

BBS 3rd Year

Business Law Exam Oriented Notes

Unit -1: Introduction to Law and Business Law

1. Law is a system of rules created and enforced by governmental institutions to regulate behavior, maintain order, and ensure justice in society. It includes statutes, regulations, and legal precedents that guide individuals and organizations in their rights and responsibilities. Laws can be national or international and cover various areas such as criminal, civil, and constitutional law.

कानून भनेको सरकारद्वारा बनाइने र कार्यान्वयन गरिने नियमहरूको प्रणाली हो, जसले समाजमा शान्ति, न्याय र सुव्यवस्था कायम राख्न मद्दत गर्छ। यसमा विभिन्न कानुनी प्रावधान, नियमावली, तथा अदालतका निर्णयहरू समावेश हुन्छन्, जसले व्यक्ति र संस्थाहरूको अधिकार तथा कर्तव्यहरू निर्धारण गर्छ। कानूनहरू राष्ट्रिय वा अन्तर्राष्ट्रिय हुन सक्छन् र यो आपराधिक कानून, नागरिक कानून, संवैधानिक कानून जस्ता विभिन्न क्षेत्रहरूमा लागू हुन्छ।

1. List out any four sources of law.

- Constitution
- Legislation
- Judicial Precedent
- Custom
- संविधान
- कानून (विधान)
- न्यायिक दृष्टान्त
- परम्परा

2. List out any four characteristics of Nepalese business law.

- Based on customs and traditions
- Influenced by religion
- Flexible and dynamic

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- Derived from multiple sources
- चलनचल्ती र परम्परामा आधारित
- धर्मद्वारा प्रभावित
- लचिलो र परिवर्तनशील
- बहुआयामिक स्रोतहरूबाट उत्पन्न

3. Define the term precedent.

A precedent is a legal decision or judgment that serves as an example or rule for future similar cases.

दृष्टान्त भन्नाले विगतमा अदालतले गरेको निर्णय वा फैसलालाई भविष्यका समान प्रकृतिका मुद्दाहरूको लागि मार्गदर्शनको रूपमा प्रयोग गरिने कानुनी नियम हो।

4. What is procedural law? •

Procedural law governs the methods and means by which legal rights are enforced and legal duties are imposed.

प्रक्रियात्मक कानून भन्नाले कानुनी अधिकार कार्यान्वयन गर्ने र दायित्व लागू गर्ने प्रक्रिया र तरिका निर्धारण गर्ने कानून हो।

5. Define business law.

Business law is a branch of law that deals with the rights, relations, and conduct of persons and businesses engaged in commerce, trade, and sales.

व्यवसायिक कानून भन्नाले व्यापार, वाणिज्य र कारोबारमा संलग्न व्यक्तिहरू तथा संस्थाहरूका अधिकार, सम्बन्ध र आचरणसँग सम्बन्धित कानून हो।

6. What is substantive law? १. कानून २. अर्थ

Substantive law defines the rights and duties of individuals and collective bodies.

वस्तुगत कानून भन्नाले व्यक्तिहरू र संस्थाहरूको अधिकार र दायित्व निर्धारण गर्ने कानून हो।

7. State any two natures of law.

- Law is normative in nature.
- Law is dynamic and evolves with society.

- कानून मान्यतामा आधारित हुन्छ।
- कानून समयअनुसार परिवर्तनशील हुन्छ।

8. Distinguish between substantive law and procedural law.

- **Substantive law:** Defines rights and duties.
- **वस्तुगत कानून:** अधिकार र दायित्व निर्धारण गर्छ।
- **प्रक्रियात्मक कानून:** ती अधिकार कार्यान्वयन गर्ने तरिका बताउँछ।

9. What is legislation?

Legislation is the process of making or enacting laws by a legislative body such as parliament.

विधान भन्नाले संसदजस्ता विधायिका निकायद्वारा कानून निर्माण गर्ने प्रक्रिया हो।

Nature of Law (कानूनको प्रकृति)

1. Law is Universal (कानून सार्वभौमिक हुन्छ)

- Law applies to all individuals and entities within a society or state.
- Every person, regardless of status, must follow the legal rules.

2. Law is Dynamic (कानून परिवर्तनशील हुन्छ)

- Law evolves over time to meet the changing needs of society.
- Old laws may be amended or replaced with new laws.

3. Law is Enforceable (कानून कार्यान्वयन योग्य हुन्छ)

- Laws are enforced by government institutions like the judiciary and police.
- Violations of the law lead to punishments or penalties.

4. Law Maintains Social Order (कानूनले सामाजिक व्यवस्था कायम गर्छ)

- It regulates human behavior to prevent conflicts and crimes.
- It ensures peace, security, and harmony in society.

5. Law is Based on Justice and Equality (कानून न्याय र समानतामा आधारित हुन्छ)

- A good legal system ensures justice for all citizens.

It protects fundamental rights and promotes fairness.

Meaning of Business Law

Business means activities of making, buying, selling, and supplying goods and services for money. It is an accumulated form of commerce, trade, and Industry.

Thus **business law** is that part of law that deals with all those laws connected with every activity of business and rights and obligations of business persons and business firms arising from the business transactions. It helps the business community to carry out its transactions without any fears and with certainty and confidence.

व्यापार कानून भनेको कानूनहरूको एक श्रेणी हो जसले व्यापारिक मामिलामा संलग्न व्यक्तिहरू र व्यवसायहरूको अधिकार, सम्बन्ध र आचरणलाई नियमन गर्छ। यसले करार, बिक्री, साझेदारी, दिवालियापन, बौद्धिक सम्पत्ति र रोजगार जस्ता विभिन्न विषयहरूलाई समेट्छ। व्यापार कानून व्यवसायहरूले न्यायपूर्ण र प्रभावकारी रूपमा सञ्चालन गर्ने सुनिश्चित गर्न महत्वपूर्ण छ र व्यवसाय र व्यक्तिहरू बीचका विवादहरूलाई कानूनी रूपमा समाधान गर्न मद्दत पुर्याउँछ।

उदाहरण:

- **करार कानून**, व्यापार कानूनी दायित्वको एक हिस्सा हो जसले व्यवसाय र ग्राहक वा आपूर्तिकर्ता बीचका सम्झौताहरूलाई नियमन गर्छ।

Features and Characteristics of Business Law

- It has Civil Nature
- It is the fastest-growing part of law.
- It regulates industry, trade, and commerce.
- It regulates every business activity of the business community.
- It includes the law of contract, company, agency, banking, insurance, and arbitration.
- It protects the rights and interests of the business community.

