

# UNIVERSITY OF COLOMBO, SRI LANKA

## FACULTY OF MANAGEMENT AND FINANCE

Bachelor of Business Administration (Level II Semester IV) Examination- January 2017

### MOS 1302-Commercial Law

Three (03) Hours

Answer FOUR (04) questions, selecting at least ONE (01) question from PART I.

Candidates will be penalized for illegible handwriting.

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### PART I

1.
  - i. Discuss the essential ingredients of a valid contract  
(15 marks)
  - ii. Briefly explain the impact of an exemption clauses on a contract.  
(10 marks)

**(Total 25 Marks)**
2.
  - i. Nalani, filed action against Kamal stating that Kamal infringed copyright by an unauthorized publication of the one of classical dramas written by her late husband Sarath. Furthermore, Nalini points out that Kamal printed his name on the first page as the author of the new publication. However, Kamal argued that he distributed all copies of new publication among the students of his tuition classes as a free course material. Also, he argued that, his action amounted to a fair use of the classical drama.  
  
Nalani seeks your advice as to whether she can successfully maintain the action against Kamal. Support your answer with relevant statutory provisions and case law.  
  
(10 marks)
  - ii. Write notes on **THREE** of the following:
    - a. Patent rights;
    - b. Trademark;

- c. Geographical indications;
- d. Trade secrets and undisclosed information.

(05 x 3 = 15 marks)

**(Total 25 Marks)**

3. Discuss the legal principles involved in following situations.

- i. Amara offers to sell his vehicle to Nayana by a letter dated 10.11.2016. Nayana accepted the offer and posted the letter of acceptance on 12.11.2016. The letter reached Amara on 19.11.2016, but Amara had sold his vehicle to Chamari on 15.11.2016.  
(10 marks)
- ii. Saman agreed to buy a ring from Ranga, thinking it is a diamond ring, but in fact, it was a ring made of some other precious stones.  
(05 marks)
- iii. Shane rented his house to Ruchira, because Ruchira threatened to shoot Shane, if he refused to do so.  
(05 marks)
- iv. Thidas, an Attorney-at-Law persuaded Kamani, his client to sell her car to Thidas's wife, at a higher price.  
(05 marks)

**(Total 25 Marks)**

## PART II

4. i. "The law recognizes that it is not practical for people, especially business people to do everything themselves. People must be permitted to act through others"

Do you agree with the above statement? Discuss with reference to the law of agency

(07 marks)

- ii. Ashan agreed to carry Ruwan's tomatoes from Bandarawela to Hambanthota, by train to Mathara and by lorry to Hambanthota. The train was stopped at Kandy for five days due to bad weather in the hill country. There was also a serious land slide. Alagalla which is very close to Kaduganawa tunnels and several telecommunication towers were badly damaged. Eventually, when the train arrived at Mathara, Ashan's employees were on

strike, tomatoes were unloaded by casual laborers and it was a two day delay. At that time, some of the tomatoes were found to be bad. Therefore, Ashan decided to sell the tomatoes for a low price as he felt that tomatoes could not arrive in Hambanthota market in a good and saleable condition. Ruwan found out about this and now he wants to claim damages from Ashan.

Advise Ruwan as to whether he will be able to claim damages from Ashan

(08 marks)

- iii. Lahiru appointed Rio as his agent, to sell an antique table belonging to Lahiru. He instructed Rio that under no circumstance should Rio sell the antique table for less than Rs. 20,000.

Explain the legal position of the parties in each of the following situations:

- a. If Rio sold the antique table for Rs. 15,000.  
(You may assume that there were no exceptional circumstances present, which justified this transaction).

(05 marks)

- b. If Rio sold the antique table to Bani for Rs. 20,000 and received a commission of Rs. 1,500 from Bani

(05 marks)

**(Total 25 Marks)**

5. i. Ravi and Nisal were partners in a service station. They had an agreement with Ali Baba Oil Company regarding oil distribution in Sri Lanka. Ravi gave three months' notice on his termination determining the partnership and during that period he obtained a new agreement to distribute oil into his name alone with Ali Baba Company. Ravi then continued to trade in the same way at the same premises under his name. At the same time Ravi bought oil at the discounted price then he sold it to the service station at market price. Now Nisal wants to take action against Ravi.

Advise Nisal

(08 marks)

- ii. "As per section 1 of the Partnership Act of 1890 a partnership is the relation which subsists between persons carrying on a business in common with view of profit."

In the light of the above statement, briefly explain the main elements of a partnership and the formalities to be followed in establishing a partnership.

(07 marks)

iii. Briefly discuss the modes of dissolution of partnership

(05 marks)

iv. Kumari and Wimali were partners who managed a theatre called PiumPokuna. As there were several repairs in the theatre, money was lent form Kumudu to fix it. The financial arrangements were that Kumari and Wimali received 40 percent of the gross profit equally with the remaining 15 percent going to Kumudu as the creditor. Later Kumudu argued that he was a partner of the business because he received a share of profits gained through the theatre.

Do you agree with the argument made by Kumudu?

(05 marks)

**(Total 25 Marks)**

6. i. How do you define the term “goods” as per the Sale of Goods Ordinance No. 11 of 1896?

(07 marks)

ii. Oscar needed money urgently so he took his car to Namal's garage and asked Namal to sell the vehicle for not less than 20 Million. Namal, who often undertakes transactions of this type for customers before, agreed to do so. Oscar therefore left the book in the car. That afternoon, a friend of Oscar's told him that Namal's garage was in financial difficulties so Oscar immediately telephoned Namal telling him that he was not to sell the car and that Oscar would collect it later. When Oscar arrived at Namal's garage that evening, however, one of Namal's assistant told him that, immediately after Oscar's telephone call, Namal had sold the car to Tim for 18 Million. Tim who was unaware of any fraud had taken the car away and Namal had disappeared with the money. The assistant did not know Tim's name and address and Oskar had immediately informed the police. Two months later the car was impounded by the police as it had been stolen by Namal. It was then returned to the original owner, Oskar.

Tim wishes to take legal action against Nimal. Advise him.

(08 marks)

- iii. Saman is going to marry Ruwani. Therefore he decided to buy a wedding suit from TrueFit Garment. However he could not find a proper wedding suit from there as he wanted. Then he again went to TrueFit Tailors which is a subsidiary of TrueFit Garment to sew a wedding suit. For that purpose he chose proper cloth which has good quality to sew the suit. After, the chief tailor of Tru fit tailors completed his task and gave the suit to Saman in time. Unfortunately the suit did not fit saman. Though I the suit did not fit for Saman he decided to wear it because he did not have time to sew another suit and other related problem. As a result of the suit, his body was subject to dermatitis with a fungal infection and his wedding turned a bad dream. From the doctor's point of view the said fungal infection was a cause of negligence of True Fit tailors in sewing. Further, True Fit tailors did not fulfill proper healthy way to secure cloths and failed to follow proper sanitary trade practices.

Can Saman claim damages from True Fit Tailors? Advise him

(10 marks)

**(Total 25 marks)**

7. i. Discuss the meaning of '*nemo dat quod non habet* rule' and its implication for commercial transactions.
- ii. What are the exceptions to the *nemo dat* rule?

(10 Marks)

(15 Marks)

**(Total 25 marks)**