

LL. B. III Term

Paper – LB – 304 – Special Contracts **(Partnership and Sale of Goods)**

Objectives of the Study

The law recognizes various Special Contracts among other are (i) Partnership and (ii) Sale of Goods. Special Contracts is a logical and imperative extension of the Law of Contracts paper of the 1st Term which dealt with the general principles of contract. Since the commercial activities are ever increasing, the present paper aids in understanding the application of the general principles of contract in specific circumstances which are the footholds for business associations and commercial transactions. It will familiarize students with the evolution of business associations. The first part of paper deals with partnerships as a business association which covers types, formation, registration, rights of partners and their liabilities, rights of third parties, reconstitution and dissolution. Here the students will be introduced to Limited Liability Partnership as well. The later part of this paper is sale of goods which is a special commercial transaction affecting not only daily lives but also major part of small, medium and large scale transactions in the business relations and associations. The topic Sale of goods deals with the components of sale, point of sale, passing of property, right and liabilities of seller and buyer, goods and its classes such as ascertained goods, specific goods and appropriated goods..

The present course is aimed at a study of the Law relating to Agency particularly the provisions of sections 182-238 of the Indian Contract Act, 1872, the Indian Partnership Act, 1932, Limited Liability Partnership Act, 2008 and Sale of Goods Act, 1930 in the light of judicial pronouncements. A student of Law will be advantaged with the study of this paper as it will provide an in-depth study of principles and concepts on which commercial transaction are based, the workings of business associations and how such transaction are different from a company and LLP

Prescribed Legislations:

1. The Indian Partnership Act, 1932
2. The Limited Liability Partnership Act, 2008 (6 of 2009)
3. The Indian Contract Act, 1872
4. The Sale of Goods Act, 1930

Prescribed Books:

1. G.C ., Bharuka, *The Indian Partnership Act*
2. Avtar Singh, *Law of Partnership*
3. V.P. Verma (Rev.), S. D. Singh and J.P. Gupta, *Law of Partnership in India*
4. R.G. Padia (ed.), *Pollock & Mulla, Indian Contract and Specific Relief Acts*
5. Banks, Roderick I'Anson, *Lindley and Banks on Partnership*
5. Sanjiv Agarwal and Rohini Agarwal, *Limited Liability Partnership: Law and Practice.*
6. K. Ramamoorthy, *Pollock & Mulla The Sale of Goods Act*
7. V. Krishnamachari and Surender K. Gogia, *T.S. Venkatesa Iyer's Sale of Goods Act, 1930*

Topic 1 – Concept of Agency and The Nature of Partnership

‘Agent’ and ‘Principal’ defined; Who may employ an agent; who may be appointed as agent; Rights, duties and liabilities of principal and agent, scope and limitation, ratification and revocation of authority; appointment of sub-agent (The Indian Contract Act, 1872). Definition of “partnership”, “partner”, “firm” and “firm name” (section 4); partnership not created by status (section 5); Mode of determining existence of partnership (section 6); partnership at will (section 7); Particular partnership (section 8), Concept and nature of Unlimited Liability Partnerships; Distinction between a partnership, a limited liability partnership and a company;

Narandas Morardas Gajiwala v. SPAM Papammal, AIR 1967 SC 333

Kuchwar Lime and Stone Co. v. Dehri Rohtas Light Rly. & Co. Ltd.,
AIR 1969 SC 193

Lakshminarayan Ram Gopal v. Govt. of Hyderabad, AIR 1954 SC 367

Snow White Indl. Corpn. v. Collector of Central Excise,
AIR 1989 SC 1555

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| 1. <i>K.D. Kamath & Co. v. CIT</i> (1971) 2 SCC 873 | 01 |
| 2. <i>Cox v. Hickman</i> (1860) 8 H.L.C. 268 | 10 |
| 3. <i>Mollwo, March & Co. v. The Court of Wards</i> (1872) L.R. 4 P.C. 419 | 16 |