Purpose of Business Law

- To regulate, Control, and manage any Business organization.
- To deal with rights, duties, and obligations of business firms and Businessmen.
- To develop the Industrial Sectors.
- To develop the society.
- To grow the economic Activities.
- Effective development of business sectors.

Importance of Business Law

- To establish and run the business activities.
- To increase and maintain business transactions.
- To develop a capital market. How to collect and how to use capital.
- To develop economic activities.
- To prepare the foundation for national development.

Source of Law

Legislation: (कानूनी निर्माण)

Legislation is the main source of law in the modern states. It enjoys the law-making power of the country. It is made according to the change of time and it is the outcome of a long series of discussions among the representatives of people. It is made by the legislative body and enforced by the supreme power.

कानूनी निर्माण भन्नाले विधायिका निकाय (जस्तै, संसद वा कांग्रेस) द्वारा कानून बनाउन वा पारित गर्ने प्रक्रियालाई जनाउँछ। यसमा समाजका विभिन्न पक्षहरूलाई नियमन गर्नका लागि कानूनको मस्यौदा तयार गर्नु, छलफल गर्नु, र कानून पारित गर्नु पर्दछ। जब कुनै प्रस्तावित कानून (बिल) विधायिका निकायद्वारा पारित हुन्छ, तब यो ऐन वा statute बन्नेछ र कानूनी रूपमा लागू हुने हुन्छ।

Precedent: (पूर्ववर्तीक निर्णय)

Precedent is the judicial decision that contains itself principle. Such a principle is created in the verdict (decision) of the court and applies to other similar future cases of the same nature of the case.

A precedent refers to a legal decision or judgment that serves as an example or rule for future cases with similar facts or issues. It is a principle established by a court's previous ruling that courts use to guide decision-making in subsequent cases. Precedents help ensure consistency and fairness in the legal system.

पूर्ववर्तीक निर्णय भन्नाले अदालतको अघिल्लो निर्णय वा फैसलालाई जनाउँछ जुन भविष्यका समान तथ्य र मुद्दाहरू भएका मामिलामा उदाहरण वा नियमको रूपमा काम गर्छ। यो अदालतको अघिल्लो निर्णय द्वारा स्थापना भएको सिद्धान्त हो जसले भविष्यका मामिलाहरूमा निर्णय लिनका लागि मार्गदर्शन प्रदान

गर्छ। पूर्ववर्तीक निर्णयहरूले कानूनी प्रणालीमा सुसंगतता र समानता सुनिश्चित गर्न मद्दत पुर्याउँछ।

Ordinance and regulation: (आदेश र विनियम)

An ordinance is a law or decree issued by an executive authority (such as a president, governor, or head of state) when the legislative body is not in session or in urgent situations. It has the force of law and can be enforced until it is replaced or approved by the legislature.

आदेश भनेको एउटा कानूनी आदेश वा निर्णय हो जुन कार्यकारी अधिकार (जस्तै, राष्ट्रपतिको, गभर्नरको, वा राष्ट्र प्रमुखको) द्वारा जारी गरिन्छ, जब विधायिका (संसद) बैठकमा नहुँदा वा चाँडो निर्णय लिनुपर्ने अवस्थामा। यसले कानूनी प्रभाव राख्छ र जबसम्म विधायिका द्वारा यसको पुष्टि वा परिवर्तन हुँदैन तबसम्म लागू रहन्छ।

Custom and Usage (रूढी र प्रचलन)

Custom refers to a long-established practice or tradition that is followed by a community, group, or society. These practices are often unwritten but are considered binding because they have been accepted and followed for a long time. Customs can influence legal decisions, especially when formal laws or regulations do not exist on a specific issue.

रूढी भनेको दीर्घकालीन परंपरा वा रीतिरिवाज हो जुन कुनै समुदाय, समूह, वा समाजले पालना गर्दै आएको छ। यी अभ्यासहरू प्रायः लिखित हुँदैनन्, तर दीर्घकालसम्म स्वीकार्य र पालन गरिएर यसलाई विधि जस्तो मानिन्छ। रूढीले कानूनी निर्णयहरूलाई असर पार्न सक्छ, विशेष गरी जब कुनै विशिष्ट मामिलामा लिखित कानून वा विनियमहरू उपलब्ध हुँदैनन्।

Convention (सन्धि)

Sources of Nepalese Business Law (नेपालको व्यापार कानूनका स्रोतहरू)

- Constitution of Nepal (नेपालको संविधान):
- Statutory Laws (कानूनी ऐन):
- Regulations and Orders (विनियम र आदेश):
- Judicial Precedents (न्यायिक पूर्ववर्तीक निर्णय):
- Customary Law (रूढीवादी कानून):

Substantive Law (वस्तुगत कानूनको परिभाषा)

Substantive law is the branch of law that defines the rights, duties, and liabilities of individuals and organizations. It establishes legal principles that determine what is lawful and unlawful, without focusing on procedural aspects. This law forms the foundation for legal claims and defenses in courts.

Example: Laws defining criminal offenses, contract rights, property rights, and fundamental rights fall under substantive law.

