

CARRIAGE OF GOODS

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## CHAPTER I

*Introduction.* Goods are carried by land, sea and air. In India and Pakistan the relevant laws regarding the carriage of goods are Indian Carriages Act 1815, Indian Railways Act of 1890, Act X of 1899, Act XIII of 1921, Goods by Sea Act of 1925. Before the passing of these Acts the law relating to carriers in India was governed by the English Common law relating to carriers. Cases regarding carriers not covered by the above laws are governed by the Common Law of England.

Carriers are broadly divided into two kinds :

(a) carriers of goods, and (b) carriers of passengers.

Carriers of goods are again of three kinds.

(i) Common or public carriers, (ii) Private carriers, and (iii) gratuitous or voluntary carriers.

*Private carriers.* A private carrier undertakes on occasions to convey goods of another and receives reward for the service : *Avory J. in Watkins V. C. Lottell.*

*Gratuitous carriers.* A gratuitous carrier undertakes to carry goods or passengers gratuitously, i.e., without reward.

*Common Carriers.* Under the Carriers Act, 1865, a common carrier is a person, an association or a body of persons, other than the government, engaged in the business of Transporting goods for hire by land or inland navigation, for any one indiscriminately,

The essential features of a common carrier are :

(i) It is a person, or a partnership or a joint family business or a company ;

(ii) It transports property or goods and not persons ;

(iii) It transports goods for hire and not gratuitously ;

(iv) It transports goods as a business and not as a casual occupation ;

(v) It serves all indiscriminately. A carrier which reserves the right of accepting or rejecting goods is not a common carrier (*Coggs V. Bernard*, 1 SM L.C. 12th E.I. 191) ;

(vi) It transports by land and inland navigation. A carrier by sea is not considered a common carrier (*Mackillican V. The Compagine Das Messageries Maritimes De Grance* 6 Cal 227) ;

(vii) It cannot be the government (*Alamgir Footwear and Co. V. Secretery of State*, 1933, All. 466).

### **Rights of a common carrier :**

The rights of a common carrier are.

1. A Common carrier may not carry goods unless.

(a) the sender is willing to pay reasonable charge ;

(b) there is accommodation for the goods ;

(c) the goods are of the description the carrier is accustomed to carry ; or.

(d) the goods are not likely to subject him to exceptional danger.

2: He may not treat all customers equally and may allow special concessions to some only. But he cannot charge an unreasonable payment from any customer (*G. W. Ry. Co. V. Sutton*. L. R. 4 H.L. 226 to 237).

3. he has a lien on the goods he carries for the charges due to it and can retain the goods till the charges are paid (*Skinner V. Upshane*, 2 L.I. Raym. 752).

### **Duties of a Common Carrier :**

The duties of a common carrier are:—

(i) A common carrier must accept and carry all goods delivered to him for carriage according to his profession on being paid a reasonable compensation for so doing ; and if the carrier refuses to accept such goods, an action lay against him for not refusing (*G.W. Ry. Co. V. Sutton*, L.R. 4 H.L. 226, 237). He can refuse to carry the goods on some reasonable grounds, viz, The goods are not of the description he is accustomed to carry, there is no accommodation for the goods, the goods are likely to expose him to exceptional danger, the goods are brought too late or too long a time before the journey is to begin.

(ii) He must deliver the goods at the time agreed upon for the delivery of the goods, or, where no time is stipulated, within a reasonable time having regard to the circumstances of the case (*Taylor V. Great Northern Railway*. L. R. I. C. P. 385).

(iii) He must deliver the goods to the consignee. He is not bound to deliver the goods at the house of the consignee unless an agreement to that effect has been made. He will bring the goods to the station of destination, give the consignee notice of arrival and allow the consignee a reasonable time in which to remove the goods (*Mitchell V. L. & S. Ry. Co.* L. R. 10. Q. B. 256).

(iv) He must carry the goods by the ordinary route which he professes to be his route. He can, however, deviate from the ordinary route if that becomes necessary for the safe carriage of the goods.

#### **Liabilities of a common carrier :**

A common carrier in India and Pakistan has the same liabilities as under the English Common law subject to the modifications introduced by the Carriers Act, 1865. Under the English Common law a common carrier stands in the position of an insurer for the safe delivery of the goods entrusted to him for carriage and he must indemnify the owner of the goods for loss or damage caused to the goods while in his custody irrespective of any question as to how such loss or damage was caused. (*Irrawady Flotilla Co V. Bhagwandas*, 18. I. A. 121).

Besides liabilities as an insurer a common carrier may be liable for any damage or loss which the owner of the goods has suffered owing to breach of any duty by the carrier even though the goods may have arrived safely, e. g., damage suffered by the owner of goods owing to delay in delivery of the goods.

The liability of a common carrier is subject to certain exceptions and modifications under the Common Law and the Carriers Act, 1865. They are:—

#### **Exceptions under the Common Law :**

(i) A common carrier has no liability for loss or damage to

goods delivered to him for carriage if such loss or damage is caused by (a) an Act of God, e. g., storm ; (b) an act of the King's enemies, e. g., seizure or destruction of the goods by enemies, and (c) inherent defect in the goods themselves, e. g., bad packing.

(ii) When the goods arrive at the destination and notice is given to the consignee of the arrival of the goods the liability of the common carrier as an insurer ceases. If the consignee fails to take delivery of the goods within a reasonable time after such notice the common carrier will continue to have the liability of an ordinary bailee in respect of the goods in his custody and will not be liable for any loss or damage unless it has been caused by his own negligence (*Mitchell V. Lancashire and Yorkshire Ry. Co. L. R. 10 Q. B. D. 256*).

(iii) By a special agreement between the carrier and the consignor the liability of the common carrier for all loss and damage may be waived or his liability may be limited to a particular kind or kinds of loss and damage. But the mere insertion of a general clause which exempts a carrier from liability for any loss of or damage to the goods delivered to him for carriage will not exempt a carrier from liability for loss or damage occasioned by his own negligence or that of his servants or agents unless such exemption is expressly provided for in express and unambiguous terms by inserting in the special agreement something equivalent to what is known as the negligence clause (*Price & Co. V. Union Lighterage Co., 1. K.B. 412*). In order to avoid the strict Common Law liability of an insurer carriers were constantly devising new types of agreements whereby they sought to reduce the liability of a carrier almost to nothing to the prejudice of the public Carrier's Act of 1865 was designed to relieve the strict liability of carriers and to restrict their powers to make one-sided special contracts.

#### Exceptions under the Carriers Act :

The Carriers' Act of 1865 divides the articles, which may be consigned, into two categories namely, (i) the scheduled articles, i. e., articles enumerated in the Schedule to the Act and which are unusually valuable or unusually perishable, e. g., gold, silver, jewellery

silk, paintings, title deeds, currency notes etc., and (ii) the non-scheduled articles, i. e., articles which are not included in the Schedule to the Act and which are of an ordinary kind, e. g., wheat and rice and not unusually valuable or perishable.

(i) Under the Carriers Act, 1865, the liability of a common carrier for the scheduled articles is as follows:—

(a) A common carrier is not liable for any loss or damage to a scheduled article exceeding Rs. 100·00 in value except when it is caused by a criminal act of the carrier, his servants or agents. But if the consignor or his duly authorised agent fails to declare the value and description of such goods at the time the goods are delivered to the carrier, the carrier will not be liable for the loss or damage to the goods (Ss. 3 & 8, Carriers Act, 1865).

(b) A common carrier is allowed to charge an additional rate for undertaking the increased risk of carrying a scheduled article provided a scale of charges containing the additional rate is publicly exhibited in his place of business in English as well as the vernacular language of the place (S. 4, Carriers Act, 1865).

(c) Where the consignor or his agent has properly declared value and description of a scheduled article and has paid or agreed to pay the increased rate, if any, the carrier is liable for any loss or damage to such article and is bound to return any sum which might have been paid as the charge for carriage and the carrier cannot limit his liability in this respect by any special agreement (Ss. 3 & 6, Carriers Act, 1865).

(ii) As regards non-scheduled articles, the liability of a common carrier for the loss of goods may be limited by special contract signed by the owner or his duly authorised agent except when such loss shall have arisen from the negligence or criminal act of the carrier or any of his agents or servants, (Ss. 6 & 8, Carriers Act). Any special agreement, therefore, which purports to exempt the carrier from liability for his own negligence or criminal act, or that of his servants or agents is void and inoperative as being illegal (*India General Steem Navigation Co. V. Joy Kristo Saha*, 17 Cal. 39).

**Presumption of Negligence :**

The principle is that the loss or damage to the goods is *prima facie* proof of negligence on the part of the common carrier to whom the goods are delivered for carriage and the court must presume negligence in the absence of any proof to the contrary (*The River Steam Navigation Co. V. Choutmull Doogar*, 26 Cal. 398). So, when a common carrier wants to relieve himself of the liability for the loss or damage for which he is sued it is for him to prove the absence of negligence.

**Suits against a Common Carrier :**

Any person who has an interest in the goods consigned can sue the common carrier to whom the goods are delivered for carriage whether he is a party to the contract of carriage or not. Thus a consignee to whom the property in the goods has passed or a mortgagee of the goods or even an insurer who has paid the owner for the loss of the goods, can sue the carrier for loss or damage to the goods.

*Notice.* Under Section 10 of the Carriers' Act, 1865, no suit can be instituted against a common carrier for the loss or injury to goods delivered to him for carriage unless notice in writing for the loss or injury has been given to him before the suit has been instituted and within six months of the time when the loss or damage first came to the knowledge of the plaintiff.

*Limitation.* A suit against a common carrier for compensation for loss or injury to goods must be instituted within one year of the time when the loss or injury occurs and a suit for compensation for non-delivery or delay in delivery of the goods must be instituted within one year of the time when the goods ought to be delivered (Articles X 30 & 31, Limitation Act).

## CHAPTER II

### RAILWAYS

*Liability of Railways.* A railway is not a common carrier so far as its liability is concerned ; it is regarded as a common carrier so far as its duties to the general public are concerned. Under the Railways Act, 1890, the liability of Railway Administration for the loss, destruction or deterioration of animals or goods delivered to it for carriage is like that of a bailee as laid down in Ss. 151, 152 and 161 of the Contract Act and not that of an insurer as under the Common Law (S. 72 (1), Indian Railways Act, 1890. It will be liable as a bailee in the following cases only.

(i) For the loss or damage of goods or animals owing to the neglect of the railway or its servants to take such reasonable care as a man of ordinary prudence would, under similar circumstances take of his own goods (Ss. 151 & 152 Contract Act).

(ii) For the loss or damage of goods or animal for any reason after the railway has made default in delivering the goods or animals at the proper time (S. 161, Contract Act).

The general liability of a railway as a bailee is further limited in the following cases.

(A) When any articles mentioned in the second schedule of the Railways Act, 1890, e. g., gold, silver, silk, pearls jewellery, watches, government and other securities, paintings, engravings etc., are contained in any parcel or package the value of which exceeds Rs. 300.00 the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the same caused its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or package to the railway administration, and if so required by the administration paid or engaged to pay in writing a percentage on the value so declared by way of compensation for increased risk (S. 75 (1), Railways Act) when any parcel or package of which the value has been declared the compensation.....for loss, destruction or



deterioration shall not exceed the value so declared [S. 75 (2), Railways Act]. A railway administration may, before accepting any parcel or package declared to contain any such article, examine the contents of the package in order to ascertain that it really contains the declared article [S. 75 (3) Railways Act].

(B) *Carriage of Animals.* The responsibility of a railway administration for the loss, destruction or deterioration of any animal delivered to it shall not exceed Rs. 1500.00 per elephant, Rs. 750.00 per horse, Rs. 200.00 per mule or horned cattle or camel, or Rs. 30.00 per dog or donkey or goat or pig or sheep or other animal or bird unless the person delivering the animal to the railway administration declares in writing a higher value in the forwarding note and has paid or engaged to pay to the railway administration percentage specified by it upon the excess of the value so declared [S. 73 (1), Railways Act]. The Railway Administration shall not be liable for any damage or loss arising from fright or restiveness of the animal [S. 73 (3), Railways Act].

(C) *Carriage of Passengers' Luggages.* A railway administration is not liable for the loss, destruction or deterioration of any luggage belonging to or in charge of a passenger unless a railway servant has booked and given a receipt therefore, (S. 74, Railways Act, 1890). In other words, the company is liable only for luggage entrusted to it, being booked by a railway servant and a receipt being given for it. The company cannot be held liable for the personal luggage of a passenger which has not been so booked and which is taken by the passenger with him at his own risk.

(D) *Carriage in those cases where forwarding notes have been executed.* Any person delivering to the railway administration any animals or goods to be carried on a railway shall.

(a) if the animals or goods are to be carried by a train intended solely for the carriage of goods, or

(b) if the goods are to be carried by any other train and consists of articles of any of the following categories namely:—

- (i) articles carried at owners' risk rates ;
- (ii) articles of a perishable nature ;
- (iii) articles, mentioned in the second schedule, e. g., gold, silver,

silk, pearls, jewellery, watches, government and other securities, paintings, engravings, etc ;

(iv) articles defectively packed or in a defective condition ;

(v) explosives and other dangerous goods, execute a note called the forwarding note, in such form as may be prescribed by the railway administration and approved by the Central Government in which the sender or his agent shall give such particulars in respect of the animals or goods so delivered as may be required (S. 72A. Railways Act, 1890).

(E) *Where goods are in defective condition or defectively packed.* When any goods tendered to a railway administration for carriage by railway:—

(a) are in a defective condition as a consequence of which they are liable to deterioration, leakage, wastage or damage in transit ; or

(b) are either defectively packed or packed in a manner not in accordance with the general or special order, if any, of the Central Government as to the manner in which such goods are to be packed, and as a result of such defective or improper packing are liable to leakage wastage or damage in transit, and the fact of such condition or defective or improper packing has been recorded by the sender or his agent in the forwarding note, the railway administration shall not be responsible for any deterioration, leakage, wastage or damage, or for the condition in which such goods are available for delivery at destination except upon proof of negligence or misconduct on the part of the railway administration or of any of its servants [S.74A (1) Railways Act, 1890].

(F) *Where goods are carried in open vehicles.* When any goods which, under ordinary circumstances, would be carried in covered vehicles or vessels and would be liable to damage if carried otherwise, are, at the request of the sender or his agent recorded in the forwarding note, tendered for carriage by railway in open vehicles or vessels, the railway administration shall not be responsible for any destruction, deterioration or damage which may arise only by reason of the goods being so carried (S. 74B. Railways Act, 1890).

(G) *Where animals or goods are carried at owner's risk rate.* When any animals or goods are tendered to a railway adminis-

tration for carriage by railway and the railway administration provides for the carriage of such animals or goods either at the ordinary tariff rate called the railway risk rate or at a special reduced rate called the owner's risk rate the animals or goods shall be deemed to have been tendered to be carried at owner's risk rate unless the sender or his agent elects in writing to pay the railway risk rate. When the sender or his agent elects in writing to pay the railway risk rate the railway administration shall issue a certificate to the consignor to that effect.

When any animals or goods are carried or are deemed to be carried at owner's risk rate a railway administration shall not be responsible for any loss, destruction or deterioration of or damage to such goods from any cause whatsoever except upon proof that such loss, destruction or deterioration or damage was due to negligence or misconduct on the part of the railway administration or of any of its servants, (S. 74C, Railways Act, 1890). \*

*Burden of Proof.* Section 74D of the Railways Act, 1890, provides as follows :—

(a) Where the whole of a consignment of goods or the whole of any package forming part of a consignment carried at owner's risk rate is not delivered to the consignee and such non-delivery is not proved by the railway administration to have been due to any accident to the train or to fire, or.

(b) Where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit.

The railway administration shall be bound to disclose to the consignor how the consignment or package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servant cannot be fairly inferred from such disclosure the burden of proving such negligence or misconduct shall lie on the consignor.

