Business Law

BBS Third Year

Question Model

No of Question Asked	Marks	Questions to be attempted
10	2	Attempt all Question
6	10	Attempt only 5 Question
3	15	Attempt only 2 Questions

Chapter: 1 Introduction to law and Business Law (10-12 Marks)

Meaning Of law

The law is a set of rules and regulations established by a government to regulate behavior within a society. Through the centuries, the concept of law has evolved, shaped by various legal systems and philosophical perspectives. It's a framework that sets standards, resolves disputes, and maintains social order.

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Meaning of Business Law

Business law is the set of legal rules that govern how businesses operate. It deals with the rights and duties of people involved in commerce and trade. Business law ensures fair practices and legal agreements in business activities.

.Nature of Business Law

1. Law consists of a rule

Law is made up of rules that prescribe certain behaviors or actions and prohibit others. The rules are formulated and enforced by governmental authorities, such as the state or government. stability and order.

2. Law regulates only the external human actions

Law primarily regulates external human actions that have a direct effect on society. As a result, it promotes harmonious coexistence by ensuring individuals' conduct is consistent with accepted standards and norms.

3. Law regulates human action either by way of prohibitory or mandatory or promissory

It is possible for laws to take many forms and to have different effects on human behavior. Prohibitive laws specify what individuals must not do in order to comply with legal requirements by forbidding certain actions.

4. Equality before law

Law is fundamentally characterized by the principle of equality before the law. As a result, all individuals, regardless of their social status, wealth, or other differentiating factors, are entitled to the same laws and treatment.

5. Law is recognized and issued by government

A governing authority issues law, typically a government or state. Laws are made and enforced by the government through legislative or executive processes.

6. Law is backed by sanctions or Punishments

It is the purpose of law to ensure compliance and deter violations. Depending on the severity of the offense, these penalties may include fines, imprisonment, community service, or other forms of punishment.

7. Law is Persuasive in nature

In order to convince individuals of a law's legitimacy and enforceability, it relies on reasoning and argumentation. Justifications and rationales support the purpose of laws, as well as the underlying principles they aim to protect. .

8. Law maintains peace by maintaining law and order situation

A primary function of the law is to maintain peace and order within society. Law provides a framework for peaceful coexistence by establishing rules, standards, and dispute resolution mechanisms.

9. The aim of law is justice

Classification of Law

Law is classified into different groups based on the point of view because human actions are different from the purpose of law. This classification is not done because of the difference in law, but because of the area of involvement. Several jurists have made different classifications, so for our convenience we can classify laws into the following categories.



A. National Law

It refers to the body of laws which govern the conduct of individuals and organizations within a specific country or jurisdiction, also known as domestic law or municipal law. National laws are enacted and enforced by the government of each nation. They include statutes, regulations, case law, and constitutional provisions.

B. International Law

The international law system consists of rules and principles that govern the relations between sovereign states, international organizations, and individuals around the world. By regulating interactions between different nations, it promotes cooperation, peaceful resolution of disputes, and the protection of human rights.

A. Substantive Law

Laws governing rights, duties, and obligations of individuals and entities are known as substantive law. Individuals are granted various rights and responsibilities in various areas of life, such as property, contracts, torts, criminal offenses, and family law. As well as the consequences for violating these standards, substantive law sets the standards and principles governing behaviors and interactions between people.

The law provides individuals with a legal framework for asserting and protecting their rights. For example, a person has the right to use the property that belongs to him lawfully.

B. Procedural Law

It establishes the rules and procedures that courts and other legal institutions must follow when resolving disputes and conducting legal proceedings under substantive law. A procedural law ensures that legal actions are conducted fairly, efficiently, and in compliance with established principles of justice. We rely on procedural law to provide remedies when rights or duties are violated, it guides us:

- Where we can get remedies
- When and how to proceed
- How to collect and present evidence in support of our claim

Sources of law

The sources of law refer to the sources or authorities that give legal rules and principles their validity and binding force. A legal system is constructed on the basis of laws that are definite, interpretable, and applicable. These sources can be divided into two categories: binding and persuasive.

In this detailed explanation, we will explore each category and its various components, emphasizing their significance and role in shaping the legal framework.

Binding Sources • Legislation • Precedent • Customs or Usages • Agreements/ Conventions • Decisions of foreign courts • Principles of Foreign Laws • Opinion of experts or jurists • Textbooks/Journals • Rules of Morality and religious books

1. Legislation

Legislation refers to laws enacted by a legislative body, such as a parliament, as statutes, acts, codes, or ordinances. Creating, amending, and repealing laws becomes the responsibility of legislative bodies. The legislative process establishes the general rules and principles that govern various aspects of society and is a fundamental source of law.

