

THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME - LEVEL 6
FINAL EXAMINATION - 2006/2007
COMMERCIAL LAW – LWU 3324/4324/4313
DURATION: THREE (03) HOURS



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DATE: 23rd March 2007
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TIME : 1.30 a.m. – 4.30 p.m.
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Answer **FIVE** questions only.

Illegible handwriting will be penalized.

Candidates should assume that each part of a sub-divided questions carry equal marks unless the contrary is expressly indicated.

01. Asela, a final year student at the Open University of Sri Lanka had entered into a hire purchase agreement with Shyamraji Company Ltd., to hire a water bottle vending machine to install in his shop located close to OUSL, Nawala campus to make some profit which is to be donated to ongoing construction of a temple in a remote village by one of his friends. He installed the machine in his shop on 01st August 2006.

Consider rights and liabilities of various parties in the following situations.

- a) Unfortunately, from September 2006 the machine began to malfunction and the Company had not taken any steps to fix it even after many requests had been made by Asela.
- b) Since Asela could not earn the intended profit it led to a default of 3 months in his installment payments. The Company informed Asela in terms of the agreement that unless he paid a sum of Rs. 12,000/= being arrears of hire within 7 days, the Company will take steps to recover the arrears of hire. Asela failed to pay the said sum. The Company seized the machine and sold it.
- c) The Company recovered the possession of the vending machine even though Asela had already paid 75% of the hire purchase price.
- d) The agreement contained a clause that “the Company reserves the right to enter upon the residence of the hirer for the purpose of taking possession of the vending machine”

02. Lohitha is the wholeseller of famous 'Lohith Basmati' rice, who supplies the retail trade. On 23rd January 2007, he makes the following contracts for the sale of 'Lohith Basmati'.

- a) Lohitha agrees to sell 200 sacks of Grade 1 'Lohith Basmati' rice (the superior quality) to Venya. Venya agrees to pay on collection. Lohitha separated 200 sacks and labels them with Venya's name. He tells Venya that the rice is ready for collection. However, on 24th January 2007, by which time Venya had still not collected the rice, the part of the warehouse where the separated 200 sacks for Venya were stored, burned down due to poor maintenance of the electric wiring system. Next day, Venya came to collect the rice and Lohitha told what happened and asked Venya to pay the price since as far as he was concerned it was Venya's rice. Venya refuses to pay.

Advise Lohitha on his rights against Venya.

- b) Lohitha agrees to sell 150 sacks of Grade 1 'Lohith Basmati' rice to Herath. Herath was asked to examine a sample of rice before the payment was made. Herath could not examine the rice since he was engaged in an important business talk with one of his customers over his mobile phone. Now Herath realizes that the rice he purchased is not as good as the sample and he countermanded the cheque given to Lohitha.

Advise Herath on his rights against Lohitha.

- c) Lohitha sold to Chamila 300 sacks of Grade 1 'Lohith Basmati' rice and agreed to send 100 sacks monthly in equally weekly installments. After about half of the contracted amount was delivered and paid for, Chamila discovered that some of those sacks were not Grade 1 but Grade 2 and could have been rejected. Therefore, he refused to take further deliveries.

Advise Chamila on his rights against Lohitha.

- d) Lal agrees to buy 500 sacks of Grade 2 'Lohith Basmati' rice with a view to reselling them to Jayasundara on 30th January 2007. According to the contract Lohitha should deliver them to Lal's shop on or before 29th January 2007. However, owing to many difficulties Lohitha could deliver them only on 10th February 2007.

Advise Lal on his rights against Lohitha.

03. 'All negotiable instruments recognized under Sri Lankan law are transferable. However, those instruments significantly differ from other transferable instruments not only due to the commonly recognized features of negotiable instruments but also due to many specific characters of those instruments including rights and duties of the parties, features that facilitate the usage and mechanism that secures the rights of the parties to those instruments'.

Evaluate the validity of the statement referring to decided cases and statutory provisions if any.

04. a) "In general, indemnity insurance and contingency insurance significantly differ from each other".

Comment.

- b) Ranjith is preparing a proposal form to submit to a leading Insurance Company in Sri Lanka. However, he needs your assistance to clarify firstly as to whether he could get an insurance policy on the life of his girl friend, secondly whether he could sell the remnants of his shop in the event of a fire where a fire insurance policy has been obtained for his shop and thirdly what would happen if he mentioned that he is a teetotaler in the proposal form of the life assurance contract but before he concluded the contract he was compelled to consume alcohol due to the departure of his girl friend.

You are required to assist Ranjith to clarify the above situations and your clarification should be legally justified.

05. Manori, gave Gayanga a cheque for Rs. 1000/= as a 21st birthday present. Gayanga signed on the back of the cheque, without giving any payment instructions gave it to Shyamen who wanted a loan from Gayanga to pay one of her friend's library deposits. Bala stole the cheque from Shyamen and paid his rent by adding 'Pay Bala' before Gayanga's signature. Kamal, the house owner where Bala lives, took it to his bank, which did not query it and passed it to Manori's bank for payment.

Consider the rights and liabilities of various parties, including those of the bank in the following situations.

- a) Kamal's bank allowed him to withdraw Rs. 1000/- against an uncrossed cheque before it was returned, dishonoured on Manori's instructions.
- b) What if the cheque issued by Manori was in the common form with printed crossing 'Account payee' but the Manori's bank, having received no contrary instructions, paid the cheque to Kamal's Bank.

- c) What if the cheque issued by Manori was a 'cash cheque' but it is altered by Bala as to show that it was for Rs. 10,000/- and Manori's bank paid it over the counter when it was presented.

06. a) Saman bought 25 bottles of 'NEC-TAR' fruit drinks from Jaya and bought a 21" coloured Television from Cabral. The Television is a used one but in working condition and needed some repairs. He paid the price for both items. Saman used the Television after repairing. He served the drinks to his visitors.

However, now Saman has discovered that Jaya had bought the drinks from someone who had stolen it. Likewise, he came to know that at the time of the sale of the Television, Cabral had borrowed it from Biyanka, the owner, but soon afterwards, Biyanka had gifted the Television to Cabral.

Saman has now informed Cabral and Jaya that he regards both the contracts as terminated and demands the return of the price paid.

Advise Jaya and Cabral.

- b) "There are no implied conditions as to 'fit for the purpose' and 'merchantable quality' in a contract of sale of goods. However, goods are merchantable, if they are fit for a purpose for which goods of that kind are commonly bought for"

Comment on the accuracy of this statement with reference to decided cases and statutory provisions if any.

07. Compare and contrast the following with reference to decided cases and provisions of relevant statutes where applicable.

- a) Hirer of a hire purchase agreement and buyer of a contract of sale of goods.
b) A bill of exchange and a promissory note.
c) Section 25 of the Sale of Goods Ordinance, No.11 of 1896 and a hire purchase agreement.

08. Write notes on any two of the following.

- a) Implied conditions and warranties of a hire purchase agreement.
b) Presentation of a bill of exchange.
c) Food Act, No. 26 of 1980 as amended.
d) Consumer Affairs Council.