#### Suits :

*Notice.* Section 77 of the Railways Act, 1890, contemplates

a notice of claim to be served on the company which is asked to settle a claim. Under this section no suit for compensation against a railway administration for the loss, destruction or deterioration of animals, or goods or for refund of overcharges in respect of animals or goods carried by the railway can be instituted unless notice in writing of such claim is given to the railway within six months from the date of the delivery of the animals or goods for carriage.

Notice is to be served on all the companies over which the goods had been carried. Notice to one railway administration cannot avail a party for a claim against another railway administration (*Dumchand V. Secy. of State*, A.T.R. 1931 Cal. 585).

*Notice under Section 80, C. P. Code.* Notice under Section 77 of the Railways Act, 1890, is required to be given before a suit for damages is instituted against the railway or railways concerned. In suits against state-owned railways, a previous notice of suit is required to be given to the General Manager of the Railway concerned containing the particulars specified in Section 80 of the Civil Procedure Code. A notice under Section 77, Railways Act, 1890, will not dispense with the necessity of a notice under Section 80, C. P. Code is mandatory.

*Persons entitled to sue.* The person in whom the property in the goods or animal, delivered to the railway is vested is the person who can sue the railway for any loss or damage to such goods or animals. Where the property in the goods still remains vested in the consignor after their delivery to the carrier the consignor is the only person who can sue. But where the seller after delivering the goods to the railway for conveyance to the buyer has made over the receipt to the buyer, the buyer alone, who is the consignee, can sue for any loss or damage (*N. & S. M. Rly Co. Ltd. V. Rangaswami Chetti* A. R. 1924, Mad. 517). Any person to whom the consignor has endorsed the railway receipt can sue the railway for any loss or damage because he becomes entitled to the goods by virtue of such endorsement (*Peare Lal Gopi V. E. I. Rly. C.* 46. All. 691).

*Limitation.* The period of limitation is the same as in the case of a suit against common carrier.

CHAPTER III  
CARRIAGE OF GOODS BY SEA

Contract of affreightment :

“When a ship-owner.....agrees to carry goods by water or to furnish a ship for the purpose of so carrying goods in return for a sum of money to be paid to him, such a contract is called a *contract of affreightment*, and the sum to be paid is called freight,” (Scrutton). A contract of affreightment is made (a) either by a *charter party* or (b) by a *bill of lading*.

*Charter party*. A contract of affreightment between a ship-owner and a shipper by which the ship-owner undertakes to carry a complete cargo of goods for the shipper or to furnish a ship for that purpose is set out in a formal document called a *charter party*. The shipper under a charter party is called the *charterer*. A charter party may either take the form of a lease or demise of the ship by the ship-owner to the charterer for the purpose of carrying the goods, the charterer hiring the ship for such purpose or contain an undertaking by the ship-owner to carry the goods, the charterer undertaking to provide a full cargo.

Under a contract by way of demise, the charterer becomes the owner of the vessel (for the time being) during the continuance of the charter and has all the rights and is subject to all the liabilities of a ship-owner. The effect of such a charter party are :—

(a) The ship-owner, being out of possession, would have no lien in Common Law on the goods shipped for the freight due thereon under the charter.

(b) The ship-owner, having ceased to be the owner, would not be liable to the shippers who ship goods through the charterer for any loss or damage to the goods or for any acts of the master or the crew even if they did not know of the charter (*Bumvall V. Gilchrist & Co.*, A. C. 8)

(c) The master would be the agent of the charterer and delivery to him of goods bought by the charterer would deprive the

unpaid seller of his *right of stoppage in transit* unless the bill of landing is made deliverable to the shipper or his order. When the charter is not a demise, delivery to the master would be delivery to a carrier and the right of *stoppage in transit* would remain.

(d) A charterer by a demise is regarded as a carrier within the meaning of the Carriage of Goods by Sea Act, 1926, and is entitled to all the protection given to a shipowner.

(e) A charter by a demise is entitled to the benefit an owner is entitled to under Sections 502 and 503 of the Merchant Shipping Act, 1894.

Where the charter party is not by way of a demise all that the charterer acquires is the right to use the ship for loading and carrying his goods and the ownership and the possession of the ship remain in the ship-owner and the master and the crew continue to be the employees of the shipowner.

#### **Bill of landing :**

When the owner of a ship agrees to carry goods of separate shippers the ship is called a general ship. The contract of affreightment for each parcel of goods is usually set out in a document called *bill of landing*. A bill of landing, unlike a charter party, is not contract but only an excellent evidence of the terms of the contract (Per Lord Bramwell in *Sewell V. Burdic*, 10 A. C. 105).

#### **Form of Bill of Landing :**

A bill of landing states the apparent order and condition of the goods delivered for shipment. The *shipped* bill of landing commences with the words 'shipped in apparent goods order and condition' or words to the like effect, and acknowledges the actual receipt of the goods on board a named ship. There is another form of bill of landing known as '*received for shipment*' bill of landing. It simply acknowledges that goods have been received by the shipowner for shipment and does not admit whether the goods have been put on board a ship or not.

#### **Requisites of Bill of Landing :**

Under the Carriage of Goods by Sea Act, 1925, a bill of landing or a similar document of title must contain the following :—

(i) It must contain an express statement that it is to have effect subject to the rules laid down in the Act.

(ii) It must contain statements showing among other things :—

(a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage ;

(b) the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper ;

(c) the apparent order and condition of the goods :

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking (Carriage of Goods by Sea Act, 1925 r. 3, III Schedule).

#### Effects of a Bill of Lading :

The effects of a bill of lading issued under a charter party are:—

(i) A bill of lading signed by the master within the ordinary scope of his authority is binding on the shipowner even if the ship is chartered unless the charter amounts to a demise, or the shipper knew of the existence of the charter at the time of shipment and the shipper can sue the owner if the goods are lost or damaged by any cause not excepted in the bill of lading (*Sandeman V. Sewar*, L. R. 2. Q. B. 86).

(ii) Where a bill of lading is issued to a shipper other than the charterer, who ships goods on a ship which is chartered by way of a demise, the charterer alone is liable for any loss or damage to the goods covered by the bill of lading whether the shipper knew of the charter or not (*Bumvall V. Gilchrist*, A. C. 8).

(iii) Where the shipper has notice that the ship is chartered and that under the charter the master is the agent of the charterer in signing bills of lading, the shipper can sue the charterer only for any loss or damage even if the charter does not amount to a demise

(*Samuel V. West Hartlepool Steam Navigation Co.*, 11 Com. Cas. 115).

(iv) Where the charterer is himself the shipper, the bill of landing is to be regarded as merely a receipt for the goods and cannot vary the terms of the charter unless the parties expressly and clearly intend to effect such variation. In *Wagstaff V. Anderson*, Lord Bramwell observed, "to say that the bill of landing is a contract, superseding, adding, to or varying the former contract, is a proposition to which I can never consent".

(v) Where a bill of landing, issued to a charterer who is also the shipper, is transferred to a *bona fide* transferee for value without notice of the terms of the charter party, the shipowner cannot rely on the charter party as against such transferee and is bound by the terms of the bill of landing. The position would be the same as against a shipper or an endorsee from him who takes a bill of landing in ignorance of the terms of the charter party (*Patria*, L. R. 3 A & E. 436).

The effects of a bill of landing whether issued under a charter party or not are:—

(i) A bill of landing shall be *prima facie* evidence of the receipt by the carrier of the goods described therein, (Carriage of Goods by Sea Act, 1925, r. 4. Art. III of the Schedule). The carrier will be liable for any deficiency in the weight or quantity or packages and the condition of the goods as stated unless he can show that the statement in the bill of landing relating to these was incorrect.

(ii) The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses, arising or resulting from inaccuracies in such particulars.

(iii) Where any particular weight of a bulk cargo is accepted by a third party other than the carrier and is incorporated as such in a bill of landing such weight will not be *prima facie* evidence against the carrier and the shipper will not also be deemed to guarantee the accuracy thereof and the carrier will not be liable for any deficiency in the weight even to a transferee of the bill of landing for value.



(iv) If a bill of lading is transferred to a *bona fide* transferee for value, the statements in the bill of lading are conclusive evidence against the carrier even if the goods have not, in fact, been shipped or the statements as to the quality, quantity and weight are incorrect and the carrier will be liable to the transferee for non-delivery or deficiency in the quality, quantity or weight of the goods (*Brown V. Powell Coal Co.*, L. R. 10 C. P. 562). But the carrier will not be liable even to a transferee for value if the bill was obtained by misrepresentation or fraud of the holder of the bill or the shipper or some person under whom the holder claims or if the holders knew at the time of the transfer of the bill to him that the statements in the bill were incorrect (*Valleri V. Boyland*, L. R. I. C. P. 382).

**Bill of lading as a Document of Title—Transfer of Bill of Lading :**

Where a bill of lading is transferred to the consignee named in it or to an indorsee the right to have possession of the goods passes to the transferee ; “that is the symbol of the goods, and a transfer of it is, symbolically, a transfer of the possession of the goods themselves. Until the goods have been delivered a delivery of the duly indorsed bill of lading operates, as between the transferor and the transferee, and all who claim through them as a physical delivery of the goods would do. And thus the possession may, in effect, be passed from one buyer, pledgee, etc., to another while the goods are still in the hands of the shipowner,” (Carver).

The Bill of lading is thus generally a document of title, carrying with it the right to demand and have possession of the goods described in it. But in order that it may have this character, it must purport on the face of it to be transferable—usually by stating that delivery is to be to the “order or assigns” of the consignee, or of the shipper ; and words of this kind seem to be essential to the transferability.

Where delivery is to be to the “order or assigns” of any person indicated by the bill of lading, it may be transferred by an indorsement on the bill of lading. It may be special in favour of some particular person, or general, by a blank indorsement of the orderer’s signature upon the document. In the latter case the bill

of landing may afterwards be transferred by mere delivery ; but where the indorsement is special the indorsee must again make an order, in order to transfer it.

**Whether Bill of Landing is Negotiable Instrument :**

The characteristic feature of a negotiable instrument is that a holder in due course acquires a valid title to the instrument, even as against the true owner, irrespective of any defect in the title of his transferor in all cases excepting when he derives his title through a forged indorsement. But the holder of a bill of landing takes the bill subject to any defect in the title of his transferor or any person from whom his transferor derives his title whether he is a holder for value without notice of such defect or not (*Curney V. Behrend*, 3 E. & B). So a bill of landing cannot be regarded as a negotiable instrument. Thus where a ship's goods to C and sends the bill of landing to C along with a bill of exchange, the intention of the parties is that the property in the goods will only pass on C's acceptance of the bill of exchange. (Scrutton). If C takes the bill of landing wrongfully without accepting the bill of exchange and indorses it in favour of D who takes it *bona fide* and for value, D will have title to the goods as against A, though he was not aware of the defect in C's title. A bill of landing is, therefore, negotiable in a popular sense and not in a technical sense (Scrutton).

**Warranties and Terms :**

The statements in a contract of affreightment are either warranties or terms. A warranty in a maritime contract as in a marine insurance contract is a condition which must be exactly complied with and non-compliance with it entitles the party relying thereon to repudiate the contract. "It is either an affirmation or promise of the existence of some fact or facts upon the non-existence of which the contract ceases to exist". A term, on the other hand, means an affirmation or promise which is not so vital as to make the contract dependent upon its truth. Its breach only gives rise to a right for damages to the aggrieved party. Whether a term in a contract of affreightment is a warranty or a term is to be determined by the court from the intention of the parties to be

gathered from all surrounding circumstances (*Behu V. Burness*). In *Sugar V. Duthie* (8. C. B. N. S. 45) a ship was chartered to be ready on or before 10 November, or the charterers would have the option of cancelling the agreement. It was held that such readiness was a condition precedent or warranty, the breach of which would entitle the charterer to cancel the agreement. The same charter also contained the provision that the Captain should attend daily at the broker's office to sign bills of landing. It was held that the provision for daily attendance was only a term and not a warranty.

A party entitled to repudiate a contract of affreightment may waive a breach of warranty and treat it as a mere term and sue for damages.

Warranties may be express or implied.

#### **Implied Warranties :**

The warranties implied in every contract of affreightment, unless they are excluded by clear and unambiguous words, are :—

(i) *Warranty of seaworthiness.* The carrier shall be bound before and at the beginning of the voyage, to exercise due diligence to:—

- (a) make a ship seaworthy ;
- (b) properly man, equip and supply the ship ;
- (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation, (Carriage of Goods by Sea Act (Schedule Art III, r. I.)

Seaworthiness is a relative term and varies according to the nature of the voyage and the cargo to be carried. A ship may be seaworthy for a voyage in home waters but unseaworthy for a voyage across the Atlantic. It may be seaworthy for a voyage at one season of the year and not for a voyage at another season. Similarly, a ship without a refrigerating machine may be seaworthy for carrying wheat but not for carrying frozen meat.

When there are different stages in a voyage the ship must be seaworthy at the commencement of each stage, i. e., she must be seaworthy at the beginning of each stage of the voyage, in respect

of equipment or preparation necessary for the purpose of that particular stage.

A contract of affreightment cannot imply an absolute undertaking by the carrier of the goods to provide a seaworthy ship (Carriage of Goods by Sea Act, 1925, S. 2). The undertaking of the shipowner is only to exercise due diligence to make the ship seaworthy. The shipowner is not liable for any unseaworthiness which could not be discovered by due diligence or care.

(ii) *Warranty of reasonable despatch.* By entering into a contract of affreightment a carrier impliedly undertakes that the ship "shall be ready to commence the voyage agreed on, and to load the cargo to be carried and shall proceed upon and complete the voyage agreed upon, with all reasonable despatch (Scrutton). Breach of such undertaking entitles the shipper to recover damages for any loss which he may have suffered due to delay.

There are circumstances, such as, the ship is requisitioned by the government before the voyage starts, the ship is detained at the port of loading by an order of the government as a result of war, the ship is lost due to no fault of the carrier which render the performance of the contract impossible. In such cases the rights and obligations of both parties come to an end excepting that any party who has received any benefit under the contract, is bound to restore it to the other party (S. 65, Indian Contract Act).

(iii) *Warranty against deviation.* In the absence of an express stipulation authorising deviation the carrier by a contract of affreightment impliedly undertakes to take the ship along the proper route of the voyage without unnecessary deviation. The proper route is the usual and customary route when no route is fixed by the contract. When a particular route is fixed by the contract the proper route is the route so fixed.

Besides deviation provided for by an express stipulation in the contract, the following cases of deviation may be justified under the Common Law:—

(a) The ship deviates to save human life, as from a wrecked or torpedoed ship lying outside the ordinary route ;

(b) The ship deviates in order to avoid some imminent peril, e. g., pirates, icebergs, etc. (*The Tentonia*, L.R. 4 P.C. 171)

(c) The ship deviates for repairing damages to the ship or the cargo (*Phelps, James & C. V. Hill*, 1. Q. B. 605).

(iv) *Warranty by shipper not to ship dangerous goods without notice.* By a contract of affreightment the shipper impliedly undertakes that the goods he ships are not dangerous. If he ships such goods without notice to the shipowner of the dangerous character of the goods he will be liable for the damage caused to any person by the shipment of such goods, unless the goods are so well-known that the shipowner ought to know of their dangerous character (*Brass V. Mainland*, 6 E & B. 470). "Goods may be dangerous within this principle if owing to legal obstacles as to their carriage or discharge they may involve detention of the ship (Scrutton).

#### [Excepted Perils :

"Excepted perils" refer to those clauses in a charter party or a bill of lading which relieve the carrier of his liability for any loss or damage to the goods entrusted to him caused by any of the perils specified in those clauses. The Carriage of Goods by Sea Act, 1925 prohibits a carrier carrying goods under a bill of lading from contracting out of his liability for negligence in performing his duties enjoined by the Act or in taking reasonable care for loading, stowing, handling or discharging the goods.