वस्तुगत कानून भन्नाले व्यक्तिहरू तथा संस्थाहरूको अधिकार, कर्तव्य, र दायित्व निर्धारण गर्ने कानून हो। यसले के कानूनी रूपमा सही वा गलत हो भन्ने तय गर्छ, तर प्रक्रियागत पक्षमा केन्द्रित हुँदैन। यो कानून न्याय प्रणालीमा दावी (Claim) र प्रतिरक्षा (Defense) को आधार बन्छ।

उदाहरण: फौजदारी अपराध, करार सम्बन्धी अधिकार, सम्पत्ति अधिकार, र मौलिक अधिकार निर्धारण गर्ने कानून वस्तुगत कानून हुन्।

Procedural Law (प्रक्रियागत कानूनको परिभाषा)

Procedural law is the branch of law that establishes the methods and processes for enforcing substantive laws. It provides the rules and procedures that courts, law enforcement agencies, and individuals must follow to file cases, conduct trials, and implement legal judgments.

Example: Laws that define court procedures, evidence rules, appeal processes, and case filing methods fall under procedural law.

प्रक्रियागत कानून भन्नाले वस्तुगत कानून कार्यान्वयन गर्ने विधि र प्रक्रिया निर्धारण गर्ने कानून हो। यसले मुद्दा दर्ता, प्रमाणहरू पेश गर्ने तरिका, अदालती प्रक्रिया, अपील गर्ने व्यवस्था जस्ता कानूनी प्रक्रियाहरूको नियम बनाउँछ।

उदाहरण: अदालती प्रक्रिया, प्रमाण कानून, अपील प्रणाली, र मुद्दा दर्ता सम्बन्धी नियमहरू प्रक्रियागत कानून अन्तर्गत पर्दछन्।

Criminal Law (फौजदारी कानून) Criminal Law (फौजदारी कानून)

Criminal law is the branch of law that defines offenses, crimes, and punishments. It regulates actions that are considered harmful to society and prescribes penalties such as fines, imprisonment, or even capital punishment. Criminal law ensures justice by punishing wrongdoers and protecting victims.

फौजदारी कानून यस्तो कानूनी शाखा हो जसले अपराध, कानूनी उल्लंघन, र तिनका सजायहरू निर्धारण गर्छ। यसले समाजलाई हानी पुर्याउने क्रियाकलापहरू नियन्त्रण गर्छ र जरिवाना, कैद, वा मृत्युदण्ड जस्ता दण्ड तोक्छ। फौजदारी कानून अन्याय गर्नेहरूलाई सजाय दिई पीडितको सुरक्षामा मद्दत गर्छ।

Civil Law (देवानी कानून)

Civil law is that part of law, which is related with the property and position of persons. It is made and enforced by the state to regulate the society. Civil law deals with the wrong doing of the individuals. Like; land law, contract law, and commercial law are the illustrations of civil law

देवानी कानून त्यो कानूनको भाग हो, जुन व्यक्तिहरूको सम्पत्ति र अवस्थासँग सम्बन्धित हुन्छ। यो राज्य द्वारा बनाइन्छ र लागू गरिन्छ समाजलाई व्यवस्थित गर्न। देवानी कानूनले व्यक्तिहरूको गलत कार्यलाई नियमन गर्छ। जस्तै, भूमि कानून, करार कानून, र वाणिज्यिक कानून देवानी कानूनका उदाहरणहरू हुन्।

Unit – 2.1 Law of Contract

1. What is the contract?

A contract is a legally enforceable agreement between two or more parties.

सझौता भन्नाले दुई वा बढी पक्षहरूबीच गरिएको कानुनी रूपमा बाध्यकारी सहमति हो।

2. When is an agreement enforceable by law?

An agreement becomes enforceable by law when it fulfills all legal requirements of a valid contract.

जब कुनै सहमति वैध सझौताको सबै कानुनी शर्तहरू पूरा गर्छ, तब त्यो कानूनद्वारा कार्यान्वयन योग्य हुन्छ।

3. State two differences between void and voidable contract.

- Void contract has no legal effect from the beginning.
- Voidable contract is valid until one party cancels it.
- रद्द सझौता शुरुदेखि नै कानुनी रूपमा अमान्य हुन्छ।
- रद्द गर्न मिल्ने सझौता वैध हुन्छ जबसम्म कुनै एक पक्षले रद्द गर्दैन।

4. State any two nature of contract.

- Contracts are legally binding.
- Contracts involve offer and acceptance.
- सझौता कानुनी रूपमा बाध्यकारी हुन्छ।
- सझौतामा प्रस्ताव र स्वीकृति आवश्यक हुन्छ।

5. State any two differences between void and illegal contract.

- Void contract is not legally enforceable, but not necessarily against the law.
- Illegal contract involves unlawful acts and is punishable.
- रद्द सझौता कानूनद्वारा कार्यान्वयन गर्न सकिँदैन तर सबै अवैध हुँदैन।
- अवैध सझौता गैरकानुनी कार्यसँग सम्बन्धित हुन्छ र दण्डनीय हुन्छ।

1. What is contract? Explain the essentials of a valid contract.

A **contract** is a legally enforceable agreement between two or more parties.

According to **Section 2(a)** of the **Contract Act, 2056 (2000)** of Nepal:

"सम्झौता भन्नाले दुई वा बढी पक्षहरूबीच कानुनी सम्बन्ध सृजना गर्ने उद्देश्यले पारस्परिक सहमतिमा गरिएको लिखित वा मौखिक सम्झनालाई बुझिन्छ।"

✓ Thus, a **contract in Nepal** is:

- A **written or oral agreement**
- Made **between two or more parties**
- With the **intent to create legal obligations**

Essentials of a valid contract:

1. **Offer and Acceptance** – There must be a lawful offer and proper acceptance.
2. **Free Consent** – Consent of parties must be free (no force, fraud, or coercion).
3. **Lawful Consideration** – Something of value must be exchanged.
4. **Capacity of Parties** – Parties must be competent (age, sound mind).
5. **Lawful Object** – The Purpose of the contract must be legal.
6. **Not Expressly Declared Void** – Must not fall under void contracts.