In a country, there are two kinds of legislation: supreme legislation and subordinate legislation. The supreme legislation is enacted by the state's sovereign power. It is enacted by its highest law making authority. **Nepal's parliament is an example.** All forms of legislation recognized by law other than the parliament are considered subordinate legislation in any democratic country.

Criminal laws, civil rights, administrative procedures, and taxation are among the areas covered by legislation.

2. Precedent

Precedent is a source of law derived from previous court decisions, also known as case law or judicial precedent. By interpreting and applying the law to specific cases, courts play an important part in common law systems in shaping and developing legal principles.

Lower courts within the same jurisdiction are bound by the reasoning and legal principles of a court's judgment. Precedent provides guidance and consistency in interpreting and applying the law, ensuring predictability and fairness.

3. Customs or Usages

Customs and usages refer to practices and traditions that have gained legal significance within a particular community or society over time. These are the habits, traditions, and norms that are widely accepted and followed by members of that community.

If formal legislation is scarce or absent in an area, customary law is particularly relevant. For customs or usages to be recognized as binding sources of law, they must meet certain conditions, including that they are widespread, consistent, reasonable, and accepted by the community as legally binding agreement.

4. Agreements or conventions

Typically, treaties, contracts, or other formal agreements between states, international organizations, and private parties constitute binding sources of law. It is common knowledge that international treaties and conventions establish legal obligations and rights between parties and are generally enforceable under international law.

Additionally, national agreements, such as contracts or collective bargaining agreement, create legal obligations and can be enforced by the law. A binding agreement regulates international relations, trade, human rights, and other aspects of global cooperation.

Persuasive Source of Law

In legal decision-making, persuasive sources of law are those that do not carry a direct binding authority but carry persuasive weight and influence. Although they are not legally enforceable on their own, they are important in shaping how the law is interpreted and applied. The main persuasive sources include:

1. Decision of Foreign Courts

Decisions of foreign courts, especially those from jurisdictions with similar legal systems, may be persuasive in interpreting the law if they are persuasive. When dealing with legal issues that have not been directly addressed in their own jurisdiction, courts may consider foreign court decisions as persuasive authority.

It promotes consistency and facilitates the resolution of complex or novel legal questions by utilizing the reasoning and analysis of foreign courts.

2. The Principles of Foreign Law

A principle of foreign law, also known as comparative law, involves analyzing and comparing legal principles and systems from diverse jurisdictions. The study of comparative law provides legal professionals with insight into how other countries have approached and solved legal issues. In order to adapt and refine their legal framework to better meet the needs of their society, courts and legislators can examine the principles and practices of foreign laws.

3. Opinion of experts or Jurists

Opinions and writings of legal experts, scholars, and jurists can be persuasive in legal reasoning and interpretations. As a result of their expertise and knowledge, these experts provide analysis, commentary, and interpretation of legal issues. When courts, lawyers, and lawmakers face complex legal questions or seek guidance on matters requiring specialized knowledge, they often seek their opinions.

4. Text books, journals

Textbooks, legal treatises, and academic journals play an important role in shaping legal discourse and providing analysis and commentary on legal principles and developments. These written sources provide in-depth explanations, interpretations, and scholarly perspectives on various aspects of the law. They contribute to legal education, research, and the development of legal theories and doctrines.

5. Rules of morality and religious books

A legal decision-making process may be influenced by moral principles and principles derived from religious texts in some legal systems. In matters involving ethics, family law, and religious freedom, courts and lawmakers may take into account moral principles or religious doctrines, even though they do not have direct legal binding force.

Chapter: 2 General Law of Contract (25-35)

Meaning

A contract in Nepali law refers to a mutual agreement between two or more parties that creates legal obligations and is enforceable by law.

Nature

- Involves at least two parties.
- Includes lawful offer and lawful acceptance.
- Creates enforceable obligations.
- Based on free will and mutual consent.

⋄ Meaning:

The **Law of Contracts** is a branch of civil law that governs agreements between two or more parties. It defines the conditions under which promises made by the parties to a contract will be legally binding.

"An agreement enforceable by law is a contract."

Essential Elements of a Valid Contract

1. Offer and Acceptance

o One party must make a lawful offer, and the other must accept it.

2. Lawful Consideration

o Something of value must be exchanged between the parties.

3. Intention to Create Legal Relationship

o Both parties must intend that the agreement should have legal consequences.

4. Capacity of Parties

 The parties must be competent (e.g., not minors, mentally unsound, or disqualified by law).

5. Free Consent

 The agreement must be made without coercion, fraud, misrepresentation, undue influence, or mistake.