The 'excepted perils' which are usually provided for in a charter party or a bill of exchange are:—

- (a) Perils of the sea,
- (b) Act of God,
- (c) King's enemies,
- (d) Arrests or restraints of princes, rulers and peoples,
- (e) Pirates, robbers and thieves,
- (f) Barratry,
- (g) Negligence of masters and mariners,

#### Responsibilities and Liabilities :

The duties imposed by the Carriage of Goods by Sea Act, 1925, on a carrier under a bill of lading are:—

- (i) The carrier is bound, before and at the beginning of the voyage, to exercise due diligence to.—

- (a) make the ship seaworthy ,
- (b) properly man, equip, and supply the ship, and ,
- (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

(i) The carrier must properly and carefully load, handle, stow, carry, keep, care for the discharge the goods carried subject to the immunities granted to him under the Act.

### Immunities :

Under the Carriage of Goods by Sea Act, 1925, a carrier carrying goods under a bill of lading or a similar document of title is entitled to the following immunities.

(i) The carrier is not liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy and to secure that the ship is properly manned, equipped and supplied and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation.

(ii) A carrier is not responsible for loss or damage arising or resulting from.

(a) Act, neglect or default of master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship.

(b) Fire, unless caused by the actual fault or privity of the carrier.

(c) Perils, dangers and accidents of the sea or other navigable waters.

(d) Act of God, e. g., tempest ;

(e) Act of War ;

(f) Act of public enemies ;

(g) Arrest or restraint of princes, rulers or people or seizure under legal process ;

(h) Quarantine restrictions ;

(i) Act or omission of the shipper or owner of the goods, his agent or representative ;

(j) Strikes or lock outs or stoppage or restraint of labour from whatever cause, whether partial or general ;

(k) Riots or Civil commotions ;

(l) Saving or attempting to save life or property at sea ;

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods.

(n) Insufficiency of packing ;

(o) Insufficiency or inadequacy of marks ;

(p) Latent defects not discoverable by due diligence ;

(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

(iii) The shipper is not responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

(iv) A carrier is not liable for any loss or damage resulting from any deviation in saving or attempting to save life or property at sea or from any other reasonable deviation.

(v) A carrier is not liable for any loss or damage to or in connection with goods in an amount exceeding 100 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of landing.

The declaration if embodied in the bill of landing is *prima facie* evidence, but is not binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than £100 may be fixed provided that such maximum is not less than £100.

The carrier is not responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of landing.

(vi) Goods of an inflammable, explosive or dangerous nature to the shipment where of the carrier, master or agent of the carrier

has not consented, with knowledge, of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods is liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with the knowledge and consent of the carrier, master or agent of the carrier becomes a danger to the ship or cargo they may be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except the liability to contribute to a general average loss where they are destroyed or sold at an undervalue before discharge.

(vii) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading. Such notice need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier is discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver must give all reasonable facilities to each other for inspecting and tallying the goods (Art. III, r. 6).

#### **Surrender of Immunities :**

A carrier is at liberty to surrender in whole or in part all or any of his right and immunities or to increase any of his liabilities and responsibilities provided such surrender or increase is embodied in the bill of lading issued to the shipper.

#### **Immunities under the Merchant and Shipping Act, 1894 :**

The Merchant and Shipping Act, 1894, is an act of the British



Parliament. Protection granted to the shipowners by Section 502 and 503 of the said Act extend to the whole of the British Empire and is not affected by the Carriage of Goods by Sea Act, 1925. The immunities granted by the Merchant and shipping Act, 1894, are:—

(i) The owner of a British Sea-going ship or of any share therein is not liable for any loss or damage happening without his actual fault or privity in the following cases.

(a) Where any goods are lost or damaged by reason of fire on board the ship ; or.

(b) Where any gold, silver, diamonds, watches, jewels or precious stones, the true nature and value of which have not been declared by the owner or shipper thereof to the owner or master of the ship in the bills of landing, or otherwise in writing, are taken in or put on board the ship and are lost and damaged by reason of any robbery, embezzlement, making way with, or secreting thereof.

(ii) The owners of a ship, British or Foreign, are not liable to damages beyond the maximum amounts fixed by law (Section 503, Merchant and Shipping Acts, 1894) where such damages are caused without their actual fault or privity in any one of the following cases :

(a) Where any loss of life or personal injury is caused to any person carried in the ship ;

(b) Where any loss of life or personal injury is caused to any person carried in any other vessel due to the improper navigation of the ship ;

(c) When any damage or loss is caused to any goods, merchandise or other things whatsoever, on board the ship ;

(d) Where any damage or loss is caused to any other vessel, or to any goods, merchandise or other things whatsoever on board any other vessel, due to the improper navigation of the ship.

#### **Clauses in a charter party :**

A charter party usually contains the following clauses.

(i) *Proceeding to the place of loading.* This clause imposes a duty on the shipowner to proceed to the place of loading. The

port or the place of loading may be named in the charter or may be left to be named by the charterer. As regards time within which the ship should reach the port of loading, the charter party usually provides that the ship should reach the port of loading either by a fixed date or with reasonable or all convenient speed. The charterer may, in addition to cancelling the charter, where he is entitled to do so, sue the shipowners for damages caused by the delay unless it is brought about by excepted perils.

(ii) *Loading of the cargo.* This clause imposes a duty on the charterer to load the cargo. This duty is threefold, namely, (a) the cargo must reasonably comply with the terms of the charter, (b) the charterer must bring the cargo to the loading place if it is not already there, and (c) the charterer must perform his part of the actual loading, if any.

(iii) *Cesser Clause.* Under this clause the liabilities of the charterer under the charter party ceases on the cargo being shipped. This clause is inserted in consideration of the charterer granting to the shipowner a lien on the cargo for demurrage and dead freight.

(iv) *Unloading or discharge of the cargo.* This clause imposes a duty on the shipowner to proceed with his ship to the port of discharge and arrange for the discharge of the cargo. The duty of having the cargo unloaded after it has been taken out of the ship's hold by the shipowner is in the absence of agreement or custom, on the charterer or the shiper. If the charter party or the bill of lading does not fix a time for unloading the consignee is entitled to a reasonable time for unloading.

(v) *Demurrage.* "Demurrage, in its strict meaning, is a sum agreed by the charterer to be paid as liquidated damage for delay beyond a stipulated or reasonable time for loading and unloading" (Scrutton). A charter party usually contains the demurrage clause which provides that the charterer should finish the loading or unloading within a fixed time or at a fixed rate. The time so fixed is known as lay days. Where no time is fixed the charterer should finish the loading and unloading within a reasonable time consistent with the circumstances and custom of the port.

When the charterer agrees to pay a liquidated amount, by way of compensation for each day's delay where the lay days are fixed or after the expiry of a reasonable time where the lay days are not fixed the stipulation as to demurrage is exhaustive. When the demurrage is to be paid for each day's delay upto a specified number of days after the expiry of lay days or of a reasonable time according as whether the lay days are fixed or not the stipulation as to demurrage is partial.

When a charter party contains express stipulations regarding demurrage the persons liable for demurrage are :—

(a) The charterer unless he is relieved of liability under a cesser clause or under a new contract evidenced by a bill of lading issued subsequently (Scrutton).

(b) The parties to a bill of lading, if the charter party stipulations as to demurrage are expressly incorporated in the bill of lading (Scrutton).

#### Master of the Ship :

The master, popularly known as the Captain, is the highest officer on board a ship. He represents the shipowner as his agent for various purposes. He signs the bills of lading as the owner's agent. Where the ship is chartered and the charterer puts up the ship as a general ship, the master may sign the bill of lading as the charterer's agent. He has to make the ship seaworthy, and navigate the ship without unreasonable delay and unjustified deviation. He is empowered to do all that is usual and necessary in the usual course of the employment of the ship. He must take reasonable care of the cargo. He must deliver the cargo at their destination in proper condition and to the proper party. In times of emergency the master as an agent of necessity can do whatever is reasonable under the circumstances. He may raise money on the security of the ship for the necessary purposes of the voyage if he cannot communicate with the owner or procure money by any other means. He may, when absolutely necessary, enter into a salvage agreement on behalf of the shipowner as well as the cargo-owner. If the master raises money on the security of the cargo without obtaining the consent of the cargo-owner, when it

was possible to communicate with him, the cargo-owner will not be bound by the bond. In extreme cases, specially where the goods are damaged, he may sell them, but here also he must, whenever possible, obtain the consent of the cargo-owner. Where the master cannot raise the necessary money to enable him to proceed with the voyage, either on the credit of the shipowner, or on his own credit, or is unable to communicate with the owner, he may sell a part of the cargo in order to be able to carry the rest to its destination. The master can 'Jettison' or throw overboard a part of the cargo in order to save the rest.

#### Bottomry and Respondentia :

When money is raised on the security of the ship, freight and cargo the contract is known as 'bottomry bond'. Where money is raised on the security of cargo only the contract is known as 'Respondentia'. The Characteristics of bottomry and respondentia are:—

- (a) The contract must be in writing.
- (b) Bottomry has the effect of hypothecating the ship, freight and cargo. Respondentia has the effect of hypothecating the cargo only.
- (c) The money advanced on bottomry or respondentia is repayable only on the safe arrival of the ship or cargo at its destination and not otherwise. The borrower is relieved of the liability in the case the ship or the cargo which is the security for the loan is lost before arrival at destination.
- (d) The lender on a bottomry or respondentia has a 'maritime lien' on the hypothecated ship or cargo. If the money is not repaid within the time prescribed the lender may institute an Admiralty action for the arrest of the ship or cargo and its sale.

If, after the first bottomry bond, the master proceeds with the voyage and has, at some other port, to raise further money for urgent repairs for which he gives a second bottomry bond to some person the last hypothecatee has a prior claim over the prior hypothecatees.

**Freight :**

Freight is the consideration payable to the carrier for the carriage of goods. Generally, freight is due on the completion of the voyage when the carrier substantially performs the contract of affreightment by delivering the goods in a condition.

**The usual kinds of freight are :**

(a) *Simple Freight.* This is payable on the delivery of cargo at the rate fixed in the contract. This is the most common type of freight.

(b) *Advance Freight.* This is payable before the goods are delivered at the destination. The actual point of time on which it is to be paid is fixed in the contract. It must be paid even if the goods are lost, provided the loss occurs after the due date of payment (*Oriental S. S. Co. V. Taylor*, 2. Q. B. 518). If the freight has been paid before the goods are lost the carrier can retain it (*Byene V. Schiller*, L. R. 6 Ex. 20, 319). It is immaterial whether the loss is caused by excepted perils or not (*Rodocanachi V. Mulburn* 18 Q. B. D. 67).

(c) *Dead Freight.* Where the charterer fails to furnish a full cargo as agreed he would have to pay compensation, known as dead freight to the carrier for loss of freight.

(d) *Lump Sum Freight.* This is payable for the use of the whole ship and for the entire cargo. If the carrier is ready to perform the contract he is entitled to payment of the lump freight though no goods are shipped, or though part of the goods shipped is not delivered. It is immaterial whether the part remaining undelivered is lost by the excepted perils or not (*The Norway*, 3 Moore, P. C. N. S. 245).

(e) *Time Freight.* This is payable for fixed periods of time at the ends of each period specified in the charter party.

*Lien for freight.* The shipowner has a lien in law on the goods he carries for the freight due on the same and he is entitled to retain the cargo till the freight due is paid. For advance freight due dead freight or demurrage there is no lien in law and special

Clauses known as the lien clause', is generally inserted in the charter party to enable the shipowner to acquire such a lien.

*Persons entitled to freight.* Generally, the freight is payable to the person with whom the contract of affreightment is made. It may also be payable to a purchaser, or to a mortgagee, of the ship, or it may be assigned in favour of a third person.

*Liability for freight.* The shipper or the charterer is primarily liable to pay the freight. A consignee or an indorsee of a bill of lading who takes delivery of goods by presenting a bill of lading under which freight is payable becomes liable to pay the freight (*Sonders V. Vanzeler*, 12 L. J. E. 497).

## CHAPTER IV

### CARRIAGE OF GOODS BY AIR

The Indian Carriage by Air Act, 1934, was passed to give effect to the Convention held in Warsaw in 1929 for unification of certain rules relating to international carriage by air.

#### Definitions and Scope :

(Rules 1 & 2, First Schedule).

(i) These rules apply to all international carriage of persons luggage or goods performed by aircraft for reward. They apply also to such carriage when applied gratuitously by an air transport undertaking.

(ii) *High Contracting party*. It means a high contracting party to the convention.

(iii) *International Carriage*. It means any carriage in which according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two high contracting parties, or within the territory of a single high contracting party, if there is an agreed stopping place within a territory subject to the sovereignty suzerainty, mandate or authority of another power, even though that power is not a party to the convention. A carriage without such an agreed stopping place between territories subject to the sovereignty mandate or authority of the same high contracting party is not deemed to be international.

(iv) A carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, to be one undivided carriage, if it has been regarded by the parties as a single operation whether it has been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty,

suzerainty, mandate or authority of the same High contracting party.

2. (i) These rules apply to carriage performed by the state or by legally constituted public bodies provided it falls within the conditions laid down in the Rule at 1.

(ii) These rules do not apply to carriage performed under the terms of any international postal convention.

**Documents of Carriage :**

The documents issued by the carrier for the carriage of goods and passengers are (a) Passenger ticket, (b) Luggage ticket, and (c) Air Consignment Note.

*Passenger Ticket :—*

Rule 3 of the First Schedule to the Carriage by Air Act provides as follows:—

(i) For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:—

(a) the place and date of issue ;

(b) the place of departure and of destination ;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character.

(d) the name and address of the carrier or carriers ;

(e) a statement that the carriage is subject to the rules relating to liability under the Act.

(ii) The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions in the Act which exclude or limit his liability.

*Luggage ticket :*

(Rule 4, First Schedule)

(i) For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.



(ii) The luggage ticket shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(iii) the luggage ticket shall contain the following particulars

(a) the place and date of issue ;

(b) the place of departure and destination ;

(c) the name or address of the carrier or carriers ;

(d) the number of the passenger ticket ;

(e) a statement that delivery of the luggage will be made to the bearer of the luggage ticket ;

(f) the number and weight of the packages ;

(g) the amount of the value declared in accordance with Rule 22 of the Act ;

(h) A statement that the carriage is subject to the rules relating to liability under the Act.

(iv) The absence, irregularity or loss of the luggage ticket does not affect the existence of the validity of the contract of carriage which shall none the less be subject to these rules. Nevertheless, if the carrier accepts luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain the particulars set out at (iii) (d), (f) and (h) the carrier shall not be entitled to avail himself of those provisions in the Act which exclude or limit his liability.

*Air consignment note :*

(Rules 5 to 16, First Schedule)

1. (i) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called 'air consignment note' ; every consignor has the right to require the carrier to accept this document.

(ii) The absence, irregularity or loss of the document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions at 5, be none the less governed by these rules.

2. (i) The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.

(ii) The first part shall be marked 'for the carrier' and shall be signed by the consignor. The second part shall be marked 'for the consignee', it shall be signed by the consignor and by the

carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(iii) The carrier shall sign an acceptance of the goods.

(iv) The signature of the carrier may be stamped ; that of the consignor may be printed or stamped.

(v) If, at the request of the consignor, the carrier makes out the 'air consignment note', he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

3. The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

4. The air consignment note shall contain the following particulars.

(a) the place and date of execution ;

(b) the place of departure and of destination ;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character ;

(d) the name and address of the consignor ;

(e) the name and address of the first carrier ;

(f) the name and address of the consignee ; if the case so requires ;

(g) the nature of the goods ;

(h) the number of packages, the methods of packing and the particular marks or number upon them ;

(i) the weight, the quantity and the volume or dimensions of the goods ;

(j) the apparent condition of the goods and of the packing ;

(k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it ;

(l) If the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred ;

(m) the amount of the value declared in accordance with Rule 22 of the Act ;

- (n) the number of parts of their consignment note ;
- (o) the documents handed to the carrier to accompany the air consignment note ;
- (p) the time fixed for the completion of the carriage and a brief note of the route to be followed if these matters have been agreed upon ;
- (q) a statement that the carriage is subject to the rules relating to liability under the Act.