सम्झौता भन्नाले दुई वा बढी पक्षहरूबीच गरिएको कानुनी रूपमा बाध्यकारी सहमति हो।

वैध सम्झौताको आवश्यक तत्वहरू:

1. **प्रस्ताव र स्वीकृति** – वैध प्रस्ताव र स्वीकृति हुनुपर्छ।
 2. **स्वतन्त्र सहमति** – दबाव, धोका वा डर बिना सहमति।
 3. **वैध प्रतिफल (consideration)** – मूल्य वा सेवा आदानप्रदान हुनुपर्छ।
 4. **पक्षहरूको क्षमता** – वयस्क र मानसिक रूपमा सक्षम हुनु आवश्यक।
 5. **वैध उद्देश्य** – सम्झौताको उद्देश्य कानूनअनुसार वैध हुनुपर्छ।
 6. **अवैध वा रद्द घोषित सम्झौता होइन** – स्पष्ट रूपमा रद्द भनिएको सम्झौता हुनु हुँदैन।
-

2. What are void contracts? Explain the contracts that are declared as expressly void.

A **void contract** is a contract that is not legally enforceable from the beginning. It lacks one or more essential elements.

Expressly void contracts include:

- Agreements made without consideration.
- Agreements with unlawful objectives.
- Agreements made with a minor or a person of unsound mind.
- Agreements restricting legal rights (e.g., marriage, trade, legal proceedings).

रद्द सम्झौता भन्नाले शुरुदेखि नै कानुनी मान्यता नपाउने सम्झौतालाई जनाउँछ। यसमा आवश्यक तत्वहरू मध्ये कुनै न कुनै नहुन सक्छ।

स्पष्ट रूपमा रद्द घोषित सम्झौताहरू:

- प्रतिफल (consideration) बिना गरिएको सम्झौता।
- अवैध उद्देश्य भएको सम्झौता।
- नाबालक वा मानसिक असन्तुलन भएको व्यक्तिसँग गरिएको सम्झौता।
- वैयक्तिक स्वतन्त्रता (जस्तै: विवाह, व्यापार, मुद्दा) मा रोक लगाउने सम्झौता।

3. Discuss nature and functions of a contract.

Nature of Contract:

- Legally binding agreement.
- Based on mutual consent.
- Involves exchange of promises.

Functions of Contract:

- Defines legal rights and duties.
- Promotes business certainty and trust.
- Provides legal remedy in case of breach.

सम्झौताको प्रकृति:

- कानुनी रूपमा बाध्यकारी हुन्छ।
- आपसी सहमतिमा आधारित हुन्छ।
- प्रतिज्ञाहरूको आदानप्रदान हुन्छ।

सम्झौताको कार्यहरू:

- कानुनी अधिकार र दायित्व निर्धारण गर्छ।
- व्यापारमा विश्वास र निश्चितता ल्याउँछ।
- सम्झौता तोडिएमा कानुनी उपचार प्रदान गर्छ।

Major Provisions of Civil Code, 2074 (Nepal)

The Civil Code, 2074 (2017 AD), also known as the **Muluki Civil Code**, came into effect on **Bhadra 1, 2075 BS** and replaced the previous Muluki Ain 2020 BS. It is a comprehensive legal document governing civil rights and obligations in Nepal. The major provisions include:

- 1. Law of Persons (व्यक्तिको कानून)**
 - Defines natural and legal persons
 - Rules regarding name, domicile, residence, and legal capacity
- 2. Family Law (परिवार सम्बन्धी कानून)**
 - Governs marriage, divorce, adoption, and maintenance
 - Sets minimum age for marriage (20 years) and provides rights to both spouses
- 3. Property Law (संपत्ति सम्बन्धी कानून)**
 - Deals with ancestral and individual property
 - Inheritance rights, including equal rights for daughters and sons
- 4. Obligation Law (दायित्व सम्बन्धी कानून)**
 - Covers contracts and obligations between parties
 - Includes provisions on agreements, compensation, and liability
- 5. Law of Tort (अपकृत्य सम्बन्धी कानून) Law of Partition (अंशबन्डा सम्बन्धी कानून)**

Unit – 2.2 Offer and Acceptance

An offer is a proposal made by one person (offeror) to another (offeree), showing a willingness to enter into a contract on certain terms, with the intention that it becomes binding once accepted

1. What is the communication of an offer?
 - It informs the offeree about the offer.
2. When is an offer treated as accepted?
 - When acceptance is communicated to the offeror.
3. What is a cross offer?
 - Two parties make identical offers to each other without knowing the other's offer.
4. When does the communication of the offer complete?
 - When the offeree receives the offer.
5. What is the general offer?
 - An offer made to the public at large.
6. Who is the offeree?
 - The person to whom the offer is made.
7. Who is the promisor?
 - The person who makes the promise.
8. Can be revoked by a notice of revocation?
 - Before the acceptance is communicated.
9. What is a counteroffer?
 - A new offer made in response to the original offer.
10. State the rule of postal communication.
 - Acceptance is complete when the letter is posted.
11. What is a standing offer?
 - An offer to supply goods or services over a while.

Acceptance of an offer is the expression by words or conduct of assent to the terms of an offer in a manner which is prescribed or indicated by the offeror.

Acceptance is the consent given by the person to whom an offer has been presented, and it is based on the same meaning of that offer. Sec.. 504(3) (2) GCC 2074)

- स्वीकार्यता भनेको प्रस्ताव प्राप्त गर्ने व्यक्तिद्वारा प्रदान गरिएको सहमति हो, जुन प्रस्तावको समान अर्थमा आधारित हुन्छ। (महानगरीय नागरिक संहिता २०७४, दफा ५०४(३)(२))
- Features of Acceptance:
 - Express of assent
 - Acceptance can be made by word and by conduct
 - Assent to the terms and conditions of the offer
 - Acceptance given in the prescribed manner
 - It is the foundation of a valid Contract
 - It established the legal relationship

Rules regarding valid Acceptance

- Acceptance must be made after an offer
- The offer can be accepted by the offeree
- Acceptance must be absolute and unconditional
- Acceptance must be given within the prescribed time or a reasonable time
- Acceptance must be made before the offer lapses or is revoked
- Acceptance must be communicated in the usual or prescribed manner
- Mental or non-communicative acceptance is no valid acceptance
- Only valid acceptance can establish the legal relationship between the contractual parties.

