

**NAROTTAM MORARJEE INSTITUTE OF SHIPPING**

**MUMBAI**

**EXAMINATION PAPER MARCH 2024**

**DIPLOMA IN SHIPPING MANAGEMENT & LOGISTICS – FIRST YEAR**

**SUBJECT – COMMERCIAL & SHIPPING LAW**

**TOTAL MARKS: 80**

**TIME: 3 HOURS**

**10th March 2024**

**Question No. 1 is compulsory.**

**Answer any 3 other questions. All questions carry equal marks.**

Q1. 'Proposal' also known as an Offer is an essential element of a valid contract. Define 'Proposal' as per Section 2(a) of the Indian Contract Act. Enumerate and explain the essentials of a valid proposal with examples to justify each point.

Q2. Define 'Bailment' as per Section 148 of the Indian Contract Act. What are the essentials of a valid Bailment? Explain the rights and duties of a Bailee.

Q3. Who is an Agent? Explain the rights and duties of an agent.

Q4. What does the term Frustration means in context of a contract? Explain the Doctrine of Frustration quoting the two famous case laws.

Q5. Define freight and explain the different types of freights. Explain when freight becomes payable and by who is it payable.

Q6. Consideration means giving something in return. Define consideration as per Section 2(d) of the Indian Contract act. Explain the essentials of a valid consideration.

Q7. Explain the concept of Negligence as Torts in shipping. Quote case laws to explain the same.

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Month March Year 2024 TOTAL MARKS 12

Subject Commercial and Shipping Law.

Q	1	2	3	4	5	6	7	8	9	10	11	12	Total
M	17	18	18	-	-	-	17						70

WRITE BELOW

Q1] Proposal as defined by section 2(a) of the Indian contract act - 'when a person signifies his willingness to another to act or abstain from doing anything with the view of obtaining the assent of the other to such act or abstinence'.

→ Essentials of a valid proposal are:-

(i) A proposal should create a legal obligation between the two parties. The parties are in a legal relationship due to which they are bound to legal consequences. When 'A' invites 'B' over for dinner at his place on an agreed date and time & 'B' agrees to this proposal of 'A'. But 'B' was not able to go to 'A's' place for dinner due to some circumstances. Here 'A' cannot take a legal action against 'B', since there is no legal obligation between them.

In Balfour v/s Balfour, the case law, where Mr Balfour from ceylon went to UK on his leave with Mrs Balfour; After the leave was over

Mr Balfour promised to send Mrs Balfour 30 pounds every day until she could come home. Mrs Balfour couldn't come home with Mr Balfour on medical grounds. Mr Balfour sent the money to Mrs Balfour for a week and stopped sending money. Mrs Balfour went to the court to file a case against Mr Balfour. But the court declared it to be not valid, since sending money was just an agreement between Mr & Mrs Balfour.

(ii) A proposal <sup>should</sup> ~~can~~ be certain:- An agreement is said to be valid when the proposal is certain or capable of being made certain.

For example:- 'A' agrees to sell 100 tons of oil to 'B', but 'A' does not make it certain as to which type of oil would he sell to 'B'.

(iii). A proposal can be specific or general:- If a person offers to a specific person, it is a specific offer, where the act should be performed by that person only. If a person puts up an offer at large to the general public, it can be performed by anybody and this is a general proposal.

For example:- 'A' offers 'B' ₹10,000 to help A' find his cat is a specific offer, since it is offered to 'B' only.

'A' puts up an advertisement of offering '₹10,000 to any person who finds his cat. This is a general offer, as it is offered at large to general public. and can be performed by anybody.

(iv) offer should be communicated:- communication is necessary. The offer should be communicated to the offeree by the offerer. The mode of communication does not matter, may it be orally, written, mail, telex etc. IF the offer is communicated, then it would reach to the offeree, if for it to be accepted. IF it isn't accepted, there would be no contract taking place.

For example:- Arun wants to sell his house to Aditya. For the acceptance of the house by Aditya, Arun should communicate the offer of his price quotation, location etc to Aditya, then only the communication would happen.

(v) offer can be conditional:- The offerer can add as many conditions he wants to the offer. The only condition is that the conditions should be at the knowledge of the offeree when it is communicated.

For example:- When Arun wants to sell his house to

Aditya, Arun must mention the conditions he wants from Aditya, while he offered the house, that Aditya should take possession of the house immediately, he should bring his own furniture etc.

Q2] Bailment as defined by section 148 of the Indian contract act - 'when a person delivers his goods to another, for a particular purpose, & upon a contract that they shall, when the purpose is accomplished, be returned to the person delivering the goods or disposed off according to the instructions of person delivering the goods.'

The person delivering the goods is the bailor & the person to whom the goods are delivered is the bailee.