5. If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in 4 (a) to (i) inclusive and (q) the carrier shall not be entitled to avail himself of the provisions in the Act which exclude or limit his liability.

6. (i) The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note. (ii) the consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

7 (i) The air consignment note is *prima facie* evidence of the conclusion of the contract, of the receipt of the goods, and of the conditions of carriage. (ii) the statement in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated, those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

8. (i) Subject to his liability to carry out all his obligations under the contract of carriage the consignor has the right to dispose of the goods by withdrawing them at the aërodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at

the place of destination, or in the course of the journey to a person other than the consignee named in the air consignment note or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(ii) If it is impossible to carry out the orders to the consignor the carrier must so inform him forthwith.

(iii) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any persons who is lawfully in possession of that part of the air consignment note.

(iv) the right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with the following rule. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with the consignor resumes his right of disposition.

9. (i) Except in the circumstances set out in the above rule, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

(ii) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(iii) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the days on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

10. The consignor and the consignee can respectively enforce all the rights given them by the rules at 8 and 9, each in his own name whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

11. (i) Rules at 8, 9 and 10 do not affect either the relation of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(ii) The provisions at 8, 9 and 10 can only be varied by express provision in the air consignment note.

12. (i) The consignor must furnish such information and attach to the air consignment notes such documents as are necessary to meet formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(ii) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

### **Liability of the Carrier :**

(Rules 17 to 30, First Schedule)

1. The carrier is liable for damage sustained in the event of death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. (i) The carrier is liable for damage sustained in the event of destruction or loss or, of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(ii) The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or in the case of a landing outside an aerodrome, in any place whatsoever.

(iii) The period of the carriage by air does not extend to any carriage by sea or land, by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the

contrary, to have been the result of an event which took place during the carriage by air.

3. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

4. (i) The carrier is not liable if he proves that he and his agent have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(ii) In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

5. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may exonerate the carrier wholly or partly from his liability.

6. (i) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract the carrier and the passenger may agree to a higher limit of liability.

(ii) In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(iii) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5000 francs per passenger.

(iv) The sum mentioned in this rule shall be deemed to refer to the French franc consisting of 65 miligrams gold of millesimal fineness 900.

7. Any sum in francs mentioned in the above rule shall, for the purpose of any action against a carrier, be converted into

rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the court (Rule 5, Indian Carriage by Air Act, 1934).

8. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of the Act.

9. (i) In the cases covered by rules at 2 and 3 any action for damages, however founded, can only be brought subject to the conditions and limits set out in the Act.

(ii) In the cases covered by the rule at 1 the provisions of the above rule also apply without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

10. (i) The carrier shall not be entitled to avail himself of the provisions of the Act which exclude or limit his liability if the damage is caused by his wilful misconduct or by such default on his part as is in the opinion of the court equivalent to wilful misconduct.

(ii) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

11. (i) Receipts by the person entitled to delivery of luggage or goods without complaint is *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of carriage.

(ii) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

(iii) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the time aforesaid.

(iv) Failing complaint within the time aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

12. In the case of the death of the person liable, an action for damages lies in accordance with the rules against those legally representing his estate.

13. An action for damages must be brought at the option of the plaintiff, either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.

14. *Provisions regarding suits against High Contracting Parties who undertake carriage by air* (i) Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto, shall for the purposes of any suit brought in a court in India in accordance with the provision of the above rule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that court and to be a person for the purposes of the Code of Civil Procedure, 1908.

(ii) The High Court may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(iii) Nothing in this rule shall authorise any court to attach or sell any property of a High Contracting Party to the conventions, [S. 3 (i) (2) & (3), Indian Carriage by Air Act, 1934].

15. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

16. (i) In the case of carriage to be performed by various successive carriers each carrier who accepts passengers, luggage or goods is subjected to the rules set out in the Act, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(ii) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed



the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(iii) As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger, or to the consignor or consignee.

### **Provisions Relating to Combined Carriage**

(Rule 31, First Schedule)

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions detailed above apply only to the carriage by air, provided that the carriage is international carriage as defined by the Act.

2. Nothing in this Schedule (First Schedule, Indian Carriage, by Air Act, 1934) prevents the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of the said Schedule are observed as regards the carriage by air.

### **General and Final provisions**

(Rules 32 to 35, First Schedule)

1. Any clause contained in the contract and all special agreements entered into before the damage occurred by which parties purport to infringe the rules detailed above, whether by deciding the law to be applied or by altering the rules as to jurisdiction, is null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to these rules if the arbitration is to take place in the territory of one of the High Contracting Parties within one of the jurisdictions referred to in the Rule at 13 above.

2. Nothing contained in this Schedule (First Schedule, Indian Carriage by Air Act, 1934) shall prevent the carrier either from

refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of the said Schedule.

3. The above mentioned Schedule does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

### BANKING BUSINESS

(Law regulating the business between bankers and their Customers).

#### Banker :

The term 'Banker' has nowhere been defined in precise terms. Section 3 of The Negotiable Instruments Act simply states that a banker "includes also persons or a corporation or Company acting as bankers". Similar to it is the definition of Halsbury which is as follows:—

"A bank is a corporation, partnership or individual carrying on the business of banking". Both these definitions distinguish a banker by his functions but do not give any idea of what that function and businesses.

Hart defines a bank or a banker as a person or company carrying on the business of receiving moneys and collecting drafts for customers, subject to the obligation of honouring cheques drawn on him by the customers to the extent of the amounts available in their current accounts. This definition, though an attempt to state the outlines of a banker's business, is however, defective because it ignores the following facts, namely:—

- (a) cheques may be drawn not only on current accounts but also on other accounts, e. g., Savings Bank Accounts;
- (b) money may also be withdrawn otherwise than by cheque;
- (c) a banker also undertakes business other than receiving moneys and collecting drafts, e. g., lending money to others, opening letters of credit, discounting bills of exchange and drafts.

Taking into consideration the essence of all the above definitions, it may be said that banking business means the receipt of deposits of money from the public for the purpose of lending or investment, such money being repayable on demand or otherwise, and withdrawable by cheque draft order or otherwise and also includes collection of cheques and drafts and remitting money and negotiating bills of exchange, with a view to making a profit by such business. A bank is, therefore, distinguishable from a Government treasury. Though the treasury receives deposits from certain approved depositors and pays out money according to their orders, it is not a bank because the fundamental element of profit-making is absent.

#### **Relation between a bank and its customer :**

We have defined a bank above. Now, a customer may be defined as one who has entered into some relation with the bank, either by opening an account or by connecting the bank in some of his business ventures.

The principal duties of a bank vis-a-vis its customers are two, namely, (a) to pay the cheques drawn by the customers if conditions of such payment are fulfilled and (b) to collect cheques and drafts paid in by customers.

#### **Payment of Cheques :**

The bank is bound to pay the cheque of its customer provided the following conditions are fulfilled, namely:—

- (i) there must be sufficient funds of the drawer ;
- (ii) the funds must be properly applicable to the payment of the cheque ;
- (iii) the bank must be duly required to pay.

If default is made in paying the cheque in spite of the above conditions being fulfilled, the bank must pay damages to the customer.

The term "sufficient funds" means sufficiency of the depositor's own funds so as to be more than or equal to the amount of the cheque unless the Bank has agreed to allow overdraft facilities upto a certain limit, in which case the 'sufficient funds' will

mean the depositor's own money plus the maximum limit upto which overdraft facilities have been agreed to be allowed.

The phrase 'funds must be properly applicable' means that the payment required by a cheque must not be contrary to any contract existing between the banker and the customer. Thus, if there is a condition attached to the account that the customer will be entitled to draw only one cheque per week, the bank will have the right to refuse a second cheque within the same week. Similarly, if an account is opened by a trustee and the bank has express notice that the funds are trust funds, it should refuse to honour a cheque drawn by the trustee in his favour or for some purpose other than the trust.

The clause 'the bank must be duly required to pay' means that the order to pay contained in a cheque must be made and communicated according to law and according to accepted practice and usage of the banking business.

#### **Discharge of the Banker's Liability :**

This has been discussed in details under '*Negotiable Instruments.*'

#### **Accounts :**

When a proposal is made for the opening of an account, the bank with a view to avoiding future complications, insists on the observance of certain formalities by the prospective customer. The most important of them are the following :—

(a) The proponent is to be introduced by someone known to the manager of the bank, preferably one who has an account with it.

(b) The bank receives a number of specimen signatures from the customer or from such persons as will operate on the account.

(c) The customer is issued a 'cheque book' duly numbered serially, each cheque whereof is initialled by the issuing clerk or anybody else authorized to do so. It is also usual to note on each cheque the account number of the customer so as to ensure that cheque issued to one customer may not be used by another.

(d) A pass-book is issued in the case of a Savings Account but no such book is issued in the case of a Current Account.

While deposits and withdrawals of a Savings Account are recorded in the said pass-book, holders of current account are furnished monthly statements of such deposits and withdrawals.

(e) The customer is also furnished a book containing a number of 'paying-in-slips' to be used for the purpose of depositing funds with the bank. All deposits are to be made by making entry into one of such paying-in-slips. Duly signed by the customer or his agent, the paying-in-slip is to be presented to the receiving cashier at the time of paying in. The receiving cashier stamps and initials the slip and the counterfoil and returns the counterfoils to the customer which serves as an acknowledgment of the receipt of the payment by the Bank.

### **Kinds of Account :**

1. *Current.* A current account is one on which the customer can draw by cheque or otherwise as many times in a week as he likes, even drawing several times in a day. According to common banking practice, no interest is allowed on deposits made under a current account and guarantee of minimum balance has to be given at the time of opening the account. If the deposit at any time falls below the guaranteed minimum balance, the bank is at liberty to deduct from the deposit a nominal sum, say Rs. 5/00 by way of penalty.

2. *Savings.* A Savings account is one which usually stipulates that the customer can draw on it by cheque once or twice a week. This account provides for interest on the deposit and there is no condition for minimum balance as in the case of current account. A Savings account, however, fixes the maximum limit of deposit and the maximum amount to be withdrawn by a single check. If any sum exceeding the maximum amount is to be withdrawn by one check, the bank has to be served notice.

3. *Deposit Account.* A deposit account, also called, 'fixed deposit account', is one in which the funds are usually kept for a fixed and long period and cannot be drawn against before it is due. The interest payable on a deposit account is usually higher than on a Savings Account.

4. *Joint Account.* A joint account is one which is opened

jointly in the name of two or more persons. Unless otherwise provided by express stipulation, cheques drawn on a joint account has to be signed by all the parties in whose names the account stands. Where, however, one of the joint drawers dies, the bank is justified in allowing the survivor to draw any balance standing to the joint account.

A joint account may be either current, savings or deposit.

5. *Partnership Account.* An account opened in the name of a partnership firm is called a partnership account. All cheques on such an account are to be drawn in the name of the firm and in the absence of instructions to the contrary, every partner has the right to draw on the partnership account in the name of the firm. (*Taribell V. London Suburban Bank*, 1869, W.N.127). In the case of death of one or more of the partners, the surviving partner or partners may draw on the firm account (*Backhouse V. Charlton*, 1878, 8 Ch. D. 444). But the modern practice is that on the death of a partner, the partnership account should be opened for the purpose of winding the partnership and the bank should insist on opening a new account with the balance, if any, remaining of the old account. (Halsbury's Law of England)

6. *Accounts of Companies.* In the case of an account opened by a company, the bank has to ascertain who is authorized to draw cheques on the account by looking into the memorandum and the articles. Sometimes, where the memorandum leaves the matter open, the Board of Directors decides who is or are to operate the company's bank account and the bank generally accepts the same. Where a director has been duly authorized to draw cheques on the company's account, the bank will honour cheques drawn by him and it will not be liable to the company if it turns out that the cheque was, in fact, issued for a purpose other than that of the company or that the Board of Directors had by a resolution limited his authority to draw cheques, unless the bank has notice, express or implied, of the same. (*Houghton & Co. V. Nothard Lawe & Wills Ltd.*, 1928). But the bank must scrupulously comply with the directions given at the time of the opening of the accounts; otherwise the bank will be liable.

7. *Trust Account.* As decided in *Plunkett V. Barclay's Bank* (1936), a trust account is constituted where a trustee or trustees open an account expressly as trustees and also where the trustee opens an account in his personal name but the bank is fixed with notice of the trust either by the very nature of the account or by express notice thereof. "A trust account is one in which the person or persons entitled to the benefits thereof is or are not the person or persons in whom the legal title of the account vests. Thus if A transfers Rs. 10,000/- to B in trust for C, the legal title of the money will vest in B but the benefit will be derived by C.

Where the account is opened as a trust account, the bank is presumed to have express notice that the funds are trust funds and if should refuse to honour cheques by the trustee in his own favour or for any purpose alien to the trust if that is, apparent on the face of the cheque. (*Plunkett V. Barclay's Bank*, 1936). But the bank is under no duty to scrutinize the purpose of every cheque drawn by a trustee and if it is otherwise regular, it is bound to honour such cheque and it is not to be held liable for such payment. (*Thompson V. Clydesdale Bank Ltd*, 1893). The bank is entitled to presume that the act of a trustee in drawing cheques for third parties is in the course of the lawful performance of his duty and honour such cheques accordingly. (*Coleman V. Bucks and Oxon Union Bank*, 1897).

8. *Executor's and Administrator's Account.* If an account has been opened by a person in his capacity as executor or administrator, the bank must not honour cheques drawn by such executor or administrator, for his own benefit or for purposes other than that of paying the debts and legacies of the deceased provided the bank has express or implied notice of the same. Unless expressly forbidden by the will of the deceased or the letters of administration, each of the executors or administrators, where there are more than one, can separately operate and draw cheques on the account. Hence on the death of one of several executors or administrators, the bank may pay cheques drawn by the survivor or survivors and such a payment will exonerate the bank. (*Clough V. Bond*, 1838).

9. *Agents' Account.* Where the bank has notice that an agent operates an account on behalf of his principal, the bank must see that the agent acts within the scope of his authority and does not misuse his position. Thus, where the customer of a bank who was the agent of a company and was, according to the terms of the agency, bound to use the proceeds of drafts on the principal for the purpose of paying for the purchase made by him on his principal's behalf, discounted some of these drafts with the bank and paid the proceeds into his own account, it was held that the bank has liable for conversion and was bound to pay the proceeds of these drafts to the principal company. (*British American Elevator Co., Ltd., V. Bank of British North America, 1919*).

#### **Payment of forged or altered cheque :**

A forged cheque is not a cheque but a mere nullity. A bank is supposed to know the signature of its customer and has, at any rate, the obligation to ascertain the genuineness of the signature on the cheque before payment is made thereon and, therefore, if payment is made on forged cheque, it cannot debit the customer with the amount of payment unless it can establish estoppel or adoption on the part of the customer.

As regards cheques originally issued and signed by the customer but which have been later altered without due authority, the position is different and there are conflicting decisions on the law. The bank is not liable if the alteration is not apparent or where the bank pays according to the apparent tenor of the cheque. But where the alteration is apparent or noticeable on a reasonable scrutiny the bank is liable for any loss suffered by the customer by such alteration unless there is a breach of any duty owed by the customer to the Bank caused by the neglect of some usual or proper precaution (*Mercantile Bank of India V. Central Bank of India I L. R. 1938*). It is to be noticed, however, that in any event where the alteration has the effect of increasing the amount originally ordered to be paid, the bank can always charge the customer with the original amount. The dispute, in such a case, is always with regard to the excess.



