

S. S. Jain Subodh Management Institute

MBA IVth Semester, (Model Paper & Suggested Answers)

Subject: Business Law

Paper Code: M-403

Time: 1 Hour

Max Marks: 10

Attempt any two questions.

Q1. "Contract is an agreement enforceable by law—Discuss.

Q2. Define a negotiable instrument. What are the characteristics of a negotiable instrument?

Q3. What are the features of a contract of sale of goods?

Suggested Answers

Answer 1: An agreement becomes enforceable by law when it fulfils certain conditions. These conditions, which may be called the Essential Elements of a Contract, are explained below.

Offer and Acceptance: There must be lawful offer by one party and lawful acceptance of the offer by the other party or parties. The adjective “lawful” implies that the offer and acceptance must conform to the rules laid down in the Contract Act regarding offer and acceptance.

Intention to create Legal Relationship: There must be an intention (among the parties) that the agreement shall result in or create legal relations. An agreement to dine at a friend’s house is not an agreement. But agreement to buy and sell goods or an agreement to marry, are agreements intended to create some legal relationship and are therefore contracts, provided the other essential elements are present.

Lawful consideration: Subject to certain exceptions, an agreement is legally enforceable when each of the parties to it gives something and gets something. An agreement to do something for nothing is usually not enforceable by law. The something given or obtained is called consideration. The consideration may be an act (doing something) or forbearance (not doing something) or a promise to do or not to do something. Consideration may be past (something already done or not done). It may be present or future. But only these considerations are valid which are “lawful”(what is meant by lawful consideration).

Capacity of parties: The parties to an agreement must be legally capable of entering into an agreement; otherwise it cannot be enforced by a court of law. Want of capacity arises from minority, lunacy, drunkenness and similar other factors. If any of the parties to the agreement suffer from any such disability, the agreement is not enforceable by law, except in some special cases.

Free consent: In order to be enforceable, an agreement must be based on the free consent of all the parties. There is absence of genuine consent if the agreement is induced by coercion (make sb agree by bullying), undue influence, mistake, misrepresentation, and fraud. A person guilty of coercion, undue influence etc. cannot enforce the agreement. The other party (the aggrieved party) can enforce it, subject to rules laid down in the Act.

Legality of the object: The object for which the agreement has been entered into must not be illegal, or immoral or opposed to public policy.

Certainty: The agreement must not be vague. It must be possible to ascertain the meaning of the agreement, for otherwise cannot be enforced.

Possibility of performance: The agreement must be capable of being performed. A promise to do impossible thing cannot be enforced.

Writing, Registration and Legal Formalities: An oral contract is a perfectly good contract except in those cases where writing and /or registration is required by some statute. The terms of an oral contract are sometimes difficult to prove. Therefore important agreements are usually entered into in writing even in cases where writing is not compulsory.

The elements that mentioned above must all be present. If any of them is absent, the agreement does not become a contract. An agreement, which fulfils all the essential elements, is enforceable by law and is called a contract. From this it follows that every contract is an agreement but all agreements are not contracts.

Every contract gives rise to certain legal obligations or duties on the part of the contracting parties. The courts enforce the legal obligations.

Answer 2: Documents of a certain type, used in commercial transactions and monetary dealings, are called negotiable instruments. 'Negotiable' means transferable by delivery and 'instrument' means written document by which a right is created in favour of some person. The term negotiable instrument literally means 'a document transferable by delivery'. In English mercantile law, the term is used in wide sense. Thus a negotiable instrument is one in which, 'the true owner could transfer, the contract or engagement contained therein by simple delivery of the instrument'.

Characteristics of negotiable instruments are as follows:

Writing and Signature: Negotiable instrument must be written and signed by the parties according to the rules relating to promissory note, bill of exchange and cheque.

Money: Negotiable instruments are payable by legal tender money of Bangladesh.

Negotiability: Negotiable instrument can be transferred from one person to another by a simple process. In the case of bearer instrument, delivery to the transferee is sufficient. In the case of order instrument two things are required for valid transfer, endorsement and delivery.

Title: The transferee of a negotiable instrument, when he fulfils certain conditions, is called the holder in due course. The holder in due course gets a good title to the instrument even in cases where the title of the transferor is defective.

Notice: It is not necessary to give of transfer of negotiable instrument to the party liable to pay.

Presumption: certain presumptions apply to all negotiable instrument. Example: it is not necessary to write in a promissory note the words for the value received on similar expression because the payment of consideration is presumed.

Special Procedure: A special procedure is provided for suits on promissory notes and bill of exchange.

Popularity: Negotiable instruments are popular in commercial transaction because of their easy negotiability and quick remedies.

Evidence: A document that fails to qualify as evidence of the fact of indebtedness.

Answer 3: The essential elements of a contract for the sale of goods are enumerated below:

a. Movable goods: The Sale of goods Act deals only with movable goods, excepting actionable claims and money. This Act does not apply to immovable properties.

b. Movable goods for money: There must be a contract for the exchange of movable goods for money. Therefore in a sale there must be money-consideration. An exchange of goods for goods is not a sale. But it has been held that if an exchange is made partly for goods and partly for money, the contract is one of sale.

c. Two parties: Since a contract of sale involves a change of ownership, it follows that the buyer and the seller must be different persons. A sale is a bilateral contract. A man cannot buy from or sell goods to himself.

d. Formation of the contract of sale: A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery and payment by installments, or that the delivery or payment or both shall be postponed.

e. Method of forming the contract: Subject to the provision of any law for the time being in force, a contract of sale may be in writing, or by word of mouth, or may be implied from the conduct of the parties.

f. The terms of contract: The parties may agree upon any term concerning the time, place, and mode of delivery. The terms may be of two types: essential and non-essential. Essential terms are called Conditions and non-essential terms are called Warranties. The Sale of Goods Act provides that in the absence of a contract to the contrary, certain conditions and warranties are to be implied in all contracts of sale.

g. Other essential elements: A contract for the sale of goods must satisfy all the essential elements necessary for the formation of a valid contract, e.g., the parties must be competent to contract, there must be free consent, there must be consideration, the object must be lawful, etc.