6. Lawful Object

o The purpose of the contract must be legal and not against public policy.

7. Certainty and Possibility of Performance

The terms of the contract must be clear, and it must be possible to carry it out.

8. Not Declared Void

o The agreement should not be one that is expressly declared void by the law.

9. Proper Legal Formalities

o If a contract is required to be in writing (like lease agreements), proper legal formalities must be followed.

Types of Contracts

Contracts can be classified in various ways:

Category	Type of Contract	Short Description
A. Based on Validity	Valid Contract	Legally enforceable with all essential elements.
	Void Contract	Not enforceable due to missing legal requirements.
	Voidable Contract	Valid but one party may cancel due to unfair conditions.
	Illegal Contract	Involves unlawful acts; not enforceable.
	Unenforceable	Legally valid but cannot be enforced due to
	Contract	technical issues.
B. Based on Formation	Express Contract	Terms clearly stated verbally or in writing.
	Implied Contract	Formed by actions or behavior of parties.
•	Quasi Contract	Not a real contract; created by law to prevent unjust gain.
C. Based on Performance	Executed Contract	Both parties have fulfilled their promises.
	Executory Contract	Some or all terms are yet to be performed.
	Unilateral Contract	Only one party is bound until the other performs.
	Bilateral Contract	Both parties exchange promises to perform.

☑ Muluki Civil Code, 2074 (Nepal)

🔊 नेपालीमा: मुलुकी देवानी संहिता, २०७४

Meaning:

The Muluki Civil Code 2074 is the main legal document in Nepal that governs civil rights and obligations. It came into effect on 2074 Shrawan 1 (17 July 2017) and replaced the old Muluki Ain 2020 B.S.

It contains comprehensive rules about contracts, property, family, obligations, compensation, and civil responsibilities.

Structure of the Civil Code 2074:

The Code is divided into 7 Parts (भाग) with several Chapters (अध्याय) and Sections (दफा).

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Part		
No.	Subject Area	Description
Part 1	General Provisions	Definitions and basic rules
Part 2	Family Matters	Marriage, divorce, maintenance, etc.
Part 3	Inheritance and Property	Rights over property, succession, partition, etc.
Part 4 Obligations and Contracts	Obligations and Contracts	Rules about contracts, breach, quasi-contracts,
1 411 4	Obligations and Contracts	etc.
Part 5	Compensation	Damages, civil wrongs (torts), remedies, etc.

Part No.	Subject Area	Description
Part 6	Property Acquisition and Ownership	How property can be gained, lost, or transferred
Part 7	Miscellaneous	Other civil matters

☆ Important Provisions Related to Contract Law (Part 4):

Topic	Sections (दफा)	Coverage
Contract Formation	491–494	Conditions for valid contract, consent, capacity
Void & Voidable Contracts	495–498	Circumstances where a contract is invalid or can be canceled
Offer & Acceptance	499–504	Communication of proposal and acceptance rules
Consideration	505-508	Lawful consideration requirement
Performance of Contracts	521–530	Rules about execution and fulfillment of contracts
Termination of Contracts	531–536	When and how contracts can end
Remedies for Breach	537–541	Legal relief if a contract is broken
Contingent Contracts	515-520	Contracts dependent on future uncertain events
Quasi Contracts	546–550	Duties without formal agreement (e.g., mistaken payment, unjust enrichment)
Unjust Enrichment	551–554	Preventing benefit at another's expense
Hire Purchase Contracts	595–612	Rules for ownership transfer after installment payment
Lease Contracts	568-592	Property use and rent contracts

2. Offer and Acceptance

⋄ A. OFFER (Proposal)

An **offer** is a proposal by one person to another, indicating a willingness to enter into a contract on certain terms.

"When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other, he is said to make a proposal."

☑ Rules Regarding Offer:

Explanation Element

Intention to Create Legal

Relation

Must show readiness to create a legal obligation.

Definite and Clear Terms Terms must be clear and certain, not vague or ambiguous.

Communication of Offer Offer must be communicated to the offeree.

Should not be an invitation to treat (e.g., catalog or

Offer Must Not Be an Invitation

advertisement).

Offer May Be Express or

Can be made in words (spoken/written) or by conduct. **Implied**

Offer Must Be Made to a Person Can be to a specific person or the public at large.

• B. ACCEPTANCE

Acceptance is the act of agreeing to the terms of an offer, resulting in a contract.

"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."

☑ Rules Regarding Acceptance:

Element Explanation

Must Be Absolute and Unqualified Acceptance must match the offer completely.

Must Be Communicated Silence is not acceptance. It must be conveyed clearly to

the offeror.

Must Be in the Prescribed Mode If a mode is prescribed, it must be followed.

