 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.
- Supreme Court in **State of M.P. v. Orient Paper Mills Ltd., (1977) 2 SCC 77**, held that standing timber is a moveable property if trees are agreed to be severed under the contract.

### **MERCANTILE AGENT**

- Section 2(9) defines 'mercantile agent'. It means a mercantile agent having authority either
  - a) To sell goods
  - b) To consign goods. for the purposes of sale;
  - c) To buy goods
  - d) To raise money on the security of goods in the customary course of business.

### **PRICE**

- **Section 2(10)** defines price. It means money consideration for the sale of goods.

### **ASSIGNMENT**

Q1- What is the extent and commencement of Sales of Goods Act, 1930?

Q2- What do you understand by

- (a) Buyer and Seller
- (b) Delivery

Q3- What are the 8 Document of title to goods?

Q4- What do you mean by 'Goods' and 'Future Goods'?

Q5- Define the following:-

- (a) Merchantile agent and
- (a) Price

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**UNIT 3**

**LECTURE 2- CONDITIONS OF CONTRACT**

**YOUTUBE LINK-** <https://youtu.be/XeDriGP8QVc>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

Q1- Define condition and warranty. Distinguish between condition and warranty. When can a breach of condition be regarded as a breach of warranty? (2013,17)

Q2- -Define condition and warranty? What are the Implied conditions and warranties under Sales of Goods Act, 1930? (2015)

Q3- Doctrine of Caveat Emptor. What are the exceptions to it? Explain (2013,14)

Q4- Sale by description (2014,16,17)

Q5-Merchantable Quality (2017)

**NOTES**

**Condition and warranty [Section 12]**

- Section 12 provides that a stipulation in a contract of sale with reference to goods may be a condition or a warranty.
- **Condition:** A condition is a stipulation essential to the main purpose of the contract. The breach of the condition gives rise to a right to treat the contract as repudiated.
- **Warranty:** A warranty is a stipulation collateral to the main purpose of the contract. The breach of the condition gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
- 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 contract of sale may contain numerous terms. All the terms may not be equally important. Few terms are so vital that the breach of such terms may render the contract futile. Such terms are called 'condition'. The condition which is not so essential is termed as 'warranty',

**When condition to be treated as warranty [Section 13]**

- **Section 13** lays down circumstances whereby the conditions are reduced to the status of warranty. In following circumstances the condition may be treated as warranty:
  1. **Waiver by buyer:** The buyer has the option to waive the breach of condition or treat the breach of condition as breach of warranty. In such case he cannot repudiate the contract but is liable for damages of the breach.
  2. **Acceptance by the buyer:** Where a contract of sale is not severable and the buyer has accepted the goods or part of it the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty unless there is a term of the contract, express or implied, to that effect.
- **Section 13** shall not affect the case of any condition or warranty fulfillment of which is excused by law by reason of impossibility or otherwise.

**Implied conditions and warranties [Section 14,15,16,17]**

- **Section 14** provides the following implied conditions and warranties.
  - (a) Right to sell
  - (b) Quiet possession
  - (c) Free of any encumbrance or charge:

### **Sale by description [Section 15]**

- **Section 15** provides that 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.
- If the sale is by sample as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

### **Implied conditions as to quality or fitness [Section 16]**

- **Section 16** provides that 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.

### **Principle of Caveat emptor**

- The above statement incorporates the principle of caveat emptor (let the buyer beware). It means the seller is not bound to supply goods which should possess particular quality or be suitable for any purpose. It is the duty of the buyer to select goods for his requirements. In this sense the buyer is liable for his choices.

### **Exceptions to the principle of caveat emptor-Section 16** gives certain exceptions to this rule.

Following are the exceptions to the principle of caveat emptor.

#### **1-Fitness for buyer's purpose [Section 16(1)]**

- This situation arises when the buyer tells the seller the purpose for which he is purchasing the goods and he relies on the skill and judgment of the seller.