Rules for Revocation of Acceptance

- Once an acceptance of a proposal by the offeree, then he can cancel the acceptance before properly communicating it to the offerer.
- Acceptance can be revoked by notice, but it must be made before the proper communication of Acceptance.
- Revocation by Death or insanity of the Acceptor
- Revocation by lapse of time
- Revocation by non-fulfillment of the terms and conditions of the proposal
- Revocation by Subsequent Impossibility
- Change of law
- Destruction of subject matter

स्वीकार्यता फिर्ता लिनेसम्बन्धी नियमहरू

- ✓ एक पटक प्रस्तावको स्वीकार्यता दिइसकेपछि, त्यसलाई प्रस्तावकर्तालाई सही रूपमा जानकारी गराउनु अघि फिर्ता लिन सकिन्छ।
- ✓ स्वीकार्यता सूचना (notice) द्वारा फिर्ता लिन सकिन्छ, तर यो सूचना स्वीकार्यताको उचित सञ्चार (proper communication) हुनुअघि नै दिनुपर्छ।
- ✓ स्वीकार गर्ने व्यक्तिको मृत्यु (death) वा मानसिक अस्थिरता (insanity) द्वारा स्वीकार्यता स्वतः रद्द हुन सक्छ।
- ✓ तोकिएको समय समाप्त (lapse of time) भएमा स्वीकार्यता फिर्ता हुन सक्छ।
- ✓ प्रस्तावका सर्त तथा शर्तहरू पूरा नभएमा (non-fulfillment of terms and conditions) स्वीकार्यता रद्द हुन सक्छ।

Unit – 2.3 Consideration

प्रतिफल

Consideration is one of the essential elements of a valid contract. It refers to something of value that is given by both parties to a contract that induces them to enter into the agreement. **विचार (Consideration)** भन्नाले सम्झौतामा प्रवेश गर्न प्रोत्साहन दिने वस्तु, पैसा, सेवा, वा वचनलाई जनाइन्छ जुन दुबै पक्षले एक अर्कालाई दिन्छन्।

Key Features of Consideration:

1. It must move at the desire of the promisor. वचन दिने पक्षको इच्छामा आधारित हुनुपर्छ।
2. It may be past, present, or future. यो अघिल्लो, अहिलेको, वा भविष्यको हुन सक्छ।
3. It must be something of value (money, goods, services, or even a promise). मूल्यवान हुनुपर्छ (पैसा, सेवा, वस्तु, आदि)।
4. It must be lawful.
5. It can be provided by the promisee or a third party. वचन लिने वा तेस्रो पक्षले दिन सक्छ।

For example: If A agrees to sell a bicycle to B for Rs. 5,000, the money is consideration for A and the bicycle is consideration for B.

यदि A ले B लाई रु. ५,००० मा साइकल बेच्ने वाचा गर्छ भने, पैसा B को तर्फबाट विचार हो र साइकल A को तर्फबाट विचार हो।

Types of Consideration:

- **Past Consideration** – Already given before the promise is made.
- **Present Consideration** – Given at the time of the promise.
- **Future Consideration** – To be given in the future after the promise.

☑ State any three rules of consideration.

- Must be lawful
- Must have value in the eyes of law
- Can be past, present, or future

☑ What is consideration?

- It is something of value exchanged between parties in a contract.

☒ **State any two features for consideration.**

- It must be real and legal
- It must move at the desire of the promisor

☒ **When is consideration called past consideration?**

- When it is given before the promise is made.

☒ **State any two cases where a contract is valid even without consideration.**

- In case of natural love and affection
- When made as a gift by a written and registered document

What is consideration? Explain the rules regarding the consideration.

Consideration means something of value (money, goods, service, promise, etc.) given by one party to another in return for a promise or act. It is a necessary element to make a contract valid.

प्रतिफल भन्नाले कुनै सम्झौताको बदलामा एक पक्षले अर्का पक्षलाई दिएको मूल्य, सेवा, वस्तु वा प्रतिज्ञालाई जनाउँछ। यो वैध सम्झौताको अनिवार्य तत्व हो।

✓ **Rules Regarding Valid Consideration**

- Must be real and lawful
- May move from the promisee or any other
- Past, present, or future
- Must be at the desire of the promisor
- Need not be adequate
- Must not be illegal or impossible
- Consideration is essential

Unit – 2.4 Incapacity to contract

Contractual capacity is one of the most essential elements of a Valid Contract. Parties must be capable of entering into a particular contract.

Who Is Minor?