Topic 2 - Relations of Partners to One Another and to the Third Parties

General duties of partners (section 9); duty to indemnify for loss caused by fraud (section 10); determination of rights and duties of partners by contract between the partners (section 11); the conduct of the business (section 12); Mutual rights and liabilities (section 13); The

property of the firm (section 14); Application of the property of the firm (section 15); Personal profits earned by partners (section 16); Rights and duties of the partners (section 17). Partners to be agent of the firm (section 18); Implied authority of partner as agent of the firm (section 19); Extension and restriction of partner's implied authority (section 20); Partner's authority in an emergency (section 21); Mode of doing act to bind firm (section 22 Holding out (section 28); Right of transferee or a partner's interest (section 30); Minors admitted to the benefits of partnership.

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| 4. <i>Miles v. Clarke</i> (1953) 1 All ER 779 | 22 |
| 5. <i>Trimble v. Goldberg</i> (1906) AC 494 (PC) | 26 |
| 6. <i>Holme v. Hammond</i> (1872) L.R. 7 Ex. 218 : 41 L.J. Ex. 157 | 31 |
| 7. <i>Rhodes v. Moules</i> (1895) 1 Ch. 236 (CA) | 35 |
| 8. <i>Hamlyn v. Houston & Co.</i> (1903) 1 K.B. 81 | 39 |
| 9. <i>Tower Cabinet Co., Ltd v. Ingram</i> (1949) 1 KBD 1032 | 41 |
| <i>Snow White Food Products Ltd. v. Sohan Lal</i> , AIR 1964 Cal. 239 | |
| <i>Scarf v. Jardine</i> (1882) 7 A.C. 345 | |
| 10. <i>Shivgouda Ravji Patil v. Chandrakant Neelkanth Sadalge</i> ,
AIR 1965 SC 212 | 46 |

Topic 3 - Incoming and Outgoing Partners and Registration of a Firm

Introduction of a partner (section 31); Retirement of a partner (section 32); expulsion of partners (section 33); Insolvency of a partner liability of estate of deceased partner (section 35); rights of outgoing partner to carry on competing business (section 36)

Application for registration (section 58); Registration (section 59); Disabilities attach with non-registration (section 69)

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| 11. <i>CIT v. Jaylakshmi Rice & Oil Mills Contractor Co.</i> , AIR 1971 SC 1015 | 49 |
| 12. <i>Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd.</i> ,
AIR 1964 SC 1882 | 52 |
| 13. <i>Haldiram Bhujjiawala v. Anand Kumar Deepak Kumar</i>
(2000) 3 SCC 250 | 56 |
| 14. <i>M/S Umesh Goel v. Himachal Pradesh Cooperative Housing Society Ltd</i> ,
(2016) 11 SCC 313 | 63 |

Topic 4 - Dissolution of a Firm

Dissolution of a firm (section 39); Dissolution by agreement (section 40); Compulsory dissolution (section 41); Dissolution on the happening of certain contingencies (section 42); Dissolution by notice of partnership at will (section 43); Dissolution by the Court (section 44); Liability for acts of partners done after dissolution (section 45); Right of partners to have business wound up after dissolution (section 46); Continuing authority of partners for purpose of winding up (section 47); Mode of settlement of accounts between partners (section 48).

15.	<i>Saligram Ruplal Khanna v. Kanwar Rajnath</i> , AIR 1974 SC 1094	77
16.	<i>M/s. Juggilal Kamlapat v. M/s. Sew Chand Bagree</i> , AIR 1960 Cal. 463	87
17.	<i>Sharad Vasant Kotak v. Ramniklal Mohanlal Chawda</i> (1998) 2 SCC 171	90
18.	<i>S.V. Chandra Pandian v. S.V. Sivalinga Nadar</i> (1993) 1 SCC 589	98

Topic 5 - General : Formation of Contracts of Sale

The Sale of Goods Act, 1930 (sections 1-10)

(a) Concept of 'Goods'