#### **2-Merchandise quality [Section 16(2)]**

- It provides that 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.
- If the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed. [Proviso to Section 16(2)]

#### **3-Usage of trade [Section 16(3)]**

- It provides that an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade

#### **4-Express terms [Section 16(4)]**

- It provides that an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith

#### **5-Sale by sample [Section 17]**

- Section 17 provides that 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.
- In the case of a contract for sale by sample there are following implied conditions:
  - (a) The bulk shall correspond with the sample in quality;
  - (b) The buyer shall have a reasonable opportunity of comparing the bulk with the sample;
  - (c) The goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

### **ASSIGNMENT**

Q1- What do you understand by Condition and Warranty?

Q2- What are the 2 conditions when breach of Condition is treated as breach of Warranty?

Q3- What are the 4 Implied Conditions and Warranties?

Q4- Discuss the 'Doctrine of Caveat Emptor'?

Q5- What are the 5 exceptions of the 'Doctrine of Caveat Emptor'?

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**UNIT-3**

**LECTURE 3- FORMATION OF CONTRACT**

**YOUTUBE LINK- <https://youtu.be/C-oA3nratHw>**

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

Q1-What are the essentials of a contract of sale of goods? (2017)

Q2-Difference between Sale and Agreement to Sell (2014,15,17)

Q3- Determination of price of goods (2014)

**NOTES**

**Formation of Contract/ Sale and agreement to sell**

- Section 4 defines sale and agreement to sell.
- **Contract of sale:** 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. [Section 4(1)]
- There may be a contract of sale between one part-owner and another. A contract of sale may be absolute or conditional.
- **Sale and agreement to sell:** 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**. [Section 4(3)]
- 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**. [Section 4(3)]
- 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.

**Difference between Sale and Agreement to Sale**

<b>SALE</b>	<b>AGREEMENT TO SALE</b>
<ul style="list-style-type: none"><li>• In a sale, the seller has to transfer the title of ownership instantly.</li></ul>	<ul style="list-style-type: none"><li>• In an agreement to sell, the transfer of title of ownership takes place in future, not instantly.</li></ul>
<ul style="list-style-type: none"><li>• An executed contract is sale.</li></ul>	<ul style="list-style-type: none"><li>• An executor contract is an agreement to sell.</li></ul>
<ul style="list-style-type: none"><li>• In a contract of sale, subject matter is specific or ascertained.</li></ul>	<ul style="list-style-type: none"><li>• An agreement to sell, the subject matter may be specific or ascertained.</li></ul>
<ul style="list-style-type: none"><li>• A sale creates 'Jus in rem'</li></ul>	<ul style="list-style-type: none"><li>• An agreement to Sale creates 'Jus in personam'</li></ul>
<ul style="list-style-type: none"><li>• In a sale, if a buyer commits default to pay for the goods, the seller can sue the buyer for the price(Section 55)</li></ul>	<ul style="list-style-type: none"><li>• In an agreement to sale, if the buyer fails to pay for the goods, the seller can only sue for unliquidated damages for breach of contract.</li></ul>

**Essential Elements of Contract of Sale**

- Following are the essentials of sale:
  - a) **Contracting parties-** Sale is a bilateral contract. It is essential that seller and buyer are different persons. It is because in sale the property in goods has to pass from one person to another.
- Sale is always a consensual transaction and it is essential that parties should agree with free consent.

- b) **Price or money consideration**-The consideration in sale of goods is called 'price' or 'money consideration'. However, if the price is paid partly in money and partly in other goods it is also called 'sale'.
- c) **Subject matter (goods)**- The subject matter of sale must be 'Goods'. It has been defined in Section 2(7) of the Act. The 'Goods include every moveable property other than actionable claim and money. For example, water, gas, copyrights, patents etc are all 'goods'.

### **Determination of Price of goods [Section 9]**

- Section 9 provides that the price in a contract of sale
  - a) May be fixed by the contract,
  - b) May be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.
- If the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price.
- What is a reasonable price is a question of fact dependent on the circumstances of each particular case
- Price has to be fixed in terms of money. It may be either paid or promised.

### **ASSIGNMENT**

- Q1-What do you understand by the term 'Sale'?
- Q2- Define Agreement to Sell?
- Q3- What are the 5 differences between Sale and Agreement to Sell?
- Q4- What are the 3 essential elements of Contract of Sale?
- Q5- How price of goods can be determined?