- Minor refers to an infant who has not attained a certain age as specified by law for a certain purpose.
- Minors and adults are treated by law differently.
- Minors can not understand the nature and consequences of actions, so they are treated differently from adults.
- A minor is a person who has not reached the age of 18 years. Sec. 32(1) General Civil Code 2074

नाबालक भन्नाले त्यस्तो व्यक्ति हो, जसले कानूनले तोकेको निश्चित उमेर नपुगेको हुन्छ।

✓ नाबालक र वयस्क (adult) लाई कानूनले फरक तरिकाले व्यवहार गर्छ।

Rules Regarding Minors' Contract

- A contract made by or with a minor becomes void
- A contract for the benefit of the minor is valid
- No ratification on attaining the age of majority
- The minor cannot become a partner, and he may be a beneficiary but is not liable for any obligation.
- The minor can be an agent but does not liable for his act
- Parents can be made a necessary contract for the welfare of Minors on behalf of them.
- A contract by a minor and a major jointly is valid, but the Minor is not liable for liability
- The rule of estoppel does not apply to minor

• नाबालकको सम्झौतासम्बन्धी नियमहरू

✓ नाबालकद्वारा वा नाबालकसँग गरिएको सम्झौता अमान्य (void) हुन्छ।

✓ नाबालकको हितका लागि गरिएको सम्झौता वैध (valid) मानिन्छ।

✓ नाबालक वयस्क उमेर (majority age) पुगेपछि सम्झौतामा पुनः पुष्टि (ratification) गर्न सक्दैन।

✓ नाबालक साझेदार (partner) बन्न सक्दैन, तर लाभान्वित (beneficiary) हुन सक्छ, तर कुनै दायित्व (obligation) लाग्दैन।

✓ नाबालक एजेन्ट (agent) हुन सक्छ, तर उसले गरेको कार्यको लागि उत्तरदायी (liable) हुँदैन।

✓ अभिभावक (parents) ले नाबालकको हितको लागि आवश्यक सम्झौता गर्न सक्छन्।

✓ नाबालक र वयस्क व्यक्तिबीच संयुक्त रूपमा गरिएको सम्झौता वैध हुन्छ, तर नाबालकलाई कुनै दायित्व लाग्दैन।

✓ नाबालकको हकमा "Estoppel" को नियम लागू हुँदैन।

Who is Unsound Minded

A sound mind means the normal condition of mind by which the person can understand the nature and consequences of their actions.

Although Section 506 of General Civil Code, 2074 has made a provision that a person of unsound mind is incompetent to make contract but there is not defined the term "un sound mind."

Voidable Contract (Sec. 518 of GCC 2074)

The contract, made without the free consent of a party, is known voidable contract. It can be converted into the void, but it depends on the option of the parties. The party can reject or accept it. If a party wants to reject it, they must go to the court at the prescribed time.

स्वतन्त्र सहमति बिना गरिएको सम्झौता अस्वीकार्य (Voidable) सम्झौता कहलिन्छ। यो शून्य (Void) मा परिणत हुन सक्छ तर यो पक्षहरूको इच्छामा निर्भर गर्दछ। पक्षले यसलाई

अस्वीकार वा स्वीकार गर्न सक्छ। यदि पक्षले यसलाई अस्वीकार गर्न चाहन्छ भने, तोकिएको समयमा अदालत जानु आवश्यक छ।

Void Contract (Sec. 517 of GCC 2074)

- A void Contract is one that is not enforceable by law. It is void from the very beginning. It can not establish a legal relationship between the parties or create any rights and obligations between them.
 - Contract to prevent the trade
 - Contract in restraint Marriage.
 - Contract to prevent the legal rights of any person
 - Contract to restraint legal Proceeding.
 - Contract which cannot be performed and impossible to performance.
 - Subject of contract is vague or does not provide meaning.
 - Contract concluded by an incompetent person.
 - Contract made by mutual mistake.
 - Contract to do impossible task

Unit 2.9 Termination of contract

- Simply, the word termination is an end of something.
- A contract can be terminated when the contracting parties become free from their liability or legal obligations arising from a contract.
- Termination of a contract may take place;
 - Due to performance
 - Mutual agreement between the parties of the Contract
 - Operation of law
 - Impossibility of contract.

1. What is supervening impossibility? Discuss the cases and rules of supervening impossibility does apply

Supervening impossibility occurs when a contract, valid at the time of formation, becomes impossible to perform due to unforeseen events beyond the control of the parties after the contract is made. **Supervening impossibility** भन्नाले कुनै सम्झौता गरिएको समयमा सम्भव देखिएको कार्य पछि अप्रत्याशित घटनाका कारण असम्भव वा अवैध हुने अवस्थालाई जनाउँछ।

→ It discharges the contract as it becomes void under such circumstances.

यस्तो अवस्थामा, सम्झौता रद्द (void) हुन्छ र पक्षहरू मुक्त हुन्छन्।

Cases Where Supervening Impossibility Applies

- a) Destruction of Subject Matter
- b) Death or Incapacity
- c) Change in Law
- d) Outbreak of War
- e) Natural Calamities

✓ Rules Related to Supervening Impossibility

- a) Impossibility must be absolute
- b) It must occur after the contract
- c) Not self-induced
- d) Does not apply to commercial hardship
- e) The contract becomes void automatically

Quasi Contract

A quasi-contract is a legal obligation imposed by a court to prevent one party from unfairly benefiting at the expense of another. Even though there is no formal contract between the parties, the law treats the situation as if there were a contract to ensure fairness and justice.

For example, if someone mistakenly receives a service or goods and knowingly accepts them without paying, the court may require them to compensate the provider.

क्वासी सम्झौता (Quasi Contract) भन्नाले कानूनी रूपमा बनेको एउटा बाध्यता हो, जुन वास्तविक सम्झौताबिना नै अदालतले निष्पक्षता र न्यायको लागि लगाउँछ। यस अन्तर्गत, यदि कुनै व्यक्तिले अर्को व्यक्तिको सेवाबाट अनुचित रूपमा लाभ उठाउँछ भने, अदालतले सो लाभ प्राप्त गर्ने व्यक्तिलाई क्षतिपूर्ति गर्न आदेश दिन सक्छ।

Rules regarding quasi-contract

- अयोग्य व्यक्तिका लागि उनको सामाजिक स्थिति अनुरूप आवश्यक सामग्री, वस्तु, वा सेवासँग सम्बन्धित सम्झौता।
(An agreement related to the necessity of material, commodity, or service consistent with the social status of an incompetent person.)
- आवश्यक भुक्तानी सम्बन्धी सम्झौता।
(Agreement relating to the necessary payment.)
- उदाहरण: कर, भाडा, कुनै रोयल्टीको भुक्तानी।
(e.g., Payment of tax, fare, any royalty.)
- कुनै पार्टीद्वारा प्रयोग गरिएको सेवाको लागि उचित लागत वा पारिश्रमिक तिर्नु।
(To pay the appropriate cost or remuneration for any service the party uses.)