Must Be Made While the Offer Is

Late acceptance is invalid.

Open

Can Be Express or Implied May be stated in words or shown by conduct.

☒ C. Communication of Offer and Acceptance

Stage	Explanation
Communication of Offer	Complete when it comes to the knowledge of the
Communication of Offer	offeree.
Communication of Acceptance (to Complete when the acceptance is put into tr	
Offeror)	(e.g., posted).
Communication of Acceptance (to	Complete when it reaches the offeror.

Stage Explanation

Offeree)

X D. Termination of Offer

Termination of an offer refers to the **end or cancellation** of an offer so that it **can no longer be accepted** to form a contract.

In simple terms, once an offer is terminated, it **ceases to exist**, and the offeree **loses the right to accept it**. This means that no valid contract can be formed based on that offer afterward.

An offer can be terminated in the following ways:

Mode of Termination Explanation

Revocation by Offeror Offeror can withdraw before acceptance is communicated.

Rejection by Offeree If the offeree rejects, the offer ends.

Lapse of Time If not accepted within the given or reasonable time.

Counteroffer If offeree makes changes to terms, the original offer is cancelled.

Death or Insanity Of either party before acceptance is known.

Failure of a Condition If a precondition is not fulfilled.

Illegality If the subject matter becomes illegal.

Chapter: 3 Consideration

⋄ Meaning:

Consideration is the price paid by one party for the promise of the other. It refers to **something of value** (like money, goods, services, or a promise) exchanged between the parties in a contract.

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promise."

⋄ Types of Consideration

Explanation	Example
Consideration given before the promise is	A helps B, later B promises
made.	reward.
Consideration is given at the same time as the	Cash payment on delivery of
promise.	goods.
Consideration to be given at a future data	Drawiga to may after 1 month
Consideration to be given at a future date.	Promise to pay after 1 month.
	Consideration given before the promise is made. Consideration is given at the same time as the

Rules Regarding Consideration

Rule	Explanation
1. Must Move at Promisor's Desire	Consideration must be given at the request of the promisor.
2. May Move from Promisee or Any Other Person	Even a third party can provide the consideration.
3. Can Be Past, Present, or Future	All three types are legally valid in India.
4. Must Have Some Value in Law	It must be real, not illusory or vague.
5. Need Not Be Adequate	It need not match the value of what is received, but must have some value.
6. Must Be Legal	It must not be immoral, illegal, or against public policy.

X No Consideration, No Contract

The general rule is:

"A contract without consideration is void."

This means if there is no consideration, the agreement is not enforceable by law.

✓ Exceptions (When Consideration Is Not Required)

Explanation
LX

1. Natural Love and Affection

Made in writing and registered between close relations.

relation

2. Voluntary Compensation for Past Promise to pay for something already done

Act voluntarily.

3. **Promise to Pay Time-Barred Debt** Made in writing and signed by the debtor.

4. Completed Gifts Gifts once given do not require consideration.

5. **Agency** No consideration required to appoint an agent.

6. **Charitable Contributions** If action is taken based on the promise to donate.

4. Incapacity to Contract

♦ Meaning:

In contract law, "Incapacity to contract" refers to the inability of certain persons to enter into a valid contract due to lack of legal competence

Contractual Capacity

Contractual capacity refers to a person's legal ability to enter into a valid contract.

- 1. Are of the age of majority (18 years or above),
- 2. Are of sound mind,
- 3. Are not disqualified by any law.

Incapacity to Contract

Incapacity to contract means a person is legally **not capable** of entering into a valid contract. A valid contract requires that all parties have the **legal capacity** to understand and agree to its terms.

Persons Lacking Capacity:

- 1. **Minors** Under 18; contracts are usually voidable.
- 2. **Persons of Unsound Mind** Mentally ill or intoxicated at the time of the contract.
- 3. **Disqualified by Law** Includes insolvents, alien enemies, convicts, etc.

Free Consent

✓ Meaning:

Free consent means that all parties involved in a contract **agree willingly** to the terms without being forced, misled, or mistaken.

Consent is not free when caused by:

- **Coercion** Use of threat or force
- **Undue Influence** Misuse of position
- Fraud Deliberate deception
- **Misrepresentation** Innocent false statement
- Mistake Wrong belief about fact

Importance of Free Consent:

Explanation	
Without free consent, a contract may be declared void or voidable by the court.	
It shows both parties are willing and aware of what they are agreeing to.	
Prevents one party from being forced, misled, or cheated into making a contract.	
Free consent builds trust between the parties and promotes fair business practices.	
If consent is genuine, chances of conflict or litigation are much lower.	
It ensures justice and equality , especially in sensitive contracts (e.g., property, finance).	
As per Civil Code 2074, free consent is a legal necessity for all enforceable contracts.	