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**UNIT-3**

**LECTURE 4- EFFECT OF CONTRACT[SECTION 18-30]**

**YOUTUBE LINK-**<https://youtu.be/yjKibwlq5v4>

<https://youtu.be/S5hsoxpEPvw>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

Q1- "Risk prima facie passes with the property." Discuss with exceptions.(2013,15,16)

Q2- "Nobody can transfer a better title in goods than he himself possesses." Discuss the principle and state exceptions to it.(2014)

or

Q3- Nemo dat Quod Non Habet (2013)

**NOTES**

**Effect of Contract**

**Transfer of property as between seller and buyer**

**Goods must be ascertained [ Section 18]**

- **Section 18** provides that where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

**Property passes when intended to pass [Section 19]**

- **Section 19** provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

**Specific goods in a deliverable state [Section 20]**

- **Section 20** provides that where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made.

**Specific goods to be put into a deliverable state [Section 21]**

- **Section 21** provides that where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice of it.

**Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price [Section 22]**

- **Section 22** provides that where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice of it.

**Sale of unascertained goods and appropriation [Section 23]**

- **Section 23** provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

- **Section 25** provides that where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled.

### **Passing of risk [Section 26]**

This section is based on the maxim **res perit domino**. It means that when a thing is lost or destroyed, it is the loss of the person who owns it.

- **Section 26** provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.
- The 'risk' and the 'property' go together.

**Exception-** Following are the cases where risk and property can be separated:-

- a) **Express agreement**-This section is subject to the contract to the contrary.
- b) **Delay in delivery of goods**-Where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.
- c) **Trade Customs**-Risk and property may be separated by a trade custom.

### **Transfer of title**

### **Sale by person not the owner [Section 27]**

- **Section 27** provides that where goods are sold by a person who is not the owner 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.
- This provision is subject to the provisions of this Act and of any other law for the time being in force.
- This section is based on the maxim **Nemo Dat Quod Non Habet**. It means no one can pass a better title than he himself has.

### **Exceptions to this rule**

- Following are the exceptions to this rule:
  - a) **Estoppel**: It is given in Section 27 itself. When the owner is not permitted to deny the seller's authority it is known as estoppel. It arises from representation that the seller has authority to sell.
  - b) **Sale by mercantile agent**: Proviso to Section 27 provides 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 authorized by the owner of the goods to make the same. The buyer should act in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

### **Sale by one of joint owners [Section 28]**

- **Section 28** provides that 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 no authority to sell.

### **Sale by person in possession under voidable contract [Section 29]**

- **Section 29** provides that when the seller of goods has obtained possession of goods under a contract voidable under Section 19 or Section 19A of the Indian Contract Act, 1872, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods.
- It is essential that he buys them in good faith and without notice of the seller's defect of title.



**Seller or buyer in possession after sale [Section 30]**

- This provision is invoked when the seller after selling goods continues to be in possession and sells them again the buyer gets a good title if the requirements of Section 30 are fulfilled. In such a situation the subsequent buyer shall have a better title if he buys the goods in good faith and without notice of the previous sale.

**ASSIGNMENT**

Q1- Give 7 points of transfer of property between seller and buyer?

Q2- "Risk prima facie passes with the property." Discuss with 3 exceptions.

Q3- Explain the doctrine 'Nemo dat Quod Non Habet'. Discuss 2 exceptions of the doctrine.

Q4- How transfer of title takes place between seller and buyer?

CITY LAW COLLEGE, JANKIPURAM

**LLB. 3 yrs. III SEMESTER  
COMMERCIAL LAW**

**SYLLABUS-UNIT 4- SALE OF GOODS:RIGHTS OF PARTIES AND REMEDIES**-Performance of Contract(Sec. 31 to 44), Rights of Unpaid Seller(Sec. 45 to 54), Suits for Breach of Contract(Sec. 55 to 61)

**LECTURE 1- PERFORMANCE OF CONTRACT**

**YOUTUBE LINK-** <https://youtu.be/YfFvwPo4uoA>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

**NOTES**

**PERFORMANCE OF CONTRACT(Chapter IV, Sections 31-44)**

**Duties of seller and buyer**

- **Section 31** provides **duties of seller and buyer**.
- It lays down that is the duty to the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

**Payment and delivery are concurrent conditions**

- **Section 32** provides that unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions.
- The seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

**Delivery**-**Section 33** provides that delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on this behalf.

**Effect of part delivery**

- **Section 34** provides that a delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.
- But a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

**Buyer to apply for delivery**

- **Section 35** provides that apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

**Rules as to delivery**

- **Section 36** lays down the following rules as to delivery:
  - a) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending on the contract between the parties.
  - b) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
  - c) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.