**Payment of Drafts :**

Drafts drawn by one bank on another are to be regarded as cheques and the law relating to their payment by the drawee bank is the same as in the case of cheques. Such drafts may be crossed whereupon the rules governing crossed cheques will apply.

Drafts between two branches or a branch and head office of the same bank must be issued payable to the payee or order. Where any such draft drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course. (Section 85A of Negotiable Instruments Act). Such drafts cannot be regarded as cheques since the drawer and the drawee are in law the same. Hence they cannot be crossed. Even if such a draft bears any crossing the bank must pay it across the counter on presentment provided it is fully endorsed.

**Payment of Bills of Exchange :**

Section 82C of the Negotiable Instruments Act lays down that a bill of exchange is payable to bearer if it is stated to be so or endorsed in blank or if the payee is fictitious. But if the acceptance of the customer is forged the bank cannot charge the customer with the amount of the bill on the same principle as that by which a customer cannot be charged with the amount of a cheque to which the customer's signature has been forged unless the customer is precluded from denying his signature by estoppel or adoption.

Where a customer accepts a bill payable at his banker's it constitutes an authority to the banker to pay it at maturity and if no funds are available, amounts to a request for an overdraft. In such a case the banker is under no obligation to pay the bill even though he has sufficient funds in hand.

**Collection of Cheques :**

Collection of cheques means collecting the proceeds of cheques from other banks on which such cheques are drawn. It is one

of the important functions of a bank. It arises when cheques drawn on such other banks are paid in to the bank by its customers. While discharging this function, the bank is known as a collecting bank as distinguished from a drawee bank on which the cheques to be collected are drawn. In this respect the bank is, as Halsbury puts it, "a mere agent or conduit pipe to receive payment of the cheque from the bank on which it is drawn and hold the proceeds at the disposal of the customer".

While acting as a collecting agent, the bank's duty is to present any cheque, paid in by its customer, for payment with reasonable diligence, i. e., within a reasonable time. It has been held that the reasonable time would be presenting the cheque within one day after the receipt thereof where the cheque is drawn on a bank in the same place (*Alexander V. Burchfield*, 1842) or forwarding or presenting it on the day following the receipt thereof where the cheque is drawn on a bank in another place. (*Hare V. Henty*, 1861).

After the expiry of a reasonable time the customer paying the cheque for collection is entitled to presume that the cheque has been collected and the proceeds thereof have been credited to his account. The customer can, therefore, draw a cheque for an amount not exceeding the amount to be collected after the expiry of such reasonable time. If the bank has failed to collect the cheque in the meantime it cannot dishonour the cheque on the ground of shortage of funds; for there would not have been any shortage had it fulfilled its duty in collecting the cheque promptly. If the bank dishonours the cheque on this ground, the customer can recover damages for wrongful dishonour (*Lubbock V. Tribe*, 1938).

Section 84 of the Negotiable Instruments Act lays down that if a collecting bank makes delay in presenting the cheque to the drawee bank, the former will also be liable to the customer for any other loss which the customer may sustain by reason of such delay. For instance, a customer pays in a cheque for Rs. 1000/- drawn by A on a bank named B. At the time the cheque is paid in and for a reasonable time after that, A has sufficient funds in B. But the bank does not present the cheque within a

week from the date of paying in. Bank B fails before the cheque is presented. The customer cannot make A liable. The bank must, therefore, pay for this loss to the customer.

### **Collection of Bills of Exchange :**

There is no obligation on the part of a bank to collect bills of exchange for its customer but if it undertakes to do so, it must present the bill for acceptance and payment in accordance with the provisions of Negotiable Instruments Act. In case the bill is dishonoured, notice of dishonour must be given to the customer in due time. If the presentment is not done or the notice of dishonour is not communicated in due time, the bank will be liable to the customer.

### **Collection of Drafts :**

“Drafts drawn by one office of a bank on another office of the same bank are not cheques since the drawer and the drawee are, in the eye of the law, the same person. They cannot, therefore, be crossed and even if they are ostensibly crossed, a bank collecting them for its customer would not enjoy the protection which would be available to it if they were crossed cheques. Hence a collecting bank receiving payment in respect of such drafts for its customer who has no title to them would be liable to the true owner for conversion. But a draft drawn on one bank by another bank is a cheque and may be crossed and dealt with as such. Therefore, a collecting bank receiving payment in respect of a crossed draft drawn by one bank on another would enjoy the same protection as against the true owner as would be available to it in the matter of collecting crossed cheques”.

### **The Banker's Lien :**

Under Section 171 of the Contract Act, in the absence of a contract to the contrary, a banker may retain as a security for general balance of account any goods deposited with him by a customer if the customer is indebted to the bank on such a general balance of account. This right of retaining property of another is known as lien. A banker's lien extends to all bills

and cheques paid in for collection and to all securities deposited with the banker by a customer or by a third person on a customer's account and also to money paid in by, or to the account of a customer, unless there be a contract, express or implied, excluding the lien.

In order to be entitled to claim a lien the bank must receive the securities or bills on which the lien is claimed as a banker acting in the course of banking business. (*Brandao V. Barnett*, 1846). Thus the bank cannot claim a lien on securities or valuables deposited with it for safe custody for it receives them not a banker but as a bailee. (*Cuthbert V. Robarts Lubbock & Co.*, 1909). Nor can the bank claim a lien on title deeds casually left at the bank after a refusal by it to advance money on them. (*Lucas V. Dorrien*, 1817).

The banker's lien is not a passive right like an ordinary lien. It gives the banker the right of a pledgee so as to enable him to sell the negotiable instruments or securities on which he has the lien in case the customer fails to repay his debts within the time fixed or where no time is fixed after a reasonable notice to the customer to pay and the failure of the customer to pay within the time fixed by the notice. (*Burdick V. Sewell*, 1884, 13 Q. B. D. 222)

### Letters of Credit :

A 'letter of credit', as the name suggests, is a document requesting the addressee where he is specified or any person to whom it may be presented where the addressee is not specified, to make payments or advances or extend credit to the person to whom the letter is granted upto a specified amount or intimating the addressee or the presentee that the grantee of the letter is authorized to draw bills of exchange on the bank upto a specified amount.

Where the letter is addressed to a specified person, the letter is called 'special' and where there is no specified addressee, it is called 'general' or 'open'. Generally, a letter of credit is addressed to an agent of the bank or to a bank at another place.

Where the letter is a request to pay money or extend credit

to the grantee, the bank becomes liable to the party so paying or extending credit on the production of the letter. (*Morgan V. Lariviere*, 1875). If the letter is special, the bank is liable only to the addressee on his having acted on it and no one else can make the bank liable by acting on it. But if the letter is general, any one acting on it may make the bank liable.

Letters of credit are not negotiable. Therefore, only the grantee is entitled to recover from the issuing bank the money paid or credit extended. If the grantee has paid or deposited money with the issuing bank for obtaining the letter of credit, he can recover any money paid wrongly or by mistake by the issuing bank to any other person who might have obtained or used the letter by fraud or any other offence. (*Orr. V. Union Bank of Scotland*, 1854).

Letters of credit are also issued to travellers in foreign countries.

#### Safe Custody of Valuables :

As decided in a number of leading English cases, the position of a banker accepting deposit of valuables for safe custody is like that of a bailee. Once this is established, the said banker comes within the purview of Section 151 of Contract Act which enjoins him "to take as much care of the goods deposited with him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same description". If, therefore, he takes the amount of care mentioned above he will not be liable for the loss, destruction or deterioration of the goods unless he agrees to accept for value any higher liability at the time of deposit. The banker receiving such deposit is also not liable for the criminal acts of his employees which could not reasonably be anticipated. (*Chestire V. Bailey*, 1905). But if he knowingly employs a dishonest person to handle these valuables, he will be liable for his criminal acts as in employing such a person he can be regarded as having not exercised the amount of care which is required of him. The banker would also be liable to the owner of the valuables if he delivers the

goods to a wrong person, even if the goods have been obtained from him by means of a forged order. (*Stephen V. Hurt*, 1828).

### **Discounting Bills :**

A bank is said to discount a bill when it takes a bill at once as a transferee for a value. Under Section 47 of the Negotiable Instruments Act, where the bill is negotiable by mere delivery, the bank becomes a holder in due course by discounting the bill, even without the indorsement of the customer, if it takes the bill without notice of any defect in the customer's title, if any. But if the bill is payable to order, the bank will be merely a transferee for value and not a holder in due course, unless the bill is indorsed by the customer.

When a bill is received by a bank from a customer, it is a question of fact in every case as to whether the bill is taken for collection or as security for a loan or for discount. But if a bank receives a bill from a person who is not a customer, the presumption is that the bill has been discounted. A bank becomes a holder in due course of a bill discounted by it by the mere delivery thereof, if it is payable to bearer, and by delivery and indorsement, if it is payable to order provided it has no notice of any defect in the title of the person paying in the cheque. "If the bank is the holder of a bill in due course it will not be liable to the true owner if the transferor's title proves defective except in the case of forged indorsement by the transferor or someone from whom the customer took the bill. But the bank will be liable to the true owner if it discounted a bill payable to order without a proper indorsement; for, in such a case the bank will be a mere transferee for value or assignee and not a holder in due course and an assignee takes the assignment subject to all defects in the title of the assignor." (*Halsbury*).

If a bill discounted by a bank for its customer is dishonoured, the bank can debit the customer's account with the amount of the bill where the bill is indorsed by the customer. Where the bill is not indorsed by the customer, the bank cannot debit the customer's account and has to proceed with the ordinary remedies available to a transferee for value.

### Loans By Bank :

One of the Principal functions of a bank is to lend money to its customers and others with a view to making profits. A loan given may be with or without security.

Where loans are expended on the security of mortgages in immovable property the ordinary law of mortgage will apply. Where the security is furnished by valuable securities or negotiable instruments or other kinds of movable property; the bank acquires the position of a pledgee which, subject to the relevant provisions of the law of contract, entitles it to sell the goods pledged if the borrower fails to pay within the time fixed or, where no time is fixed, after the expiry of the time within which he is required to repay by a notice given by the bank fixing a reasonable time within which he is required to pay.

As decided in *Mercantile Bank of India V. Central Bank of India* (1937, 65 I. A., 75), where a loan given by a bank is secured by documents of title, e. g., a bill of lading, the bank acquires the rights of a pledgee in respect of the goods to which the documents refer and does not lose such rights by parting with the custody of the documents or by entrusting them to the borrower or his agent for the special purpose of dealing conveniently with the goods, e. g., for collecting them from the Port and putting them into the Bank's godown. If the borrower commits the fraud of obtaining further advances from other persons on the security of the same documents while they are given to him by the Bank for such special purpose, the bank's title to the goods will not be affected by the interests of these other persons so defrauded even though such fraud would not have been committed if the bank would not have parted with the custody of the documents. But no protection will be available to the bank where it parts with the custody of the documents or carelessly leaves them with the borrower for no such special purpose and as a result of that an innocent third party is defrauded.

Where the advance is made on the security of a negotiable instrument payable to bearer, the bank becomes its holder in due course to the extent of its lien and can realize its dues by

sale or negotiation of the instrument and retain the same as against the true owner whether the borrower had any title in the instrument or not. Where, however, the instrument given as security is payable to order, the bank will not become its holder in due course unless the instrument is indorsed in its favour. In such a case, against, the bank will not become a holder in due course if the indorsement of the borrower or some other previous indorsement is forged. Where the indorsement is forged, the bank will be liable to the true owner unless the bill comes into the possession of the borrower under circumstances sufficient to estop the true owner from disputing the title of the bank.

### Pass Book :

When an account is opened, the customer is provided with a pass book except where it is substituted by the system of furnishing monthly statement of deposits and withdrawals. Where a pass book has been issued, all deposits and withdrawals are periodically recorded in the pass book.

Entries in the pass book to the credit of the customer are *prima facie* evidence against the bank and the customer is entitled to act on them [ *Akro Kerri (Atlantic) Bank Ltd. V. Economic Bank*, 1904 ]. Similarly, entries in the pass book to the customer's debit are *prima facie* evidence against the customer if he makes no objection within a reasonable time. But entries in the pass book are not in all cases conclusive or binding on the bank or the customer (*Shunker V. Punjab National Bank*, 62, I. C. 4772). Thus credits mistakenly or fraudulently entered by a bank official may be rectified by the bank within a reasonable time unless the customer has altered his position by acting on such entries, e. g., has incurred liability to a third party by issuing a cheque on the strength of the entries. (*Mowji Shamji V. National Bank of India*, 25, Bom 499). Similarly, if a customer fails to object to a debit entry in respect of a cheque to which his signature was forged, he cannot be precluded from recovering the amount paid on such cheque when he comes to know of it as the customer is under no legal obligation to examine the pass book from time to time. (*Kepittagalla Subber Estates Ltd. V. National Bank of India Ltd.*, 1909, 2-K. B. 1010).



## APPENDIX

### UNIVERSITY QUESTIONS

#### Law of Contract :

1. What are the essential of a valid contract ? Can there be tacit acceptance of an offer ? (C. U., B. Com., 1930.)

2. "A contract is an agreement enforceable at law". Discuss the statement and state the essential of a valid contract. (D. U., B. Com., 1960.)

3. What are the requisites of a valid contract ? State the circumstances when it is voidable in inception and when it is voidable by subsequent default. (D. U., LL. B. (Final), 1962.)

4. What are the essential elements of a valid contract ? Distinguish between (a) void and voidable contracts, (b) enforceable and unenforceable contracts ? What is the difference between a void and an unenforceable contract ? (D. U., LL. B. (Final), 1961.)

5. Distinguish between void and voidable contracts. Describe agreements which are void under Indian Contract Act, (C.U. B. Com., 1941.)

6. Distinguish between void and voidable contracts. State whether the following agreements are void or valid:--

(a) A promises B in consideration of Rs. 1000/- never to marry throughout his life. (b) A promises to pay a certain amount of money to B who is an intended witness in a suit against A, in consideration of B's absconding himself at the trial. (C. U., B. Com., 1941.)

7. Under what circumstances do (a) fraud (b) misrepresentation vitiate contracts under the Indian Law ? What is the difference between Indian Law and English Law regarding consideration ? (C. U., B. Com., 1941.)

8. What are valid, unenforceable, void and voidable contracts ? Give illustrations of each. (D. U. LL. B (Final), 1962.)

9. Write short notes on any four of the following:--  
(i) Valuable consideration, (ii) misrepresentation, (iii) Covert Emptor, (iv) Contingent contract, and (v) Novation of a contract. (D. U., LL. B. (final), 1961.)
10. To what extent does mistake affects contracts ? (a) When is a contract voidable, and when void ? (b) A fraudulently\* informs B that A's house is free from incumbrances. B thereupon buys the house. The house is subject to a mortgage. What are the rights of B ? (C. U., B. Com., 1934.)
11. Distinguish innocent misrepresentation from fraud. D by misrepresentation induces X to sell a motor car to him and thereafter sells it to Y. Examine the nature of Y's title to the Car. (C. U. B. Com., 1943.)
12. How can a contract be affected by undue influence ? A, a money lender advances Rs. 100/- to B, a former, and by undue influence, induces B to sign a promissory note for Rs. 200/- with interest at 6 p. c. per month. Can A recover the amount of the promissory note ? If so, what amount and interest ? (C. U., B. Com., 1936.)
13. What classes of contracts are not enforceable by courts of law ? What is the policy of law behind such enforceability ? (C. U., B. Com., 1949.)
14. When is the time the essence of a contract ? Is the fixing of a date for the performance of a contract conclusive of the matter ? (C. U., M. Com., 1943.)
15. Explain clearly the law relating to communication of offer and acceptance in the law of contract. (C. U., B. Com., 1939.)
16. (a) Explain the difference between communication of offer and communication of acceptance.  
(b) A person does not act without knowing that a reward has been offered for it. Can he claim the reward ? (C. U., M. Com., 1946.)
17. "A mere mental acceptance not evidenced by words or conduct is, in the eye of the law no acceptance"- Comment. (D. U., B. Com., 1961; C. U., B. Com., 1932.)
18. How can you accept on offer by acting on it ? C. U., B. Com., 1933, 1935.)