→ The duties of a bailee:-

(i) Duty of reasonable care :- 'In a bailment, the bailee should take care of the goods as a prudent person would, of the goods of the same quality, bulk & value, as if the goods were owned by the bailee himself.'

The bailee would be held liable if the bailor's goods are lost or damaged due

to the carelessness of the bailee.

For example - 'Bhavna delivers her <sup>clothes</sup> goods to Pranjal for tailoring purposes but <sup>Pranjal</sup> Bhavna was careless while handling Pranjal's clothes, so Bhavna would be held liable by Pranjal for her damaged or lost clothes.

For example :- Bhavna delivers her clothes to Pranjal for tailoring purposes, but Pranjal was careless about Bhavna's clothes, so Bhavna would hold Pranjal liable for her damaged or lost clothes.

(ii) Duty to not make unauthorized use :- The bailor delivers the goods to bailee for a particular purpose. If the bailee uses the goods for some other purpose, the bailor can end the contract between those two.

For example :- Anish delivers his car to Rajiv for delivering Anish's goods to Abhinav, but Rajiv uses Anish's car to deliver Rajiv's goods as well as his brother's goods by using Anish's car. Anish on the knowledge of this act can end the contract.

(iii) Duty to not mix:- This duty is related to duty of reasonable care. The bailee should be responsible & careful as to not mix the bailee's goods with the bailor's goods. If, by accident the goods are mixed, the bailor will hold the bailee liable & the bailee should compensate for the loss to the bailor.

If the goods mixed are separable, the separating costs will be paid by the bailee, but if they are not separable, the bailee should pay the amount equivalent to the goods of the bailor, to the bailor.

For example:- A' delivers his barrel of oil to B', by accident B' mixes his oil with A's oil. B' will be held liable to pay for the separation.

(iv) Duty to return:- The bailee should responsibly return the goods of the bailor back to him, without waiting for the bailor's demand. If the bailee keeps the goods with himself, the bailee should keep the custody of the goods & bear all risks & costs of the goods.

- (v) Duty to return increase!- Just as the bailee is responsible for returning the goods to the bailor, he is responsible for returning the profit or increase on the goods back to the bailor.

For example - 'A' delivers his cow to 'B' for some farming purpose. In that time the cow births a calf. It is the duty of 'B' to return the cow & the calf back to 'A'.

→ The rights of a bailee :-

- (i) Right to compensation!- The bailee is entitled to the right of compensation, if the bailee faces some loss due to the bailor's actions like delivering the goods for no particular reason or any other instructions given by the bailor to the bailee, which may have caused a loss to the bailee. The bailor should compensate for the bailee's loss.
- (ii) Right to remuneration or necessary expenses!- If the bailment is of a non-gratuitous nature, the bailee is entitled to the remuneration from the bailor. If the bailment is of a gratuitous nature, the bailee has the right of recovering the necessary expenses from the bailor.



(iii) Right to lien:- The bailee can retain the goods of the bailor, until the bailor pays the bailee his lawful charges.

Q37 An agent is a person employed to act for another or to represent another while dealing with a third party. The person whom the agent is representing or acting for is the principal. This does not mean that any person representing another is an agent. For one to be an agent, he has to have authority, to represent the principal and develop a contractual relationship between his principal and the third party.

→ Duties of an agent:-

(i) Duty to follow directions:- It is the duty of the agent to follow the directions of his principal while conducting business. If the principal faces any loss due to the agent not following his directions, the agent will be held liable by the principal for his losses.

In the case law of Pannalal Janakidas v/s Mohanlal, where the agent was directed to insure the goods of the principal. The agent charged for the premium on the insurance, but did not insure the goods. The goods were lost in an explosion, due to which the agent was liable.

## WRITE BELOW

(ii) Duty to follow instructions or customs:- If the agent has been given instructions by his principal, he is obliged to follow them. In absence of instructions, the agent should follow the customs of the business. If the principal faces loss or damage, the agent will be liable.

For example:- ~~A instructed B~~ 'A' had the authority to sell goods to B <sup>on credit</sup>. The sale was done <sup>on credit</sup> without 'A' doing proper checks & enquiries about B's solvency. During the payment 'B' was insolvent. 'A' will be held liable by his principal for the loss of goods.

(iii) Duty to of reasonable care:- The agent should is expected to conduct the business of his principal with skill as possessed by a person carrying out the similar business. The agent should act with due diligence and use the skills he possesses.

'A' had to deliver 'B's goods to Singapore from India. 'A' took care of all the procedures with extreme care.

(iv) Duty to avoid conflict of interest:- The agent should not do anything in the business which would bring his personal interest in the conflict of the principal's interest. In other words the agent should not be personally interested in the business transactions.