19.	<i>R.D. Saxena v. Balaram Prasad Sharma</i> , AIR 2000 SC 2912	108
20.	<i>Commr. of Sales Tax, M.P. v M.P. Electricity Board, Jabalpur</i> , AIR 1970 SC 732 : (1969) 1 SCC 200	115

(b) 'Sale' and 'Agreement to sell'

21.	<i>State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.</i> , 1959 SCR 379	119
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(c) Statutory Transactions

22.	<i>Vishnu Agencies (P) Ltd. v. Commercial Tax Officer</i> , AIR 1978 SC 449 : (1978) 1 SCC 520	131
23.	<i>Coffee Board, Karnataka v. Commr. of Commercial Taxes</i> , AIR 1988 SC 1487	139

(d) Contract for 'Works'/'Labour'(Pre and Post 46th Constitutional Amendment)

24.	<i>Commr. of Commercial Taxes v. Hindustan Aeronautics Ltd.</i> , AIR 1972 SC 744 : (1972) 1 SCC 395	153
25.	<i>Sentinel Rolling Shutters & Engg. Co. (P) Ltd. v. CST</i> , AIR 1978 SC 545 : (1978) 4 SCC 260	156
26.	<i>Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi</i> (1978) 4 SCC 36 & (1980) 2 SCR 650	163
27.	<i>State of Karnataka v. Udiipikrishna Bhawan</i> (1981) 3 SCC 76	166
28.	<i>Larsen & Toubro Ltd. v. State of Karnataka</i> , (2014) 1 SCC 708 <i>Kone Elevators v. State of Tamil Nadu</i> (2014) 7 SCC 1	167
29.	<i>State of Karnataka and Ors. v. Pro Lab and Ors.</i> AIR 2015 SC 1098	190

Topic 6 : Conditions and Warranties

Stipulations as to time; Implied Conditions and Warranties – as to title, quality, fitness, etc.,
Sale by Description and by Sample; Treating conditions as warranties

The Sale of Goods Act, 1930 (sections 11-17, 62, 63)

- Priest v. Last* (1903) 2 KB 148
30. *British Paints (India) Ltd. v. Union of India*, AIR 1971 Cal. 393 204
Niblett v. Confectioners Material Co. Ltd. (1921) 3 KB 387
Wallis v. Patt (1911) AC 394
Baldry v. Marshall (1925) 1 KB 260 (CA)

Doctrine of Caveat Emptor

- 31 *Jones v. Just* (1868) 3 Q.B. 197 210
- 32 *Richard Thorold Grant v. Australian Knitting Mill, Ltd.*
 AIR 1936 PC 34 216
Bristol Tramways v. Fiat Motors Ltd. (1910) 2 KB 831

Topic 7 : Effects of the Contract of Sale

Transfer of property; Doctrine of *Nemo dat quod non habet* – sale by a person other than the owner, sale by joint owner, sale by mercantile agent, sale under voidable contract, sale by seller or buyer in possession after sale; sale in Market Overt

The Sale of Goods Act, 1930 (sections 18-30)

33. *CIT v. Mysore Chromite Ltd.* (1955) 1 SCR 849 :
 AIR 1955 SC 98 227
34. *P.S.N.S. Ambalavana Chettiar v. Express Newspapers Ltd.*
 (1968) 2 SCR 239 : AIR 1968 SC 741 232
35. *Agricultural Market Committee v. Shalimar Chemical Works Ltd.* (1997) 5 SCC 516 : AIR 1997 SC 2502 236
36. *Pearson v. Rose & Young, Ltd.* (1950) 2 Ch. D. 1027 240

Topic 8 : Rights of Unpaid Seller

Who is an un-paid seller ? Un-paid Seller's Rights – Right of lien, Right of stoppage in transit; Transfer of goods by buyer and seller

The Sale of Goods Act, 1930 (sections 45-54)

37. *Mysore Sugar Co. Ltd., Bangalore v. Manohar Metal Industries, Chikpet, Bangalore* AIR 1982 Kant. 283 247