19. A offers a reward to whosoever shall bring to him his lost dog. B brings to A his lost dog. Can B claim the reward ? Give reasons. (C. U., B. Com., 1928.)
20. When is an offer complete ? How and when can an offer be revoked ? A proposes, by a letter, sent by post to sell his house to B. B accepts the proposal by a letter sent by post. When can B revoke his acceptance. (C. U., B. Com., 1936, 1950.)
21. Can an acceptance which does not reach the offerer bind offerer ? An offer was made to take shares indicating that the answer was to come by post. It was accepted by letter, but the letter never reached the offeror. Is the offeror liable as a shareholder ? (C. U., M. Com., 1938.)
22. F offered by letter to buy N's horse for Rs. 500/- adding that if he heard no more about the matter he would consider the horse as his. No answer was returned to this letter, but N told B, his auctioneer, to keep the horse out of sale, as it was sold to F. B sold the horse by mistake. F sent B for conversion of his property. Give your decisions. (C. U., M. Com., 1939.)
23. A letter of acceptance is put into the post office. Subsequently a telegram revoking the acceptance is sent and reaches the offeror before the letter. Is the acceptance revoked ? Is the communication of acceptance always necessary ? (C. U., M. Com., 1941.)
24. (a) Acceptance must be something more than a mere mental assent. Illustrate.
- (b) Explain the rule, "offer determines mode of acceptance", with reference to contracts by post. (C. U., M. Com., 1944.)
25. Discuss the contractual liability of minors under the English and the Pakistani Law. (D. U., LL. B. (Final), 1962.)
26. A, a minor, secures loan of Rs. 10,000/- from a money-lender B, by a fraudulent misrepresentation that he is of full age. Can B recover his money from A ? Please refer to a decided case on the point. (D. U., LL. B. (Final), 1962.)
27. What is the position in law of infant's contracts ? (C. U., B. Com, 1939.)

28. How far is the Common Law rule regarding the rights and liabilities of infants under contracts entered into by them during infancy been modified by the Infant's Relief Act, 1874 ? (D. U., LL. B. (Intermediate), 1959.)
29. Is a minor's contract valid under Indian Contract Act ? Under what circumstances is an infant bound by the contract for necessaries ? (C. U., B. Com., 1926.)
30. Define consideration. State what part consideration plays in the formation of contract both in English and Pakistani Law (D. U., B. Com, 1959.)
31. "Agreements made without consideration are void" Explain fully (D. U., B. Com., 1962.)
32. Define consideration. What are the points of difference between the English Law and the Indian Law on the subject of consideration for a contract ? (C. U., B. Com., 1931.)
33. What do you understand by consideration ? A sells 5 bighas of land in Calcutta for Rs. 5/- to B. Is this contract a valid contract ? B desires to have it set aside. Can he do so ? Under what circumstances ? Describe fully agreements without consideration which are enforced by courts in India. C. U., B. Com., 1944.)
34. Discuss fully : "Agreements made without consideration are void". Are there any exceptions to the rule ? (C. U., B. Com., 1939.)
35. Consideration may be executory or executed, it must not be past. Discuss. (C. U., 1945.)
36. A promises to drop a prosecution which he has instituted against B for theft, and B promises to restore the value of things. Examine the nature of the agreement. (C. U., M. Com., 1940.)
- 37 (a) Consideration need not be adequate to the promise, but must be of some value in the eye of the law. Explain.  
(b) Can an agreement be valid without consideration? (C. U., M. Com., 1941, 1950.)
38. How far is it true to say that an agreement made without consideration is valid ? A agrees with B to sell a house worth Rs. 10,000/- for Rs. 10/-. A does not sell. Can B bring an

action against A in the court ? Advise B. (C. U., M. 'Com, 1942.)

39. "A part consideration is no consideration". Discuss with reference to both English and Indian Law. (C. U., B. Com., 1929, 1933, 1937.)

40. A agreed to let his theatre to B for a show in connection with major's fund. Before the date of entertainment the hall was destroyed by accidental fire. Advise the parties. (C. U., B. Com., 1928, '29, '30.)

41. Henry agreed to hire a flat to view the coronation procession on the 26th June, 1902. Owing to King's illness the procession was abandoned before the 26th June. Is Henry liable for the rent of the flat ? (C. U., B. Com., 1929.)

42. How far are the liabilities of the parties to a contract affected by supervising impossibilities ? (C. U., B. Com., 1932, 1933.)

43. A agrees to sell B a specific cargo of goods per S. S. 'Malwa' supposed to be on its way from London to Bombay. It turns out that before the day of bargain S. S. 'Malwa' had been cast away and the goods lost. Discuss the rights of A and B. (C. U., B. Com., 1933.)

44. A agrees to buy from B a certain elephant. It turns out that the elephant was dead at the time of the bargain, though neither party was aware of the fact. Discuss the rights of A and B. (C. U., B. Com., 1934.)

45. X gives a diamond ring to Y, a married woman, in consideration of a marriage by her that she would divorce her husband and marry X. Y subsequently divorces her husband but refuses either to marry X or to return the diamond ring. Discuss the legal position. (D. U., LL. B. (Final), 1958.)

46. The father of X was indebted to A. X gave to A a promissory note for the amount due with interest payable half yearly at 5 p. c. per annum. A thereupon did not sue the father for his debt which became time-barred. Then A sued X on the promissory note. X took the plea of want of consideration. What are the points of law involved in the case ? Explain and elucidate. (D. U., LL. B. (Final), 1959.)

47. G and his wife were living in France. G appropriated to his own use money entrusted to him for other purposes and was liable to criminal proceedings by French Law. K threatened to prosecute G, and the wife of G promised him a sum of money in consideration of his refraining from doing so. This agreement was lawful under French Law. G died and his wife returned to England. K files a suit against her in England. Discuss the points of law involved in the case. (D. U., LL. B. (Final), 1959.)

48. Explain the law relating to agreement in restraint of trade. (C. U., B. Com., 1925, 1932.)

49. How far courts in India uphold agreements in restraint of trade? (C. U., B. Com., 1938.)

50. State the law regarding (a) Infant's Contracts and (b) Contracts in restraint of trade. (D. U., B. Com., 1960.)

51. Write notes on contracts which law will not enforce. (C. U., B. Com., 1930.)

52. In what cases will a court grant a decree for the specific performance of a contract? (D. U., LL. B. (Final), 1950.)

53. What are the cases in which an obligation is created without a contract? A and B jointly owe 200 rupees to C. A alone pays the amount to C, and B, not knowing this fact pays 200 rupees again to C. Is C bound to repay the amount to B? (D. U., LL. B. (Final), 1962.)

54. What is an agreement by way of wager? Is such an agreement void or illegal? (C. U., B. Com., 1925.)

55. What is an agreement by way of wager? Is there any legal sanction behind such an agreement? (D. U., B. Com., 1961.)

56. Distinguish, giving illustrations between the following:—

(a) Coercion and undue influence (b) contingent and wagering contracts. (D. U. LL. B. (Final), 1962.)

57. A hires B's room for a series of lectures. B discovers that the lectures would be of seditious nature and declined to allow A to use the room. Discuss B's prospects in litigation. (C. U., B. Com., 1928.)

58. A grants lease of certain premises at Calcutta to B for one year knowing that the premises would be used for the purpose of (a) prostitution, (b) installing machinery for minting base coins, at a monthly rental of Rs. 500/- B does not pay the rent. Advise A. (C. U., B. Com., 1937.)

59. State the different modes in which a man may be discharged from the obligations of a contract. (C. U., B. Com., 1929.)

60. State the various methods in which a contract may terminate. What are the remedies for a breach of contract ? (D. U. B. Com., 1959.)

61. What are the various remedies for a breach of contract ? (D. U., LL. B. (Final), 1958, 1959.)

62. What are the rights and liabilities of parties in case of an anticipatory breach of contract ? (C. U., B. Com., 1933.)

63. How are damages for breach of contract assessed ? (C. U., B. Com., 1935.)

64. Distinguish between liquidated damages and penalty. (C. U., B. Com., 1939.)

65. Distinguish between liquidated damage and penalty. What do you mean by Quantum Merient ? A supplies food to B, wife of C who is a lunatic. C has assets worth one lac. On non-payment can A proceed against the assets of C ? Would your answer be the same if C instead of being a lunatic is an infant ?

66. Define bailment and briefly state the responsibilities of a bailor and the bailee. (C. U., B. Com., 1925, 1950.)

67. What is bailment ? What is the extent of the liability of a Railway Company in India as a bailee ? Does the liability of such a company differ in English Law ? If so, to what extent ? (C. U., B. Com., 1931.)

68. What is the standard of care a bailee has to take in respect of goods bailed to him ? (C. U., B. Com., 1933, 1950)

69. Define 'Pledge' and state respective rights and duties of the pledger and the pledgee. (C. U., B. Com., 1926)

70. Distinguish between a Pledge Mortgage and Lien. (C.U. 1928, 1932.)

71. Distinguish between a contract of guarantee and a contract of indemnity. (C. U., B. Com. 1928, 1929, 1930, 1931, 1933, 1935, 1937, 1941.)

72. Distinguish between a 'Contract of Guarantee' and a 'Contract of Indemnity'.

A stands guarantee for a debt of B to C. By certain date the debt becomes due but C does not sue B and allows the debt to be barred by limitation. Can C now sue A on the guarantee ? Give reasons for your answer. (D. U., B. Com., 1960.)

73. Explain the legal position and rights of a finder of goods and those of a pawnee in respect of goods pledged by a mercantile agent. (C. U., B. Com., 1943.)

74. (a) When is a surety discharged from his liabilities ?

(b) A contracts with B for a fixed price to build a house for B within 6 months, B supplying the necessary timber. C guarantees A's performance of the contract. B fails to supply the timber. Discuss the liabilities of C., (C. U., B. Com., 1934.)

75. What are the conditions of a valid ratification ? What is breach of warranty or authority ? (C. U., B. Com, 1925.)

76. Define warranty and distinguish it from (a) condition and (b) guarantee. (D. U., LL.B., 1961)

77. Distinguish between a "warranty" and a 'condition' in a contract of sale. Give illustrations. (D. U., B. Com., 1959.)

78. Who is an agent according to law of contract ? Describe the duties of agent to their principals.

A, a wholesale merchant authorises his agent B to purchase paddy from Bihar for 2 lacs of rupees. B does not purchase paddy, it is not available in Bihar. He purchases wheat worth the same amount from C. B does not pay. Has C any remedies against A or B or A and B ? (C. U., B. Com., 1944, 1950, 1951.)

79. How an agency is created and how it may be terminated ? A, without authority, buys goods for B. Afterwards B sells them to C on his own account. How will you legally account for B's conduct ? (D. U., LL. B. (Final), 1962)

80. Briefly enumerate the respective duties of Principal and Agent towards each other. Will an agent be personally liable



for breach of the contract if he had or had not disclosed his principal when entered into the contract ? (D. U., LL. B. (Final), 1961)

81. What are the rights and liabilities of a third party in regard to contracts entered into through an Agent whose principal is undisclosed ? (D. U., B. Com., 1959.)

82. (a) Explain what is meant by ratification of an agency. State the condition which should be fulfilled before the principal can ratify an Agent's acts.

(b) A, at Dacca, by letter directs B to sell for him some cotton lying in Karachi and afterwards by letter revokes his authority to sell, and directs B to send the cotton to Dacca. B after receiving the second letter enters into a contract with C, who knows of the first letter, but not of the second for the sale of the cotton to him. C pays B the money with which B absconds. Is C's payment good as against A ? (D. U., B. Com., 1961.)

83. (a) What is the effect of agency on contracts with third parties ?

(b) What is the legal position of a sub-agent to (i) the agent, (ii) the principal ? (D. U., B. Com., 1962.)

84. (a) State the circumstances in which a person can reimburse himself for paying money due by another.

(b) Can an agent personally enforce a contract entered into by him on behalf of his principal ? (C. U., M. Com. 1946)

85. What are the rights and liabilities of parties in cases of contracts through agents when the principal is undisclosed ? (C. U., B. Com., 1939.)

86. What are chief duties of an agent ? What degree of diligence must an agent show in discharge of his duties ? (C. U., B. Com., 1926.)

87. When is an agent personally liable for the contracts entered into by him on behalf of the principal ? (C. U., B. Com., 1928.)

88. What are the rights of an agent against his principal ? (C. U., B. Com., 1929.)

89. (a) Is the principal liable for the fraud of the agent committed for benefit of the agent. ?

(b) A being B's agent for the sale of goods induces C to buy them by a misrepresentation, which he was not authorised to make. Explain the effect of the contract between B & C. (C. U. M. Com., 1938.)

90. X, the wife of A is in the habit of buying goods from C. She does not pay C the price of the goods purchased. Can C make X liable ? What defences, if any, are open to X ? (C. U., B. Com., 1943.)

91. What are the limits of the rights of indemnity of an agent against his principal ? (C. U. B. Com., 1936.)

92. To what extent the principal is liable for his agents dealings with third parties ? D. U., LLB. (Final 1962).

93. Write notes on.

- (a) The seller's lien.
- (b) Stoppage in transit.
- (c) Anticipatory breach of contract.
- (d) Caveat Emptor.
- (e) Del Credere agent.

(C. U. B. Com., 1946.)

94. Write notes on the following:—

- (a) Mercantile Agent.
- (b) Public Policy.
- (c) Wagering contract.
- (d) Undue Influence.
- (e) Continuing Guarantee.

(D. U., LL. B., (Final), 1962.)

95. X was owner of a row of shops which he sold to different persons subject to certain covenants the object of which was to prevent competing business being set up in that row and to give purchaser a monopoly of a particular trade so far as that row of shops was concerned. He sold one of the shops to Y subject to the restriction that 'Trading upon the 'land shall be restricted to chemists and druggists business, dentist or a doctor'. Y opened a chemists's business in one part of the shop and in

the other he opened a sub-post office, having been duly appointed a sub-post master by the Postmaster-General. X sued Y for a breach of covenant. Explain the legal position. (D. U., LL. B. (Final), 1958)

96. N called in person at the shop P and bought rare diamonds, of which he obtained delivery by means of a worthless cheque, representing himself as B, a person of credit whose name was well-known to P. On the same day, N sold the diamonds to D but D had no notice of the fraud. When the cheque was dishonoured and N saw his diamonds on sale in the shop of D, he sued D for the return of diamonds or alternatively for their price.

Discuss the points of law involved in the suit. (D. U., LL. B. (Final), 1959)

97. A enters into a contract with B to sell him 100 maunds of sugar. A afterwards discovers that B was acting as agent for C. What are the rights of A in respect of price of sugar ? (C. U., B. Com., 1935.)

98. (a) X who owes Y Rs. 500/- sells Rs. 100/- worth of rice to Y. X is acting agent for Z in the transaction. Z the principal, sues Y for the price of the rice. Examine the nature of his claim.

(b) A enters into a contract with B to sell him 100 bales of cotton and afterwards discovers that B was acting as agent for C. Advise A as to the person against whom he should bring a suit for the price of the cotton. (C. U., M. Com., 1944.)

### Sale of Goods.

1. What is 'Warranty' ? Distinguish a warranty from a condition. Is there any, and if so, what condition or warranty in a sale of goods by sample ? (C. U., B. Com. 1926.)

2. How a contract of sale is made ? In a sale by sample what are the conditions and warranties ? (D. U., LL. B. (Final), 1962.)

3. Distinguish between a "warranty" and a "condition" in a contract of sale. Give illustrations. (D. U., B. Com. 1959.)

4. Differentiate between a condition and a warranty, and illustrate your answer with examples. (C. U., B. Com., 1937.)

5. A contracts to sell Java Sugar according to sample produced by him. The sugar when delivered agrees with the sample but is not Java Sugar. Has B got any remedies ? (C. U., B. Com., 1937.)