Legality of Object and Consideration

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✓ Meaning:

A contract must be made for a **lawful object** and **lawful consideration** (exchange of value). If the purpose or payment is **illegal**, **immoral**, **or against public policy**, the contract is **void**.

A contract is void if its object is:

• Forbidden by law

- Fraudulent
- Injurious to person or property
- Immoral or against public policy

Contingent Contract

✓ Meaning:

A contingent contract is a contract where the performance depends on the occurrence or non-occurrence of a future uncertain event that is not within the control of the contracting parties.

Example: A agrees to pay B if B's car is delivered safely.

Rules Regarding Contingent Contract

Feature Description

The contract is dependent on a future event which may or may not Uncertain Event

happen.

Condition The event is a **condition precedent** for the contract's enforcement.

Beyond Control The event must be outside the control of the parties.

Not Enforceable

The contract is not binding until the condition is fulfilled.

Immediately

Performance of Contracts



Performance of contract** means carrying out the **promises or obligations** mentioned in a valid contract by the parties involved, in the manner and time agreed.

According to Section 533–556 of the Muluki Civil Code, 2074, every party must fulfill their part of the contract unless legally excused.

Types of Performance:

Type Description

Actual Performance When a party fully performs their contractual duty and the other

party accepts it.

Attempted Performance

(Tender)

When a party offers to perform, but the other party refuses to

accept. It is called a valid tender.

Termination of Contracts

✓ Meaning:

Termination of a contract means the **legal end of the obligations** under a contract, either because the purpose is fulfilled, or due to legal or mutual reasons.

Sections related to contract termination can be found under Contract Law (Part 4) of the Muluki Civil Code, 2074.

- . Breach of Contract (सम्झौता उल्लंघन)
- **⋄** Meaning:

Breach of contract means failure to fulfill the terms of a contract without any legal excuse.

When one party does not perform their duty or refuses to perform, it is considered a breach.

⋄ Types of Breach:

Type Explanation

☑ Actual Breach When a party fails to perform the contract at the time of

Type Explanation

performance.

✓ Anticipatory When a party declares in advance that they will not fulfill the contract.

- ♦ Legal Provisions (Civil Code 2074 Sections 537–541):
 - Compensation can be claimed by the aggrieved party.
 - The party suffering from breach can cancel the contract and claim damages.

☑ 2. Supervening Impossibility (बाध्यता वा असम्भवता

Supervening impossibility means when a contract becomes impossible to perform due to unforeseen events that happen after the contract is made.

- (F) Example: Natural disasters, government bans, war, death of a key person, etc.
- **⋄** Effect on Contract:
 - The contract becomes void automatically.
 - Neither party is held liable for non-performance

Modes of Termination under Civil Code, 2074:

Termination Mode	Description	
1. By Performance	When both parties complete their obligations , the contract ends.	
2. By Mutual Agreement	Parties mutually agree to cancel or modify the contract.	
3. By Impossibility (Force	If the contract becomes impossible to perform due to natural	
Majeure)	disaster, death, war, etc.	
4. By Breach of Contract	If one party fails to perform, the other party may terminate it.	

Termination Mode Description

5. By Lapse of Time If not performed within a fixed time, it may be terminated.

Termination due to death, insolvency, or illegality of the

6. By Operation of Law

contract.

7. By Revocation or

One party may legally cancel if the contract was made under

Rescission

fraud, coercion, etc.

Remedies for Breach of Contract

✓ Meaning:

Remedies are the **legal actions available to an injured party** when the other party fails to perform the contract (breach).

When a contract is breached, the injured party has the right to:

- Claim damages (money compensation)
- Demand specific performance (court orders completion)
- Cancel the contract (rescission)
- Ask for restitution (return of benefits)
- Seek an injunction (court stops a party from doing something)

These remedies help the affected party get **justice or compensation**.

Quasi Contracts

✓ Meaning:

A quasi contract is **not a real contract** formed by mutual agreement, but a **legal obligation**

created by the court to prevent one person from being **unjustly enriched** at the expense of another.

"No agreement, but still liable."

☑ Quantum Meruit – Explained in Simple Terms

⋄ Meaning:

"Quantum Meruit" is a Latin term which means "as much as is deserved" or "reasonable payment for services rendered."

In legal terms, it refers to a situation where one party has done some work or provided services, and even though no formal contract exists, they deserve to be paid fairly for what they did

In Nepal, this concept is recognized under the principle of "Unjust Enrichment", mentioned in the Muluki Civil Code, 2074, particularly under the sections dealing with duty to return property, compensation, or value when no formal contract exists

Even though no agreement exists, the law requires one party to compensate another when:

- Goods/services were received by mistake
- Benefits were accepted without payment
- A person paid someone else's legal obligation

Example: If A pays B's electricity bill by mistake, B must repay A.

