

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
BACHELOR OF LAWS EXAMINATION, YEAR III – 2019

Business Law

(Three Hours)

Total Number of Questions: 07

Answer **FOUR (04)** questions and **no more**.

(Candidates will be penalized for illegible handwriting.)

1. (a) 'The rules relating to the passing of risk of sale of goods assume, at all times, that the risk rests with the party who bears it'

Do you agree with the above statement? Support your answer with reference to the statutory provisions and case law authorities.

(b) Wijedasa in Wellawatta ordered 100 kilos of tea from Ceylon Tea Ltd in Borella. Amaradasa and Company Ltd in Kurunegala and Ryan and Company Ltd in Anuradhapura ordered 200 and 400 kilos of tea respectively from Ceylon Tea Ltd. 700 kilos of tea were packed in wooden casks by Ceylon Tea Ltd and were transported by a lorry to the three buyers. The order of Wijedasa was delivered to Wellawatta. The lorry met with an accident while it was heading to Kurunegala, and the rest of the tea could not be delivered. The directors of Ryan and Company Ltd seek legal advice from you regarding the above scenario.

Advise them with reference to statutory provisions and case law authorities

2. Thilak drew a cheque worth Rs. 10,000/- and crossed it "not negotiable". He instructed Meryl, his clerk to fill in David Fernando's name as the payee of the cheque. Meryl owed a personal debt to Saman. He altered the amount on the cheque as Rs. 100,000/- and made the cheque payable to Saman. Meryl then handed over the cheque to Saman. Saman negotiated it to Bimal who obtained the cheque for value. When Bimal presented the cheque for payment, the bank refused the payment.

Discuss the rights and liabilities of the parties quoting relevant statutory provisions and decided cases.

3. Marsha saw the packaging of 'Seamy' yoghurts which stated that the yoghurts are fresh and were being clinically and scientifically proven to boost one's immune system. She tried a free sample and it tasted fresh. Marsha bought twenty yoghurts for her family's consumption. Her five year old son vomited and suffered from a terrible stomach ache after consuming two of these yoghurts. Marsha admitted her little son to the hospital. The doctor explained to Marsha that the stomach ache was caused due to the consumption of yoghurts which were unfit for human consumption.

Marsha became aware later that another yoghurt manufacturer under the brand name 'Creamy' Yoghurts had obtained an injunction order from the High Court of Colombo against 'Seamy' Yoghurts Ltd for breach of their registered trademark at the time she purchased the yoghurts. Marsha wants to file a case against 'Seamy' Yoghurts Ltd. She has retained you as her counsel.

Critically evaluate the above scenario with reference to statutory provisions and case law authorities.

4. Discuss the legal issues that have arisen in the following circumstances:

- (a) Piyal, an endorser of a cheque, transfers it to Lal without consideration. Lal also transfers it to Sena without consideration. Sena transfers it to Perera for consideration. Perera transfers it to Mala without consideration.

Explain with reasons whether Mala can recover the amount on the cheque from Perera or Piyal.

- (b) Anil steals a cheque payable to Banu and forges Banu's signature in order to transfer the bill to Cyril. Cyril gives value for the cheque and does not know that he has received the bill from a thief. When Cyril presents the cheque for payment it gets dishonored. Cyril wishes to enforce the cheque against all the prior parties to the cheque.

Advise Cyril on his legal rights. Would your answer be different if Anil steals a bearer bill and passes it to Cyril?

- (c) Mohan draws a cheque for Rs.10,000/- in favour of Dias in payment for goods. Dias having endorsed the cheque as 'pay Amal Fernando only' hands it to Amal Fernando. Now Amal Fernando wishes to transfer the cheque to Raman in settlement of a debt he owes to him.
- (d) "It would be safer for the drawer to cross a cheque with the words 'account payee' added to it". Do you agree with the above statement? Explain how it is safer for the drawer.

5. (a) A buyer of Mangoes in Matara bought a consignment of Mangoes from overseas to be delivered in Matara which arrived at the Colombo Port, after a delayed journey due to storms. Since there was an ongoing railway strike that would have caused further delay in getting the mangoes to their destination in Matara, the railway company decided to sell the mangoes immediately at the *Manning* Market in Colombo.

Discuss whether the railway company as an agent is responsible for the difference between the price achieved and the market price in Matara.

- (b) 'Unless expressly or impliedly authorized to delegate the power, an agent owes a duty to the principal to act personally in the completion of the task.'

Critically discuss the above statement with reference to decided cases.

6. "The rules governing liability of the sea carrier are the central part of international maritime conventions. They regulate the allocation of risks and balance of rights and responsibilities between the carrier and the cargo owner's interests. The practice developed through time

witnessed an attempt to allocate risks between the carrier and the cargo interest in the bills of lading”

Critically examine the above statement with special focus on characteristics and functions of a Bill of Lading which is used as the main document in International Trade referring to well-known International Rules, the Carriage of Goods by Sea Act No. 21 of 1982 of Sri Lanka and case law.

7. Advise the following parties with reference to necessary legal principles and case law:

- (a) Episton, a well-known Television company in Sri Lanka ordered a thousand (1000) 44” flat-screen televisions for a total sum of Rupees 5.5 million from Sony on CIF terms to be delivered to the Colombo Port. Sony shipped the order for television set to the Port of Akita, Japan and the cargo was thereafter loaded into the *Costerita Express*, the ship designated by Episton. The employee of the *Costerita Express* who was in charge of the loading failed to notice the size of the screen which was 40” and not 44” as was agreed in the sales contract. The ship’s Bill of Lading however indicated the size of the televisions loaded as 40”. The Episton Company acknowledged the Bill of Lading to Sony in exchange of the payment in full for the televisions.

During the voyage a fire broke out in one of the cargo bays of the *Costerita Express* and around 20% of Episton’s order was damaged despite the fire fighting efforts. When the *Costerita Express* arrived in Colombo, the error in the Bill of Lading was discovered. The Episton television company sued the owners of the *Costerita Express* for damages.

Owners of the *Costerita Express* seek your advice.

- (b) A multinational company named ‘Spice Cost’ in Australia bought 250 kg of Ceylon cinnamon from ‘Ceylon Spice,’ a company in Sri Lanka, under FOB terms and paid half of the purchase price in advance. A dealer company undertook the packing of the cinnamon and the boxes were marked with the name and address of ‘Spice Cost’ for the purpose of shipment in a designated ship in the Colombo Port. Due to a strike of heavy vehicle drivers, the dealer company failed to send the packages for loading within a reasonable time. As a result, the dealer company failed to make the shipment as agreed. The company ‘Ceylon Spice’ argued that ‘Spice Cost’ is responsible for shipment and demanded the balance purchase price.

Assume you are the legal consultant for the company ‘Spice Cost’ and draft arguments in favour of your client.