6. X, a farmer simply exhibits oats in his farm. Y buys the oats in the belief that they are old oats. In fact, they are not old oats. Is the contract enforceable ? (C. U., B. Com., 1940.)

7. In a contract for the sale of goods when does (a) the property, and (b) the risk of goods pass from the seller to the buyer ? (C. U., B. Com., 1925.) D. U. (B. Com., 1962.)

8. When does the property in goods pass from the seller to the buyer in a contract for the sale of goods ? (D. U., LL. B. (Final) 1961.)

9. "No seller of goods can give the X buyer of goods a better title to those goods than he himself has". Discuss. State if there are any exceptions to this rule. D. U., B. Com., 1959.

10. When and how does property pass in a contract for sale of unascertained goods ? (C. U., B. Com. 1932,) 1933, 1935.

11. Goods are delivered to the buyer on 'approval'. When does the property in the goods pass to the buyer ? (C. U., B. Com. 1935.)

12. Has the property in the goods been transferred in the following cases ?

(a) B offers for a horse Rs. 1000/-, the horse to be delivered on the 5th January, and the price to be paid on the 1st February following. (b) B orders A, a boat builder, to make him a boat. While the boat is building, B pays to A money from time to time on account of price. (C. U., M. Com., 1940.)

13. (a) Distinguish a seller's right of lien over goods from his right of stoppage in transit. (b) Discuss the rules relating to the passing of property in the case of sale of specific goods C. U., M. Com., 1944.)

14. What is a seller's lien ? When does it arise ? Explain with illustration. (C. U., B. Com., 1925, 1934, 1950.)

15. What do you understand by a right of re-sale ? What is stoppage in transit ?

16. What is the right of stoppage in transit ? By whom is it exerciseable and what is the effect of its exercise ? (C. U., B. Com., 1926, 1927.)

17. What is 'stoppage in transit'. What are the rights of a seller with regard to goods in transit ? (C. U., B. Com., 1936-1939.)

18. Distinguish between a Vendor's lien and stoppage in transit. (C. U., B. Com., 1932.)

19. What are the rights of a seller (a) against the goods, (b) against the buyer ? (C. U., B. Com., 1929.)

20. What are the rights of an unpaid vendor in respect of goods sold by him ? (C. U., B. Com., 1933.)

21. Write notes on (a) a factor differs from a broker in important respects (B) an auctioneer is primarily an agent for the seller but he is an agent for the buyer also. (C. U., B. Com., 1940, 1941.)

22. Write notes on : (a) Caveat Emptor, (b) Re-sale, (c) seller lien, (d) Goodwill. (C. U., B. Com., 1937.)

23. What do you mean by Caveat Emptor ? What are the rights of the unpaid seller against the buyer ? (C. U., B. Com., 1943.)

24. Discuss the difference between : (a) A factor, (b) Broker. (c) Auctioneer, (d) Del credere Agent. (C. U., B. Com., 1926.)

25. 'No one can give that which he has not got'. Do you agree ? Are there exceptions to this maxim of law regarding the sale of goods ? If so, fully discuss them. (C. U., B. Com., 1940.)

26. Examine if the property in the goods has passed in the following cases.

(a) B, on the first January, offers to A, for a quantity of rice, Rs. 1,000/- to be paid on the 1st of March following, the price not to be taken away till paid for. A accepts the offer.

(b) A, having a quantity of sugar in bulk more than twenty maunds, contracts to sell B ten maunds out of it. Afterwards, A puts ten maunds of sugar in sacks and gives notice to B that the sugar is ready and requires him to take it away. B says he will take it as soon as he can. (C. U., M. Com., 1946.)

27. (a) What is the effect of a sale of goods by a person who is not the owner ?

(b) Sale of a horse took place at a public auction. Unknown to the auctioneer and the buyer the horse had been stolen. Does the buyer obtain any title against the true owner?

(c) A consigned a quantity of cocoa to B by railway, and sent the consignment notes to him. The price, at the time, he had not been agreed . Before any agreement was arrived at as to the price, B sold the cocoa to C and handed to him the consignment notes. Can A dispute B's title to the cocoa ? (C. U., B. Com., 1952.)

28. Explain with illustrations what is seller's lien and how does it arise. (D. U., B. Com., 1958.)

29. Distinguish between a sale and a contract of sale. Enumerate the rights of a seller against the buyer. (D. U., B. Com., 1960.)

### Partnership

1. Define partnership and distinguish it from joint family business. (C. U., B. Com., 1925, 1951.)

2. Define Partnership and state the rights and obligations of partners after dissolution of partnership. (D. U., B. Com., 1959.)

3. Define a 'Partnership'. What test would you apply to determine whether a partnership exists between two or more persons ? Explain with illustrations the principle of 'holding out' in this connection. (D. U., B. Com., 1960.)

4. Discuss the rights and liabilities of the members of a Partnership firm. (D. U., B. Com., 1961., LL. B. (Final 1961.)

5. Discuss the rights and liabilities of partners *inter se* and their relation to third parties. (D. U., B. Com., 1958.)

6. Discuss fully the relations of partners to third parties. Under what circumstances does a partnership stands dissolved ? (C. U., B. Com., 1944, 1950.)

7. Explain the position and rights of a minor under the law of partnership. What is the effect of an agreement of partnership entered into by the guardian, with a third party to make him a partner on behalf of his ward ? (C. U., M. Com., 1938)

8. Does a notice given to the partner bind the firm ? Can a partner bind the firm by an admission of representation made by him ? (C. U., M. Com., 1940.)

9. (a) Can a firm be liable for the wrongful act of a partner ? (b) Explain the legal position of the transferee of a partner's share. (C. U., M. Com., 1941.)

10. Write an essay on the mutual rights and duties as between partners in a firm. C. U., B. Com., 1929.

11. State the general rules relating to the mutual relations of Partners. (C. U., B. Com., 1930.)

12. Mention in detail the acts for which a partner has implied authority to bind the firm. For what acts is the authority to bind the firm not implied ? (C. U., B. Com., 1929)

13. Distinguish between (a) a company, (b) corporation, (c) a partnership. (C. U., B. Com., 1927)

14. Distinguish between a joint stock company and a partnership. (C. U., B. Com., 1939)

15. A and B who are partners borrowed money from C. Eventually C sued them on the loan and obtained a decree which was not satisfied. Subsequently C discovered that D was a partner with A and B at the date of loan. Discuss the rights of the parties. (C. U., B. Com., 1929.)

16. What do you understand by the principles of "holding out" in reference to the relations of partners to third parties ? On what ground may a court dissolve a firm ? (C. U., M. Com. 1942.)

17. What are the effects of the non-registration of firm ? C. U., M. Com., 1942.)

18. Discuss the effects of the non-registration of partnership firm in (a) a suit brought by a mortgagee of the partnership property against the firm, (b) a suit by a partner for enforcing a right against the firm. (C. U., B. Com., 1945.)

19. (a) Analyse the legal position of a minor in a partnership firm. (b) On what grounds can court dissolve a partnership firm ? (C. U., M. Com., 1944.)

20. X is the sole owner of a firm. He admits Y as a partner on the following terms : (1) Y is not to bring any capital, (2) Y is not to be responsible for any loss, (3) Y is

to receive Rs. 200/- per month in lieu of profits, (4) Y is to have all the powers of a partner. Discuss the legal position of Y. (C. U., B. Com., 1936.)

21. Can an infant be a partner ? Can he be the shareholder of a company ? If so, under what circumstances ? What is the extent of his liability ? (C. U., B. Com., 1937.)

22. How does partnership differ from co-ownership ? What are the rights and liabilities of an infant in a firm ? (C. U., B. Com., 1938.)

23. Discuss the rights and liabilities of a minor in a firm. What are his disabilities ? (D. U., LL. B., 1962.)

24. Under what circumstances and in what different ways is a trading firm dissolved compulsorily ?

Can (a) partner of a firm on his own authority send a dispute relating to the firm to arbitration ; (b) that partner acquire immovable property of the firm ? (c) (i) a member of a limited company, (ii) a member of a firm, enter into a contract with (a) the company, (b) the firm ? (C. U., B. Com. 1941.)

25. (a) Can a partner be expelled from a firm ? (b) Explain the Doctrine of 'holding out', so far as it is applicable to a person who is not partner of the firm. (C. U., B. Com. 1946.)

26. What are the rights and obligations of partners after dissolution of partnership ? (C. U., B. Com. 1932.)

27. How far is it true to say that the law of partnership is a branch of the law of Principal and Agent ? What liabilities, if any, has a person who holds himself out as a partner in regard to (a) his relations with the public; (b) the member of the partnership ? (C. U., B. Com., 1942.)

28. What are the consequences of the dissolution of a firm ? How do you describe the rights of the creditors after dissolution ? (C. U. B. Com. 1948.)

29. What do you understand by "the implied authority of a partner as an agent of a firm ?" (C. U., B. Com., 1948.)

30. On what grounds the court may dissolve a firm at the suit of the partner ? (D. U., LL. B., 1962.)



### Company Law

1. What are the different classes of companies under the Companies' Act ? How would you distinguish a Company from a Partnership ? (D. U., B. Com., Final, 1958. )

2. Define a private Company and show how it differs from a public company. (C. U., B. Com. 1925, 1935.)

3. Distinguish between a "Public Company" and a "Private Company". (C. U., B. Com., 1926.)

4. How can one become a member of a Company ? What are his rights and liabilities ? (D. U., LL. B., (Final), 1958.)

5. Describe different classes of Public Companies. How would you distinguish between a private and public incorporated company ? (C. U., B. Com., 1943.)

6. What are the rights of a member or a shareholder in a Public Company ? Can an infant be a shareholder ? If so, what are his rights and liabilities ? (D. U., B. Com., 1958.) \*

7. How does a public Company differ from a private Company ? Discuss the rights and liabilities of the directors of a Joint stock company. (C. U., B. Com., 1938.)

8. How does a Private Company differ from a Public Company ? Do you notice the difference between voluntary liquidation and compulsory liquidation ? What are the powers of the liquidator regarding payment of dividends to (a) creditors, (b) contributors ? (C. U., B. Com., 1942.)

9. How are the directors of a Joint stock company appointed ? Discuss the rights and liabilities of such directors. (D. U., B. Com., 1960.)

10. Who are directors of a company ? On what grounds is the office of a director vacated ? (D. U., LL. B. (Final), 1958.)

11. Define a Memorandum of Association. Mention the particulars required to be contained in a Memorandum of Association. Can this be altered ? (D. U., LL. (Final), 1958.)

12. What do you mean by "Articles of Association" and Memorandum of Association ? Can they be altered ? If so, how ? (C. U., B. Com., 1939.)

13. What is the purpose of stating the 'object clause' of a

Company in its memorandum ? Can it be altered ? If so, how ? (D. U. B. Com. 1959.)

14. What is a Memorandum of Association ? How is it related to Articles of Association ? Can a Memorandum of Association be altered ? If so, how ? (D. U., B. Com., 1961.)

15. Distinguish between Articles of Association and Memorandum of Association. (D. U. LL. B. (Final), 1962.)

16. Distinguish between the Memorandum of Association and the Articles of Association. What procedure would you advise your list to adopt to amend both ? (C. U., B. Com., 1943, 1945.)

16. (a) State the extent to which the memorandum and the articles of a company can be altered, and the procedure for the purpose. (b) Can a court make an order staying the proceeding after passing an order of winding up ? (C. U. M. Com. 1938.)

17. What are the Articles of Association of a Joint stock company ? How far do these articles bind the company and the members thereof ? (C. U. B. Com. 1956.)

18. What is a Memorandum of Association ? Can a company change its object ? If so, how and to what extent ? (D. U., LL. B. (Final), 1958.)

19. What is (a) a Prospectus and (b) a Statement in lieu of prospectus ? Mention some of the particulars required to be contained in a Prospectus. (D. U., LL. B. (Final), 1962.)

20. Distinguish between 'shares' and 'debentures'. What are the different kinds of shares that a company can issue ? State the rights and obligations of each kind of shareholders. (D. U. LL. B. (Final), 1962.)

21. Define floating charge misfeasance, debenture and dividend. (C. U., B. Com., 1936.)

22. Distinguish between shares, debentures and debenture stock. (C. U., B. Com. 1932.)

23. Under what circumstances can shares be allotted for a consideration other than cash ? (D. U., LL. B. (Final), 1962.)

24. (a) Define a floating charge and explain its effects.

(b) Distinguish between shares, debentures and debenture stock. (D. U., B. Com., 1961.)

25. (a) What are the various ways in which the capital of a company can be altered. ?

(b) Distinguish between Reduction and Diminution of capital. D. U. B. Com. 1962.)

26. Distinguish between (a) shares, (b) Debentures, (c) Debenture stock. What are managing agents ? How has their position been regulated by state ? (C. U. B. Com. 1938.)

27. Who are the managing agents of a Public Company ? How do they differ from managers of such a company ? How are managing agents appointed ? How are they removed ? (C. U., B. Com. 1940.)

28. "Managing agent occupy an important place in the Company law of India". Discuss fully. (C. U. B. Com. 1944.)

29. Write a note on Statutory Reports.

(C. U., B. Com., 1940, 1941.)

30. What is call, who can make calls ? (D. U., LL. B. (Final), 1962).

31. What qualifications must the directors of a company possess ? Is it possible for a director to assign his office to (a) a fellow director, (b) a third person ? How can a director be removed from his office ? C. U., B. Com 1934.)

32. How far is it true to say that the position of a director of a limited Company is akin to that of trustees ? C. U., B. Com., 1939, 1945.)

33. What are the qualifications of the directorship of a public incorporated company ? How can the director of a company be removed from office ? (C. U., B. Com. 1943.)

34. How can borrowing power of a company be restricted ? D. U., LL. B. (Final), 1962.)

35. What is dividend ? Is it lawful to pay dividend from out of capital ? (C. U., B. Com. 1940.)

36. What are the qualifications for directorship of a public limited company ? How is a director appointed ? How can he be removed from office ? (D. U., LL. B. (Final), 1962.)

37. Whose agent is (a) a Receiver appointed by the court, (b) a Receiver appointed by debenture holder ? Is either of them

ever personally liable on the contracts he makes ? (C. U., B. Com., 1927.)

38. Distinguish between a Joint Stock Company and a Partnership. (C. U., B. Com. 1939.)

39. Define and distinguish between (a) a Company , (b) Corporation, (c) a partnership. (C. U., B. Com. 1927.)

40. How can a voluntary winding up of a company be brought about ? How is liquidator appointed in such winding up ? (C. U., B. Com. 1935.)

41. For what reasons and by what methods can the compulsory liquidation of a limited company be brought about ? (D. U., LL. B. (Final), 1962.)

42. Narrate the procedure of voluntary winding up of a company. (D. U., B. Com. 1958.)

43. When can a court order for a compulsory winding up of a Company ? What is the effect of such an order ? (D. U., B. Com. 1960.)

44. (a) Under what circumstances will the court, if ever, compel winding up of a Company ? (b) Discuss fully how the creditors can voluntarily wind up a company. (D. U., B. Com., 1962.)

45. Under what circumstances will the court compel the winding up of a Company ? (C. U., B. Com., 1931, D. U., LL B. (Final), 1962.)

46. What is compulsory winding up of a company ? What are the powers of a liquidator in a compulsory liquidation of a company ? (D.U., LL.B. (Final), 1958.)

47. How can a Company be wound up ? On what grounds can a shareholder file a petition for winding up ? (C.U., B. Com. 1933, 1951.)

48 (a) What part does a committee of inspection play in the compulsory winding up of a Company under the Company Law ? (b) Enumerate the restrictions placed on the formation and working of a banking company. (C.U., M. Com. 1944.)

49. For what reasons and by what methods can the compulsory liquidation of a limited company be brought about. D.U. LL.B., (Final), 1962.)