Unjust Enrichment

✓ Meaning:

Unjust enrichment occurs when one person gains a benefit unfairly at the expense of another,

without a legal basis.

The law prevents individuals from being enriched unjustly. If someone gets a benefit:

- Without providing compensation
- By mistake
- By exploiting another

Then the law requires them to return the benefit or compensate the other party.

This principle supports justice and equity in law.

Lease Contract

✓ Meaning:

A lease contract is a legal agreement where the owner (lessor) allows another person (lessee) to use property (such as land, house, shop, or vehicle) for a specific period in exchange for rent or consideration.

- It is **temporary** use, not ownership
- Terms include duration, rent amount, and conditions
- Both parties have rights and obligations

Example: Renting a shop or apartment.

Leases are common in real estate, business premises, and equipment use.

Hire Purchase Contract

✓ Meaning:

A Hire Purchase Contract is a financial agreement where the buyer takes possession of

goods (like vehicles, electronics, machinery, etc.) by paying in installments, and ownership is transferred only after full payment is completed.

Governed by Muluki Civil Code, 2074 – Section 595–612.

- Buyer uses the item during payment period
- Seller remains owner until all dues are cleared
- Often used to purchase vehicles, electronics, machinery

Parties Involved:

Party Role

Owner / Seller Provides goods under hire purchase agreement.

Hirer / Buyer Takes possession and agrees to pay in installments.

Financier (optional) A third party who pays the seller and collects from buyer.

Duties of the Buyer:

- Pay installments on time.
- Maintain the goods properly.
- Avoid selling or damaging goods.

Duties of the Seller:

- Transfer goods in good condition.
- Transfer ownership after final payment.
- Cannot forcibly seize goods without legal process.

Example: Buying a mobile phone on monthly EMI.



Concept of Tort

- A tort is a civil wrong committed by one person against another, causing harm or loss, which entitles the injured party to seek compensation. (तोर्ट भनेको कुनै व्यक्तिले अर्को व्यक्तिविरुद्ध गरेको निजी गल्ती वा गैरकानूनी कार्य हो, जसले अरूलाई हानी वा नोक्सानी पुऱ्याउँछ र जसका कारण पिडितले क्षतिपूर्ति माग्न सक्छ।)
- It is different from a crime because torts are private wrongs (compensated by damages), while crimes are public wrongs (punishable by the state).

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Character of Tort

- Civil wrong: Tort involves a breach of a legal duty owed to another person.
- Unintentional or intentional: It can arise from negligence or intentional acts.
- Compensation: The main remedy is usually damages (monetary compensation).
- Private law: It deals with private rights rather than public duties.

Principle of Tort

- The foundational principle is that any wrongful act causing harm to another obliges the wrongdoer to compensate the injured party.
- The injured party must prove:
 - 1. **Duty of care** existed.
 - 2. Breach of that duty occurred.
 - 3. The breach caused damage or loss.
 - 4. Actual damages or injury happened.

Damnum Sine Injuria

• Latin for "damage without injury".

- This principle means not all losses or damages caused to a person are legally actionable if there is no violation of a legal right.
- Example: If a new competitor opens a shop and takes away customers, causing loss to an existing business, it's damage but **no legal injury** (no tort).

Vicarious Liability

- This is a legal principle where one person is held liable for the torts committed by another person, typically in an employment relationship.
- Example: An employer can be held responsible for the wrongful acts of an employee done during the course of employment.
- Purpose: To ensure victims get compensation even if the person who committed the tort can't pay.



冷 Very Short Questions (2 Marks) − Focus Points

1. Bailment

A **bailment** is the delivery of goods by one person (**bailor**) to another (**bailee**) for a specific purpose under a contract that the goods shall be returned once the purpose is accomplished.

♦ Example: Giving a suit to a dry cleaner.

2. Pledge

A **pledge** is a special kind of bailment where goods are delivered as security for a debt or performance of a promise.

◆ Parties: Pawnor (pledger) & Pawnee (pledgee).

♦ Example: Pledging gold to a bank for a loan.s

3. Bailor

The **bailor** is the person who delivers goods to another under a contract of bailment.

4. Bailee

The bailee is the person to whom goods are delivered in bailment.

5. Duties of Finder of Goods

- Take reasonable care of goods.
- Not to use the goods for personal use.
- Try to find the real owner.