For example:- 'A' had to sell the property of 'B', but 'B' had no idea that 'A' bought the property under the name of 'C'. When it would come to the knowledge of 'B', 'B' would repudiate the contract or tell 'A' that the sale was disadvantageous to him.

(v) Duty to not make secret profit:- The agent is in a fiduciary relation with the principal. He should conduct the business in good faith. The agent should earn commission which was agreed by him. The agent should not be involved in acts that would earn him more profit than agreed.

(vi) Duty to remit sums:- The agent should return all the sums received by him on behalf of the principal back to the principal. Agent can lawfully reduce his fees from the sums.

(vii) Duty to maintain accounts:- The agent has the responsibility of maintaining the transaction account of the principal & furnish the account of transactions to the principal upon completion.

of business.

(viii) Duty to not delegate:- The agent is appointed on the strength of his skills, integrity, talent etc. He is not expected to delegate the business of his principal to another agent or agency.

If the nature of the business compels him to delegate, then he should:

For example:- A' delegates his principal's business to B' since the business of his principal has a nature of being conducted by multiple agents.

→ Rights of an agent:-

(i) Right to remuneration:- The agent has the right to receive remuneration from his principal as agreed. Remuneration would be given upon the completion of business or act given to the agent. If the agent does a misconduct in the business, he would not be receiving any remuneration.

For example:- A' was told to ship petrol, from UAE to India, by his principal & the agent. A' conducted his business as expected with extreme care & skills. Upon the petrol delivery, the agent would be paid by his principal.

(ii) Right to retain:- If the principal refuses to pay the agent upon business completion, the agent is entitled to retain the goods of the principal until his claims are fully satisfied. The agent can retain goods received by the principal in the business.

(iii) Right to lien:- Just like retaining the agent has a right to retain money, papers received by the principal in the course of business until the amount due to him is paid by the principal in the form of disbursements, commissions & services. This is particular lien, if property is held lien, it is to be the property received by the principal in the course of his business.

(iv) Right to indemnity:- The principal should indemnify the agent against consequences of lawful acts done by the agent.

For example:- A' in Singapore instructed B' in Calcutta to deliver goods to C' in Europe. A' did not send B' goods so C' sued B'. B' informed A' about the issue & A' told B' to defend the suit. B' defended the suit & A' paid him all costs incurred by him in defending the suit.

WRITE BELOW

Q1) Right to compensation:- The principal should compensate the agent for injury caused to him due to the principal's neglect or want of skill.

For example:- A' appointed B' to build A's house & while building the house, an accident occurred for which B' A' would compensate for the damages to B'.

Q7] Tort is a word derived from latin, meaning twisted conduct. Tort is a civil injury arising independent of a contract and for which remedy is action for unliquidated damages.

All torts are civil wrongs, but all civil wrongs are not torts. There are several legal wrongs which are not provided any legal remedy even when they cause a lot of loss like setting up a rival school & there are several moral wrongs for which legal remedy is provided which cause no loss like not voting is a private right.

Torts arise by :-

- (i) **Misfeasance** :- commission of an unlawful act like fraud.
- (ii) **Misfeasance** :- improper performance of a lawful act like negligence.
- (iii) **Non-feasance** :- omission to commit even when there is an obligation to commit like not providing a ship bill of lading to the shipper.

There are several types of torts :-

- (1) Tresspass
- (2) Nuisance
- (3) Defamation
- (4) Deceit
- (5) Fraud
- (6) Misrepresentation
- (7) Conversion
- (8) ~~Negligence~~

Let's talk about negligence :-

Negligence is an injury to a person or property caused by a wrongdoer due to his unreasonable act or unreasonable failure to act.

Liability for collisions at sea arise out of

torts for negligence.

For a plaintiff to succeed against a defendant, the plaintiff must prove:-

- (i) The tortfeasor or defendant owes the injured party a duty of care.
- (ii) The defendant was in a breach of duty.
- (iii) The breach of duty caused the injury.

1) Duty of care:- If a person is liable to another for his carelessness, there is a legally recognized re' proximity between the two.

2) Breach of duty:- since the damage was out of a breach of duty by the defendant. This is the negligent act (breach of duty). The real question is if a reasonable person would've acted like this or failed to act that way.

3) Breach of duty caused injury:- The plaintiff should not only prove the defendants carelessness, but also that the injury's cause is his carelessness.



## Tarrant v/s semca, sembawang & vamage.

Case law:- An Iraqi missile struck a tugboat in the gulf in 1917. The radio operator suffered injuries & alleged negligence against the tug captain vamage, employer semca & the ship owner sembawang.

Tarrant proved their negligence and the court gave the decision that semca & sembawang are vicariously liable for the negligence.

End