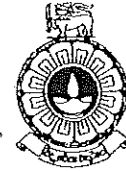


THE OPEN UNIVERSITY OF SRI LANKA
 FACULTY OF HUMANITIES AND SOCIAL SCIENCES
 DEPARTMENT OF LEGAL STUDIES
 LL.B DEGREE PROGRAMME- LEVEL 6
 FINAL EXAMINATION- 2017/2018
 LLU4324/LLU6716 – COMMERCIAL LAW
 DURATION- THREE (03) HOURS



DATE: 01 March 2020

TIME: 1.30p.m. – 4.30p.m.

Illegible hand writing will be penalized.

Total number of questions 08

Answer Five (05) questions only.

1. a) What is the difference between a 'contract of sale of goods' and 'an agreement to sell' under Sales of Goods Ordinance, No 11 of 1896?

Substantiate your answer with relevant legal provisions and examples.

(06 marks)

b) "The combined effect of the basic rules laid down in the Act (Sales of Goods Act of United Kingdom) is to give buyers a substantial degree of protection against the risk of the goods proving to have defects of quality or fitness for purpose. Indeed, it is now unrealistic to treat the basic principle of the law as *caveat emptor* rather than *caveat venditor*".

Adams J.N., MacQueen H (2010) *Atiyah's Sale of Goods* (12th Ed) P140

Do you agree with the above statement?

In light of the above statement, discuss the scope and application of implied conditions and warranties under the Sales of Goods Ordinance in Sri Lanka.

(14 marks)

2. a) Supun entered into a hire purchase agreement with Bikeland Company to buy a motor bike on 01.07.2019 which marked the price as Rs 450,000/-. He paid Rs 50,000/- and agreed to pay the balance hire purchase price in 24 monthly installments. Furthermore, Supun agreed to pay the monthly installment on or before the 30th day of each month. Supun paid three installments on time but, he was unable to pay the fourth as he was facing some financial difficulties. The Bikeland Company by letter dated 07.11.2019 requested Supun to pay the monthly installment immediately. He was also informed that in the event of any default, the Company would be compelled to take any step to recover the arrears. Three days after the letter was received by Supun, the motor bike was seized by a group of thugs on the instructions of the Bikeland Company causing a considerable damage to it.

Supun wishes to know whether Bikeland Company has acted in accordance with the law governing Hire Purchase Agreements in Sri Lanka. Advise Supun. (15 marks)

- b) Would your answer be different if Supun had paid more than 75 percent of the hire purchase price? Briefly discuss. (05 marks)

3. Discuss the legal consequences of the following situations in light of relevant statutory provisions and case law.

- a) Mahinda drew a bill in favour of Shirani. The bill was stolen by Namal and he forged the signature of Shirani. Kamal, who took it for value in good faith, gave it to Rohitha. (06 marks)

- b) Ranil drew a cheque on Serendib Bank in favour of Ranjan for a payment of debt. Ranjan crossed the cheque, endorsed it and gave it to Malik for the goods he received from him. Malik deposited the cheque in his account at the Zeeland Bank. The Zeeland Bank had collected the money from the cheque, but deposited it mistakenly in another's account. (08 marks)

- c) Wimal drew a cheque for Rs.10,000/- in favour of Champika. Champika altered it in to Rs 100,000/- and gave it to Anura. (20 Marks)

4. Rukmal operates a canteen near a governmental school in the North Central Province of Sri Lanka. The canteen is famous among the students for sausage-buns, fish buns, rolls, cutlets, patties and bottled soft drinks as they are sold at low prices. These food items are kept in the showcase without wrapped and many have seen that flies and small insects frequently land on them.

Since there was inadequate space inside the canteen for food preparation, these short eats are prepared on a table which is kept in an open space outside the canteen. Samanali, Rukmal's wife, fries the left overs in the morning and fresh food items are prepared once such items are sold. She keeps vegetables on the bare floor under the table. She keeps fried sausages and fish in a container which is not closed. Two cats are also used to stay inside the canteen and sometimes they sleep under the table where the vegetables are kept. There is no refrigerator inside the canteen and the bottled soft drinks are also kept in the showcase. These bottles are not labeled and it is said that they contain a high level of sugar. As there is no label, information like ingredients, expiry date and manufacturer's details are not available for public information. The garbage pit of the school is also near to the canteen and sometime bad odor emanates from it.

Hussain, a teacher of the school, seeks your advice as to whether any complaint can be made against Rukmal.

Advise Hussain, with reference to relevant provisions of the Food Act No 26 of 1980 (as amended) and practical examples. (20 Marks)

5. "The basic purpose of economic liberalization is to allocate resources for maximum satisfaction of consumer needs. Consumer protection laws have a pivotal role in this regard. The Consumer protection includes various rights and various remedies available to the consumers."

Do you agree with the above statement? Critically evaluate the validity of the above statement with reference to the provisions of the Consumer Affairs Authority Act, No 09 of 2003.

Support your answer with case law and examples. (20 Marks)

6. Amesh, a cab driver of a tourist agency, has obtained a life insurance policy from the Alive Insurance Company.

The given below is a part of the filled proposal by Amesh.

a) Question- Have you ever been convicted of any offence?

Answer- No

b) Question - Have you had any operations, accident or injury in the last 5 years?

Answer- No

While filling the application, Amesh had mistakenly mentioned his age as 30 instead of 33. He had also been convicted of negligent driving at the age of 19, but he did not think that it was of vital importance. Also, Amesh did not disclose that he had undergone surgery at the age of 10.

Amesh has put his signature on the proposal under the following clause.

"I declare that to the best of my knowledge and belief all statements and particulars contained in the proposal are true and complete and that no material fact has been withheld or suppressed".

Three months after receiving the insurance policy, he changed his cab to a van and he served the same tourist agency. However, he did not inform it to the Alive Insurance Company. A few days later, his van collided with a bus and Amesh became permanently disabled. Alive Insurance is now refusing to pay the claim made under the insurance policy that he has obtained, citing the reason that Amesh is in breach of the insurance agreement.

Advise Amesh with reference to the law of Insurance.

Substantiate your answer with relevant legal principles and case law.

(20 Marks)

7. "The essential characteristic of a bill is that it is negotiable. Of course, it may be that the drawer may wish not to allow the bill to be transferred or negotiated as a way of protection against forgery. Similarly, an endorsee may wish by his endorsement to prohibit further transfers. In his respect, the drawer or endorsee may insert restrictive wording on the face of the bill."

Davis I, *Text Book on Commercial Law*(1992) p196

Comment on the above statement with reference to the negotiability of a bill.

Substantiate your answer with relevant provisions of the Bills of Exchange Ordinance and case law.

(20 Marks)

8. Explain the significance of Any Two (02) of the following in the context of commercial law:

- a) The doctrine of *Nemo dat quod non habet* and its exception;
- b) Conditional sale agreement and hire purchase agreement;
- c) Nature and Scope of an insurance contract; and
- d) Passing of risk in Sales of Goods

(10x2 =20 Marks)

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