6. Rights of Finder of Goods

- Right to retain the goods until compensated.
- Right to sue for reward (if declared).
- May sell goods under certain conditions (e.g., perishable goods or long retention).

7. Cases Where Non-Owner Can Make Valid Pledge (Important)

A non-owner can validly pledge goods in the following cases:

✓ Mercantile Agent: If in possession with the owner's consent.

Possession Under Voidable Contract: If contract not rescinded yet.

Seller in Possession After Sale: If pledgee acts in good faith.

✓ **Joint Owner in Possession**: With consent of other owners.

✓ Pledge by a Person with Limited Interest: Up to the extent of interest.

☎ Short Question (10 Marks) − Possible

Q. Define Bailment and Pledge. Explain differences between them.

⋄ Bailment:

Delivery of goods by bailor to bailee for a purpose with an agreement for return.

⋄ Pledge:

Bailment of goods as security for payment or performance.

VS Differences between Bailment and Pledge:

Basis	Bailment	Pledge
Purpose	General purpose	For security against debt
Consideration	May or may not be for consideration	Always for consideration
Right to Use Goods	Bailee may use (if permitted)	Pawnee has no right to use
Right to Sell	Bailee can't sell goods	Pawnee can sell (after default notice)
Parties	Bailor, Bailee	Pawnor, Pawnee

Include: Rights & Duties of Bailee and Bailor

- Bailee's Duties: Care of goods, no unauthorised use, return goods, etc.
- Bailor's Duties: Disclose faults, bear expenses, etc.

□ Long Question (15 Marks) – Important

Q. What is a Pledge? Who can make a valid pledge? Describe rights and duties of a Pawnee.

⋄ Pledge:

Defined under Section 172 of the Indian Contract Act / Nepal Contract Act equivalent.

♦ Who can make a valid pledge?

- 1. Owner of goods
- 2. **Agent/Mercantile Agent** (with authority)
- 3. Person with possession under voidable contract
- 4. Joint owner in possession
- 5. Seller in possession after sale
- 6. Person with limited interest (up to extent of interest)

⋄ Rights of Pawnee (Pledgee)

- 1. Retain goods until payment of debt.
- 2. Retain goods for interest and charges.
- 3. Right to sell goods after giving reasonable notice (on default).
- 4. Sue for debt and retain goods as collateral.

⋄ Duties of Pawnee

- 1. Take reasonable care of goods.
- 2. Not to use goods.
- 3. Return goods after repayment.
- 4. Return accretion to goods (e.g., offspring or increase in pledged animals).



Solution Focus Topics Summary

♦ 1. Concept of Sale of Goods

Definition:

A **contract of sale of goods** is a contract where the seller transfers or agrees to transfer the ownership (property) of goods to the buyer for a price.

It may be:

- Sale (ownership transferred immediately), or
- Agreement to Sell (ownership to be transferred later).

Essential Elements:

- Two parties (seller & buyer)
- Goods
- Price consideration
- Transfer of ownership

♦ 2. Rights and Duties of an Unpaid Seller

Unpaid Seller: A seller is considered unpaid when:

- ✓ Full price not paid or
- Payment through negotiable instrument dishonored (e.g., cheque bounced)

☑ Rights Against the Goods:

- 1. **Right of Lien** Retain goods until payment is made.
- 2. **Right of Stoppage in Transit** Stop goods in transit if buyer becomes insolvent.
- 3. **Right of Resale** Can resell goods after notice.

4. Withhold Delivery – Refuse to deliver if price not paid.

☑ Rights Against the Buyer:

- 1. Sue for Price
- 2. Sue for Damages (non-acceptance, breach)
- 3. Repudiation before due date (anticipatory breach)

Duties of Unpaid Seller:

- Deliver goods if payment is made.
- Take reasonable care of goods before resale.
- Give notice before resale or stopping goods in transit.

◆ 3. Caveat Emptor ("Let the Buyer Beware")

This principle means the buyer must be cautious and examine the goods before buying.

☑ Buyer is responsible for checking:

- Quality
- Suitability for purpose
- Defects (visible)

! Exceptions (when seller is liable):

- 1. If seller made false representation/fraud
- 2. If goods sold by description or sample and don't match
- 3. If seller knows the purpose and buyer relied on seller's skill
- 4. If goods are unfit for use and buyer couldn't detect it

♦ 4. Warranty

A warranty is a collateral (secondary) term in the contract. If breached, the buyer can claim damages, but cannot reject the goods.

✓ Types of Warranty:

- 1. **Express Warranty** Written or spoken promises.
- 2. **Implied Warranty** Understood by law:
 - o Goods are free from third-party claims.
 - o Buyer shall have quiet possession.
 - o Goods are free from hidden defects.