Lease Contract:

- An agreement, which is related to the rent of any property to use for any purpose or possession of such property or use any benefits of such property based on regular payment of any amount for some period, is called the contract of lease.
- कुनै सम्पत्तिको भाडा, उपयोग, कब्जा, वा त्यस सम्पत्तिबाट लाभ लिनको लागि तोकिएको रकम नियमित रूपमा निश्चित अवधिको लागि तिर्ने आधारमा गरिने सम्झौतालाई पट्टाको सम्झौता (Contract of Lease) भनिन्छ।

Hire Purchase Contract

- Hire purchase is an arrangement for buying expensive consumer goods, where the buyer makes an initial down payment and pays the balance plus interest in installments.
- The hire-purchase contract means;
- An agreement for the right of possession and use of the goods on the condition of payment of the amount by installments.
- To purchase the goods on hire according to the terms and conditions of the contract,
- The ownership of such goods would be transferred to the hirer upon payment of the last installment
- हायर पर्चेज (Hire Purchase) महँगो उपभोक्ता सामान किन्ने व्यवस्था हो, जहाँ खरिदकर्ताले प्रारम्भिक अग्रिम भुक्तानी गरेर बाँकी रकम ब्याजसहित किस्ताबन्दीमा तिर्छ।
- हायर पर्चेज सम्झौताले निम्नलिखित अर्थ जनाउँछ:
- निश्चित किस्ताबन्दीमा रकम भुक्तानी गर्ने सर्तमा सामानको कब्जा र प्रयोगको अधिकार सम्बन्धी सम्झौता।
- सम्झौताको सर्त तथा नियमअनुसार सामानलाई भाडामा लिएर खरिद गर्ने प्रक्रिया।
- अन्तिम किस्ताको सम्पूर्ण रकम तिरेपछि मात्र उक्त सामानको स्वामित्व खरिदकर्तामा हस्तान्तरण गरिने।

Unjust Enrichment

- When one party benefits at another's expense is called unjust enrichment. The elements of the enrichment include a payment or transfer of property between the two parties.
- Where one party, either in error or accidentally, receives benefits, it is called unjust enrichment.
- *Any person gets any benefit or advantage from another person, without the reason of doing any lawful act or fulfilling any obligation, is called unjust enrichment. Sec.. 664 of GCC 2074*
- An increment of property or a decrease in liability,
- Receive the service from another without cost.
- Use of others' property without any cost or liability

Rules regarding Unjust Enrichment

- Things taken by mistake to be returned
- To pay back the debt paid by mistake
- To return goods or the amount taken with a malicious intention and benefit
- To pay a debt paid by a third person

Meaning and Definition of Tort

- A tort is a civil wrong that causes harm to another person by violating a protected right.
 - A civil wrong is an act or omission that is intentional, accidental, or negligent, other than a breach of contract.
 - A tort is *an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability.*
 - Any loss or damage, in any manner, to another person's body, life or property, or legally protected right or interest by reason of commission or omission done, whether by any default, negligence or recklessness, must bear the obligation. Sec. 672 of GCC 2074
- **टोर्ट (Tort)** भनेको कुनै सुरक्षित अधिकारको उल्लङ्घन गरी अर्को व्यक्तिलाई हानि पुर्याउने नागरिक अन्याय (सिविल गलत) हो।
- **नागरिक अन्याय (Civil Wrong)** भन्नाले कुनै सम्झौता उल्लङ्घन बाहेक जानाजान, दुर्घटनावश, वा लापरवाहीका कारण गरिएको कार्य वा नगरेको कार्यलाई जनाउँछ।
- **टोर्ट** भन्नाले कुनै कार्य वा नगरेको कार्यका कारण अर्को व्यक्तिलाई चोटपटक वा हानि पुर्याउने तथा अदालतले त्यसका लागि दायित्व लगाउने नागरिक अन्यायलाई जनाउँछ।
- **गृह संहिता २०७४ को दफा ६७२** अनुसार, यदि कसैले कुनै कार्य गरे वा नगरेका कारण, कुनै गल्ती, लापरवाही वा लापरबाही (recklessness) का कारणले अर्को व्यक्तिको शरीर, जीवन, सम्पत्ति, वा कानुनी रूपमा सुरक्षित हक वा हितमा कुनै पनि तरिकाले नोक्सानी वा क्षति पुर्याएको छ भने, त्यस व्यक्तिले सो को दायित्व व्यहोर्नु पर्नेछ।

Unit – 3

Contract of Bailment and Pledge, and Pawn

Meaning:

A Bailment is the delivery of goods by a person to another for a definite purpose, under the condition that after the purpose is accomplished, the goods have to be returned.

बेलमेन्ट भन्नाले कुनै व्यक्तिले निश्चित उद्देश्यका लागि आफ्नो मालसामान अर्को व्यक्तिलाई हस्तान्तरण गर्ने प्रक्रिया हो, जुन उद्देश्य पूरा भएपछि ती मालसामान फिर्ता गर्नुपर्ने सर्त राखिन्छ।

- **Features of Bailment**

- **Special Contract** विशेष सम्झौता
- **Delivery of movable goods** चल सम्पत्तिको हस्तान्तरण
- **Delivery for a special purpose** विशेष उद्देश्यका लागि हस्तान्तरण
- **Non-transfer of ownership** स्वामित्व हस्तान्तरण नहुने
- **Return or dispose of goods** मालसामान फिर्ता गर्ने वा उचित रूपमा व्यवस्थित गर्ने