50. State the manner in which creditors can voluntarily wind up a company. (C.U., M. Com. 1941, 1950.)
51. Under what circumstances will a public incorporated company be wound up by the court? What are the functions of the official liquidator? (C.U., B. Com., 1943.)
52. What are the powers of a liquidator in (a) a compulsory liquidation, (b) voluntary liquidation? (C.U., B. Com., 1937.)
53. Discuss the rights of individual members of a public company. What rights can they exercise collectively? (C.U., B. Com. 1951.)
54. Explain the provisions of the Company Law by which the interests of the shareholders are safeguarded as against the directors and managing agent of a Company. (C.U., B. Com., 1948.)
55. Is the issue of a prospectus compulsory on the part of a Company? Discuss the liability of the directors and promoters of a Company for statements, omissions and concealments in a prospectus. (C.U., M. Com., 1940.)
56. Distinguish a special resolution from an extraordinary resolution under the Company Law. C.U., B. Com., 1950.
57. Distinguish between a Private Company and a Public Company. How can a private Company be converted into a Public Company? (C.U., B. Com., 1948.)
58. Defines 'Managing Agent.' Is it possible for a Managing Agent to be independent of the control of the Directors of a Company? (C.U., B. Com. 1948.)
59. What do you understand by debentures? How do you distinguish between fixed charges and floating charges? What are the rights of debenture holders? (C.U., B. Com. 1948.)
60. What do you mean by the capital of a Company? What are the various ways in which the capital of a company can be altered. (D.U., B. Com. 1962.)
61. Distinguish between Reduction and Diminution of capital (D.U., B. Com. 1962.)
62. What is a 'Committee of Inspection, in a Compulsory winding up? What are the functions of such a Committee of Inspection? (C.U., B. Com., 1952.)
63. Compare liquidation of a Company and the insolvency of an individual. (C.U., M. Com. 1945.)

### Negotiable Instruments

1. What is a negotiable Instrument ? Who is a holder in due course and what are his rights ? (D.U., B. Com. 1960.)

2. Is a Promissory note a negotiable instrument ? If so, why ? When is the maker of a promissory note discharged from liability ? (D.U., LL.B. (Final), 1958.)

3. Define a Promissory Note and distinguish it from Bill of Exchange. Who is a holder in due course and what are his rights ? (D.U., LL.B. (Final), 1962.)

4. What are the different kinds of negotiable instruments ? Say how they differ from one another ? D.U., B. Com. 1958.

5. Write explanatory notes on :—

(a) 'Promissory Note' and 'Bill of Exchange'. (b) 'Open cheque' and 'Crossed cheque'. (D.U., B. Com. 1959.)

6. When is the maker of a promissory note discharged from liability ? When can a negotiable instrument be regarded as dishonoured ? (D.U. B. Com. 1961.)

7. Distinguish between different kinds of negotiable instruments. (D.U., B. Com. 1962.)

8. What is a bill of exchange ? In what cases is presentment of a bill of exchange unnecessary ? (D.U., LL. B. (Final), 1958.)

9. Define a cheque. What is the effect of crossing a cheque ? State the various ways in which crossing can be done and with what effect. (D.U., LL. B. (Final), 1962.)

10. What is a bill of lading ? What are the implications involved in endorsing a cheque "A/C payee only" ? (D. U., LL. B. (Final), 1962.)

11. Explain and illustrate :—

(a) Hundi

(b) Presentment for payment.

(c) Crossed cheque.

12. What do you mean by 'a drawee in case of need' ? (C.U., B. Com. 1931.)

13. What is the position of a minor in the case of negotiable instruments ? (C.U., B. Com. 1941.)

14. State the effects of crossing a cheque (a) generally and (b) specially. (C.U., B. Com. 1935.)

15. What do you mean by 'Notary Public' ? What are his

functions in respect of a Negotiable Instrument ? (C.U., B. Com. 1942.)

16. In what different ways may an instrument be dishonoured (C.U., B. Com. 1939.)

17. When, how and to whom should the notice of dishonour ? of a bill of exchange be given ? When is such notice unnecessary ? (C.U., B. Com. 1932, 34.)

18. In what cases is presentment of a bill of exchange unnecessary ? What are the rights and liabilities of an acceptor for honour ? (C.U., B. Com. 1935. '51.)

19. What is 'noting' and 'protest' ? How and why are they done ? (C.U., B. Com. 1938.)

20. Explain the effect of alteration of negotiable instrument upon the parties before and after the alteration. (C.U., M. Com., 1946.)

#### Arbitration

1. What is the effect of referring a dispute to arbitration ? (C.U., B. Com. 1932.)

2. What is a submission ? On what grounds can you have an award set aside ? (C.U., B. Com. 1933.)

3. Can a joint stock company refer to arbitration any existing or future dispute between itself and another company ? (C.U., B. Com. 1942.)

4. State the different ways in which matters in dispute can be arbitrated according to the Arbitration Act, 1940. (C.U. B. Com. 1940.)

5. How would you describe the powers of arbitrators and umpires under the Arbitration Act, 1940. Under what circumstances would the court (a) remit and (b) set aside awards. (C. U., B. Com. 1944.)

6. Explain the nature and effect of 'Submission' according to the Arbitration Act ? Is the courts' jurisdiction affected by submission ? (C.U., B. Com. 1938.)

7. State briefly the manner in which the arbitration of a dispute may be made without the intervention of the court. (C. U., M. Com. 1939.)

8. Can a submission be revoked ? If so how ? (C.U., B. Com. 1946.)

9. Under what circumstances would the Court appoint (a) an arbitrator (b) an umpire. What are the powers of the court in respect of a reference to arbitration. (C.U., B. Com., 1948.)

10. What is an arbitration agreement ? What are the provisions implied in an arbitration agreement without the intervention of the Court ? (C.U., B. Com. 1952.)

### Law of Insolvency

1. What are the grounds on which a person can apply for adjudication as insolvent ? What constitute acts of insolvency ? (D.U., B. Com. 1959.)

2. On what grounds can you apply for adjudication of a person as an insolvent ? (C. U., B. Com. 1930.)

3. What are the effects of (a) an order of adjudication of an insolvent and (b) an order of discharge of an insolvent. (D. U., B. Com. 1960.)

4. What are "Acts of insolvency" ? Does an order of discharge release the insolvent from all debts payable in insolvency ? (D. U., LL. B. (Final), 1958.)

5. Describe what are called 'protected transactions' an insolvency what is meant by discharge of an insolvent ? D.U., LL.B. (Final), 1962.)

6. Under what circumstances can a person be declared to be insolvent Can an insolvent become solvent later on ? (D.U., LL.B. (Final) 1962.)

7. "A petition of insolvency can be made only when the debtor has committed an act of insolvency" Explain. What do you mean by a Protection Order ? (C.U., B. Com. 1943.)

8. An act of insolvency may be voluntary. Explain and illustrate. Can a firm as such commit an act of insolvency ? (C.U., B. Com., 1940.)

9. Can (a) an infant (b) a married woman and (c) a foreigner be made a bankrupt ? (C.U., B. Com. 1940.)

10. Discuss fully the effects of an order of adjudication. Describe the debts which are not payable in insolvency ? (C.U., B. Com. 1940.)



11. What is 'fraudulent preference' in the law of insolvency? What is its effect in insolvency? (C.U., B. Com. 1952.)

12. Explain 'reputed ownership' and its application under insolvency law. (C.U., B. Com., 1941.)

13. What do you mean by 'secured creditor'? Under what circumstances can be present a petition for adjudging a person insolvent. (C.U., B. Com. 1944.)

14. Discuss the law relating to the avoidance of fraudulent preference in the case of insolvency. (C.U., B. Com., 1948.)

15. "A bankrupt, when in contemplation of his bankruptcy, cannot by his voluntary act favour any one creditor". Explain and illustrate. (C.U., B. Com. 1952.)

16. What is the position of a bankrupt as to property acquired by him discharge and after his discharge. (C.U. B. Com. 1949.)

17. What are the powers and duties of a receiver? (C.U., B. Com. 1938.)

18. Explain the circumstances under which a Receiver can have a higher title than the insolvent in respect of property in the possession of the latter? (C.U., M. Com. 1937.)

19. When can the court annul an order of adjudication passed in an insolvency matter? C.U., B. Com. 1942.

20. What are the conditions or restrictions imposed by the law of insolvency in Pakistan in connection with the presentation of an insolvency petition for an order of adjudication? (C.U., B. Com., 1948.)

21. A, who has been contemplating bankruptcy, transfers, goods to B in preference to C. D. E. his other creditors. And there is an adjudication against him. Is the transfer valid (D.U., B. Com. 1958).

### Insurance

1. Define Insurance. What are the essential features of a contract of insurance? (C.U., B. Com. 1925., '27.)

2. Discuss the nature of a Life Insurance contract. To what extent will concealment by a person insuring his life affect the contract? (D.U., B. Com. 1958.)

3. A was filling in a form while taking out an insurance policy but he suppressed the fact that he had high blood-pressure at the

time of taking the policy. He subsequently dies of high blood pressure. Will the company be liable to pay the policy money ? Give reasons for your answer. (D.U., B. Com. 1960.)

4. State the effect of misstatements in Insurance policies. (D.U., B. Com., 1962.)

5. Distinguish between Reinsurance and Double Insurance. Can a Marine Insurance Contract be assigned ? (D.U., B. Com. 1962.)

6. Is a Contract of Insurance a "wagering contract" ? Why is it called a contract of indemnity and a contract *uberrimae fidei* ? (D. U., LL. B. (Final), 1958.)

7. Explain-(a) Double Insurance, (b) Marine Insurance, (c) Insurable Interest, (d) Salvage (e) Particular Average. (D. U., LL. B. (Final), 1958.)

8. Discuss the general characteristics of a contract of insurance. How far the principle of 'Subrogation' applies to such contracts ?

9. What is meant by a breach of warranty under the Insurance Law ? Can an insurer refuse to make payment for such a breach ? (D.U., L.L.B. (Final), 1962.)

10. Write a short note on Jeltison clause. (D.U., L.L.B. (Final), 1962.)

11. What is meant by insurable interest ? State how it may arise in connection with the different types of insurance. Give a few illustrations to show the absence of insurable interest. (D. U., B. Com. 1957.)

12. State what you know of the Loyd's Corporation. What are the functions and duties of Lloyds' agents ? (D. U., B. Com. 1957.)

13. Does the principle of indemnity apply with equal force to Fire and Marine Insurance Contracts ? (D.U., B. Com. 1957.)

14. Differentiate between Insurance and gambling. What facts need not be disclosed by the proposer to the insurer at the time of negotiations ? (D.U., B. Com. 1957.)

15. Write notes on.

(a) Fidelity guarantee insurance.

(b) Personal Accident.

(c) Days of Grace. (D.U., B. Com., 1957.)

16. What is the difference between contracts of Indemnity and life contracts ? (D.U., B. Com. 1959.)

17. Discuss how far insurable interest is important in different types of insurance contracts. (D.U., B. Com. 1959.)

18. State the salient features of principal classes of life assurance contract granted at the present time. (D.U., B. Com. 1959.)

19. Enumerate briefly the points of similarity and dissimilarity in Fire and Marine contracts. (D. U., B. Com. 1959.)

20. Describe fully the different types of "Fidelit Insurance" Policies which are in general use for modern commercial risks. (D. U., B. Com. 1959.)

21. What are the essentials that must be present in a contract with special reference to insurance contracts in order to make it valid ? Is 'Sum insured' an essential feature in a contract of fire insurance ? (D.U., B Com. 1958.)

22. Write notes on (a) Paid-up (b) automatic non-forfeiture and (c) Surrender value, (d) Suicide- (e) revival of lapsed policy (D.U., B. Com. 1958.)

23. What is insurable interest and how does it arise ? When should the insured possess insurable interest in marine insurance ? (D.U., B. Com. 1958.)

24. What do you understand by General Average ? Distinguish it from particular Average. D.U., B. Com. 1958.

25. Write notes on (a) *Proxima cause* (b) Warranty. (D.U., B. Com. 1958.)

26. What are the mutual rights and obligations of the insurer and the insured in the modern form of insurance ? (D.U., B. Com. 1960.)

27. Write an exhaustive note on the Controller of Insurance. (D. U., B Com. 1960.)

28. Enumerate the leading principles by which the practice of Fire Insurance is governed. (D.U., B Com. 1960.)

29. What is 'Hull Insurance' ? Describe in short the nature of risks covered and the factors which determine such risks under a 'Hull policy'.

30. Enumerate and explain fully the essential factors on which a contract of marine insurance is primarily based. (D. U., B. Com. 1960.)
31. What do you mean by "perils of the Sea" ? Describe fully whether foundering of a ship by scuttling can be treated as a loss under "Perils of the Sea". (D.U., B. Com. 1960.)
32. Write notes on (a) Seaworthiness (b) Bottomry (c) Subrogation.
33. What are the functions and powers of the controller of Insurance under the Insurance Act, 1938 as amended upto 1958. (D.U., B. Com. 1961.)
34. Distinguish between "Total loss" and "Constructive total loss". (D.U., B. Com. 1961.)
35. How would you distinguish between 'gambiling' and "insurance. (D.U., B. Com. 1961.)
36. How would you distinguish between "perile of the Sea" and "Act of God" ? (D.U., B. Com. 1962.)
37. Explain the following terms.
  - (a) Endowment policy (b) Joint Life Policy. Are life and fire policies assignable ? If so, how ? (C.U., B. Com. 1942.)
38. Can a fire policy be transferred ? Illustrate the principle of contribution as applicable to an insurance policy. D.U., B. Com. 1943.)
39. Can a marine contract be assigned ? (C. U., B. Com. 1938.)
40. Under what circumstances will courts order winding up of insurance business ? (C.U., B. Com. 1941.)

### Carriage of Goods

1. Who are the common carriers ? What are their duties ? How would you distinguish them from private carriers ? (D. U., LL.B, (Final), 1958.)
  20. Who are common carriers ? What are their duties ? Distinguish between a charterparty and Bill of Lading. (D.U., LL.B. (Final), 62.)
- In what extent do railways (in India) discharge the duties of carriers ? (C. U., B. Com. 1936.)

4. What is the purpose of a Bill of Lading in a contract of affreightment ? (C. U., B. Com. 1936.)

5. Is Bill of Lading a Negotiable Instrument ? (C. U., B. Com. 1836.)

6. Write an exhaustive note on charter-party. (C. U., B. Com. 1945.)

7. How far is it correct to say that a common carrier under Act III of 1865, is an insurer of the goods he carries ? (C. U. M. Com. 1946.)

8. What are the requirements of a bill of lading under the carriage of Goods by Sea Act ?

9. What are the effects of a Bill of lading issued under a charter party ?

10. What are the implied warranties in a contract of affreightment ?

11. What are the duties and liabilities of a carrier by Sea ?

12. What are the 'excepted perils' in a charterparty or bill of lading ?

13. State the powers of a master of a ship. How far can he bind the ship-owner by his acts ? (D. U., B. Com. 1961.)

14. Distinguish between Bottomry and Restondentia.

15. What are the rights and duties of the consigner and consignee by air ?

16. What is the liability of a carrier by air ?

### Banking Business

1. Define 'banker' and 'customer' What is the relation of the banker with his customer ?

2. Distinguish between 'Bearer Cheque' and 'Order Cheque'.

3. Under what circumstances is the duty and authority of a bank to pay a cheque is determined ?

4. What are the various kinds of 'Bank accounts' prevalent in our country ?

5. Distinguish between 'Current deposit' and 'Savings deposit'

6. Discuss the rules governing the opening and operation of Trust Account.

7. What are the chief duties of a bank ?
  8. What do you know about (a) collection of cheques and (b) collection of drafts ?
  9. What do you mean by Letters of Credit ? Distinguish between 'Special' and 'General Letter of Credit'.
  10. Write an exhaustive note on 'Bank Pass Book'.
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