Difference Between Condition and Warranty:

Basis	Condition	Warranty
Importance	Essential term	Secondary term
Breach result	Buyer can reject goods + claim	Only claim damages
Example	"Must be a new iPhone 15"	"Comes with charger"
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S Concept

An **agency** is a legal relationship where **one person (agent)** acts on behalf of **another (principal)** to create legal relations with a third party.

- ♦ Governed by **law of contract** principles.
- Example: A broker selling land on behalf of the owner.

♦ 1. Types of Agency (Very Short – 2 marks / Short – 10 marks)

Type of Agent	Explanation	
General Agent	Authorized to act in all matters related to a particular business or trade.	
Special Agent	Appointed for a specific act or transaction.	
Universal Agent	Authorized to act on behalf of the principal in all matters.	
Co-Agent	Two or more agents working together.	
Sub-Agent	Appointed by the agent to act under his control (with permission).	
Broker	A person who negotiates on behalf of principal but does not possess goods.	
Commission Agent	Buys or sells goods on behalf of principal for commission.	
Factor	Agent who has possession of goods and authority to sell.	

◇ 2. Modes of Creating Agency (Very Short / Short)

Agencies can be created in 5 ways:

Mode	Description
1. Express Agreement	Written or spoken agreement (e.g., power of attorney).
2. Implied Agreement	Inferred from conduct or situation.

Mode	Description
3. Agency by Necessity	Created during emergencies (e.g., delivering perishable goods).
4. Agency by Ratification	Principal accepts and approves unauthorized act done on his behalf.
5. Agency by Estoppel	Principal's behavior leads others to believe someone is an agent.

⋄ 3. Agency by Ratification (Important)

☑ Definition:

When a person acts without authority on behalf of another, and the other person later approves or accepts the act — this is agency by ratification.

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☑ Conditions for Valid Ratification:

- 1. Agent must act on behalf of principal.
- 2. Principal must have full knowledge of the facts.
- 3. Principal must exist and be competent.
- 4. Ratification must be for **whole act**, not partial.
- 5. Ratification must happen within reasonable time.
- 6. The act must be **lawful**.

⋄ Example:

If A buys a car for B without B's permission, and B later agrees to buy that car, B has ratified A's act.

♦ 4. Agency by Estoppel (Important)

☑ Definition:

If a **principal allows a third party to believe** that a person is their agent, and the third party relies on it — the principal is **estopped (prevented)** from denying the agency later.

⋄ Key Points:

- Based on appearance and conduct of the principal.
- Protects third parties acting in **good faith**.
- Does not require express appointment.

⋄ Example:

If the owner of a store lets his friend sell goods on his behalf without stopping him, the friend may become an agent by estoppel.

⋄ Insolvency and Its Features

☑ Definition:

Insolvency is the condition where a person or company is unable to pay debts when they become due. **Insolvency** refers to a **financial condition** where an individual or a company is **unable to pay its debts** when they become due.

✓ Key Points:

- It is a **legal status** confirmed by a court.
- The liabilities (debts) of the person or company are greater than the assets.
- It can lead to **legal proceedings** such as **liquidation** (for companies) or **bankruptcy** (for individuals).

• It is **not the same as bankruptcy**—insolvency is the state; bankruptcy is the legal declaration.

Feature	Explanation	
Inability to Pay Debts	The main feature; liabilities > assets	
Legal Declaration	Must be declared by court	
Asset Liquidation	Assets are collected and sold	
Appointment of Receiver	For managing and distributing assets	
Debt Discharge	After process, individual may be released from remaining debts	

$oxed{ }$	Features	of Ins	solvency:
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✓ Consequences:

- Business operations stop
- Credit rating damaged
- Legal protection may be provided to debtor

♦ 3. Rights and Duties of Auditor

☑ Who is an Auditor?

An auditor is an independent person appointed to examine the financial records of a company.

☑ Rights of Auditor:

- 1. Access to Books Can inspect books, records, and vouchers.
- 2. **Seek Information** Can ask employees for necessary information.
- 3. **Right to Attend Meetings** Especially when financial matters are discussed.
- 4. **Right to Report** Can express opinion on financial truthfulness.
- 5. **Remuneration** Right to get paid as per agreed terms.

☑ Duties of Auditor:

Duty	Explanation	
Examine Accounts	Verify correctness of financial records	
Report to Shareholders	Submit unbiased, accurate audit report	
Detect Fraud and Errors	Investigate suspicious entries	
Follow Legal Guidelines	Comply with Company Act and auditing standards	
Maintain Confidentiality	Must not disclose company secrets unnecessarily	
Professional Competence	Must act with skill, care, and diligence	

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