- d) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.
- e) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

### Delivery of wrong quantity

- **Section 37** provides the options available in case of delivery of wrong quantity. Following options are available:
  - a) **Delivery of less quantity**-Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.
  - b) **Delivery of larger quantity**-Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.
  - c) **Delivery of mixed goods**- 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 the rest, or may reject the whole.

### Installment deliveries

- **Section 38** provides for Installment deliveries. It provides that unless otherwise agreed, the buyer of goods is not bound to accept delivery by installments.

### Delivery to carrier or wharfinger [Section 39]

- **Buyer's right of examining the goods**-**Section 41** provides buyer's right of examining the goods. It lays down that where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

### Acceptance-**Section 42** deals with rules as to acceptance.

- The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

### Buyer not bound to return rejected goods

- **Section 43** provides that buyer not bound to return rejected goods.

### Liability of buyer for neglecting or refusing delivery of goods

- **Section 44** provides that 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.

### ASSIGNMENT

- Q1- What are the duties of seller and buyer?
- Q2- What are the 8 provisions relating to delivery?
- Q3- What are the rules relating to acceptance?
- Q4- What is the liability of buyer for neglecting or refusing delivery of goods?

**LL.B. 3 yrs. III SEMESTER  
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**UNIT 4**

**LECTURE 2- RIGHTS OF UNPAID SELLER[Section 45-54]**

**YOUTUBE LINK-** <https://youtu.be/ZDq2VcoslyU>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

Q1- Define unpaid seller.(2013,14,15,16,17)

Q2- What are the rights of an unpaid seller against the goods?(2014,15,16)

Q3- Explain all the aspects of the unpaid seller's right of lien against the goods.(2013)

Q4- When lien is terminated?(2017)

**NOTES**

**Definition of 'unpaid seller [Section 45]-**

- Section 45 of Sales of Goods Act,1930 provides that in the following, cases the seller of goods is deemed to be an 'unpaid seller':-
  - (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.

**Rights of 'unpaid seller' [Section 46]-**

- Section 46 provides that the unpaid seller has the following rights:
  - (i) Lien
  - (ii) Stoppage in transit
  - (iii) Right of re-sale
  - (iv) Right of withholding delivery
- These rights arise by way of implication of law and do not depend on the agreement between the parties.

**Unpaid seller's lien [Section 47 &48]-** 'Lien' is the right to retain the possession of goods until certain charges due in respect of them have been paid.

- **Section 47** provides that 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,
  - 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.**The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.
- **Section 48** provides that 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.

**Termination of lien [Section 49]**

- **Section 49** provides that in the following cases the unpaid seller of goods loses his lien:
  - (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

**Stoppage in transit[Section 50]-**If the goods are delivered to the carrier for the purpose of transmission to the buyer and the buyer becomes insolvent then the seller has the right to stop the goods in transit.

- **Section 50** provides that 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.

**Duration of transit [Section 51]-**

- The 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.
- It lays down the following rules regarding termination of transit:-
  - a) 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.
  - b) 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 the transit is at an end. It is immaterial that a further destination for the goods may have been indicated by the buyer.
  - c) 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.
  - d) 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.

#### **How stoppage in transit is effected [Section 52]**

- **Section 52** provides that the unpaid seller may exercise his right of stoppage in transit either
  - a) By taking actual possession of the goods, or
  - b) 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. 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.

#### **Right of re-sale [Section 54]-**

- **Section 54** provides that a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.

#### **Circumstances when the seller may re-sell the goods-**

- In the following circumstances the seller may re-sell the goods:
  - Where the goods are
    - (i) of a **perishable nature; or**
    - (ii) 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.

- 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.
- 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.

#### **ASSIGNMENT**

Q1-What do you mean by Unpaid Seller?

Q2- What are the 4 rights of 'Unpaid Seller'?

Q3- What are the 2 rights of Unpaid Seller's lien?

Q4- What are the 3 ways of termination of lien?

Q5- What do you mean by Stoppage in transit?

Q6- What are the 2 circumstances where the seller may re-sell the goods?

**LLB. 3 yrs. III SEMESTER  
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**UNIT 4**

**LECTURE 3- SUITS FOR BREACH OF CONTRACT[SECTION 55- 61]**

**YOUTUBE LINK-** <https://youtu.be/4ZTwSYk3OC0>

**PREVIOUS YEAR QUESTIONS OF LUCKNOW UNIVERSITY BASED ON THIS TOPIC**

Q1- What are the remedies available to the seller against the buyer where there is a breach of contract of sale?(2014,17)

Q2- What are the remedies available to the buyer against the seller where there is a breach of contract of Sale?

Discuss.(2015,16)

**NOTES**

**Seller's remedies against the buyer**

- Seller has various remedies against the buyer. In case of default of buyer, seller has remedies against the goods as well as against the buyer personally. The seller has the following remedies against buyer
- (i) Suit for price [Section 55]
- (ii) Suit for damages for non-acceptance [Section 56]
- **Suit for price:** Section 55 provides that when the property in goods has passed to the buyer, he becomes bound to pay the price. If he does not pay the price the seller may sue him for the price.
- **Suit for damages for non-acceptance:** Section 56 provides that where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.
- **Case- A.K.A.S. Jamal v. Moola Dawood Sons and Co., (1916) 1 AC 175,** the court held that the plaintiff who sues has the duty of taking all reasonable steps to mitigate the loss. The loss to be ascertained is the loss at the date of the breach. Damages are assessed in accordance with the principles laid down under Section 73 and 74 of the Indian Contract Act.

**Buyer's remedies against the seller**

- (i) Damages for non-delivery[Section 57]
- (ii) Specific performance[ Section 58]
- (iii) Damages for breach of warranty[ Section 59]

The buyer has the following remedies against the seller:

- **Damages for non-delivery: Section 57** provides that where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non delivery.
- **Specific performance: Section 58** provides that court may order specific performance of contract without giving the defendant an option of retaining the goods on payment of damages. The decree may be unconditional or upon such terms and conditions as the court may deem fit
- **Damages for breach of warranty: Section 59** provides that where there is breach of warranty by seller the buyer is not entitled to reject the goods. However he has the following remedies:
  - (i) He may setup against the seller the breach of warranty in extinction of the price.
  - (ii) Sue the seller for damages for breach of warranty.

**Anticipatory Breach**

- **Section 60** provides that if a party to a contract of sale repudiates the contract before the date of delivery, the other party has the choice between two courses.
  - (i) He may either treat the contract as subsisting and wait till the date of delivery.
  - (ii) He may treat the contract as rescinded and sue for damages for the breach.

**Recovery of Interest**

- Section 61 contains provisions about recovery of interest.

### Exclusion of implied terms and conditions

- **Section 62** enables the parties to a sale to exclude liability for implied terms. This section recognises 3 modes by which liability for implied terms may be negative-
  - (i) by express contract
  - (ii) by course of dealing
  - (iii) by usage
- **Section 63** provides that reasonable time a question of fact.
- **Section 64** deals with rules relating to auction sale.

### Incidence of Taxation [S. 64-A]

- **Section 64 A** is concerned with regulating the rights and liabilities between the seller and buyer in circumstances where it is necessary to take note of the increase or decrease in duty which would result in unnecessary gain where contracts were concluded prior to the increase or decrease.

### Savings[Section 66]

- The object of this section is to fill any voids in the Act itself. The section emphasizes that the statute is not retrospective in its operation.
- **Section 66(2)** saves the operation of other rules related to the sale of goods especially related to insolvency.
- **Section 66(3)** further makes it clear that the present Act does not apply to any transaction in the form of a contract of sale, the intention of which is to operate by way of mortgage, pledge, charge or other security .

### ASSIGNMENT

- Q1- What are the 2 seller's remedies against the buyer?  
Q2- What are the 3 buyer's remedies against the seller?  
Q3- What are the 2 conditions of anticipatory breach?  
Q4- What do you understand by exclusion of implied terms and conditions?  
Q5- What do you mean by incidence of Taxation?  
Q6- What are the provisions relating to Savings?