Rights of Bailor

- Rights of Bailor: The person who delivered the goods...
- Enforcement of Bailee's duties;
The right to demand the return of goods within the prescribed time.
- 1. बेलरको अधिकारहरू: जसले मालसामान हस्तान्तरण गर्छ...
- 2. बेलीसँगको कर्तव्यको कार्यान्वयन गर्न पाउने अधिकार।
- 3. तोकिएको समयभित्र मालसामान फिर्ता माग गर्न पाउने अधिकार।

Duties of the Bailor

- Duty to provide any fee or charge for Bailment
- Duty to disclose known defects of goods
- Duty to repay necessary expenses
- Duty to indemnify the bailee
- Duty to receive the goods

Rights of Bailee

- Rights of Bailee: The Person to whom the goods...
- Enforcement of the bailor's duties
- Right to demand the charges or fees
- Right to claim damages for loss arising from the non-disclosed faults in the bailed goods.
- बेलीका अधिकारहरू: जसलाई मालसामान हस्तान्तरण गरिन्छ...
- बेलरका कर्तव्यहरूको कार्यान्वयन माग गर्ने अधिकार।
- सेवा वा शुल्क माग गर्ने अधिकार।

Duties of Bailee

- Duty to take reasonable care of goods delivered to him for a particular purpose
- Duty not to make unauthorized use of goods of bailment
- Duty not to mix bailed goods with his own goods
- Duty to return the goods
- बेलीका कर्तव्यहरू
- विशेष उद्देश्यका लागि हस्तान्तरण गरिएको मालसामानको उचित रूपमा हेरचाह गर्ने कर्तव्य।
- बेलमेन्ट गरिएको मालसामानको अनधिकृत प्रयोग नगर्ने कर्तव्य।

Termination of Bailment

- On the expiry of the specific period.
 - On the accomplishment of a specific purpose.
 - Inconsistent with the term.
 - On the destruction of the subject matter of the contract of the bailment.
 - On the void condition of the contract.
- तोकिएको निश्चित अवधि समाप्त भएपछि।
 - निश्चित उद्देश्य पूरा भएपछि।
 - सम्झौताको सर्तसँग बेमेल भएमा।
 - बेलमेन्ट गरिएको विषयवस्तु नष्ट भएमा।

Finder of lost goods

The term finder of lost goods means a person who has found goods not belonging to him and keeps them with him. The responsibilities of the finder of lost goods are the same as the Bailee.

हराएको मालसामान फेला पार्ने व्यक्ति भन्नाले, आफूलाई नभएको मालसामान फेला पार्ने र त्यसलाई आफ्नो संरक्षणमा राख्ने व्यक्तिलाई जनाउँछ। हराएको मालसामान फेला पार्ने व्यक्तिको जिम्मेवारी बेली (Bailee) को जिम्मेवारीसह नै हुन्छ।

Rights and duty of finder of lost goods:

- Right to retain possession of the goods until the true owner is found
- Right to lien over the goods for expenses
- Right to sue for reward
- Right to sale goods or property

Duties of the finder of lost goods

- Duty to take reasonable care of the goods as like Bailee
- Duty to find out the true owner

Meaning and Features of Pledge or Pawn

- Loan transactions are very familiar activities in business operations. A pledge or pawn provides security for the repayment of such a loan.
- The Pledge is also a kind of special contract and a part of the contract of bailment. The bailment of goods as security for payment of a debt is called a pledge.
- ऋण कारोबार व्यवसायिक क्रियाकलापहरूमा धेरै प्रचलित छन्। प्रतिज्ञा (Pledge) वा गिरवी (Pawn) ले यस्तो ऋणको भुक्तानीको सुरक्षाको व्यवस्था गर्छ।
- प्रतिज्ञा एक प्रकारको विशेष सम्झौता हो र बेलमेन्ट सम्झौताकै एउटा भाग हो। ऋणको भुक्तानीको सुरक्षाका रूपमा गरिने मालसामानको बेलमेन्टलाई प्रतिज्ञा (Pledge) भनिन्छ।

Advantages of Pledge or Pawn

- It provides security for the repayment of a loan.
- It helps to accumulate the capital to carry out any business activities.
- It makes it easy to recover the loan.
- It helps to fulfill the respective obligations of the parties.
- It helps to reduce the conflicts between the parties.

Rights and Duties of the Pawner

Rights of Pawner

- Enforcement of Pawnee's duties
- Right to get back pledged goods

Duties of the Pawner

- To compensate for the extraordinary expenses incurred for the necessary care of the goods.
- To pay off the dues, if it is inadequate, by the sale of the goods

Unit – 4 Contract of Sale of Goods

1. Define the term 'caveat emptor'.

Answer:

Caveat emptor is a Latin phrase meaning "let the buyer beware." It implies that the buyer alone is responsible for checking the quality and suitability of goods before a purchase is made. 'Caveat Emptor' लेटिन शब्द हो जसको अर्थ हो

“खरिदकर्ताले आफैं सावधान हुनु पर्छ।” यसले जनाउँछ कि कुनै वस्तु खरिद गर्दा त्यसको गुणस्तर वा उपयुक्तता जाँच्ने जिम्मेवारी खरिदकर्ताकै हुन्छ।

2. What is meant by goods?

Answer:

Goods refer to every kind of movable property, excluding actionable claims and money. In business law, they include things that are produced or manufactured for sale, such as commodities, products, and materials.

Goods भन्नाले सबै प्रकारका चल सम्पत्तिहरू बुझिन्छन्, जसमा नगद र कानुनी दाबीहरू (actionable claims) समावेश हुँदैनन्। यी बिक्रीका लागि तयार गरिएका वा उत्पादन गरिएका भौतिक वस्तुहरू हुन्।

3. When does a condition transform into a warranty?

Answer:

A condition transforms into a warranty when:

- The buyer waives the condition, or
- The buyer elects to treat the breach of condition as a breach of warranty.
This means that instead of rejecting the goods, the buyer chooses to claim damages.

- जब खरिदकर्ताले शर्तलाई छोडिदिन्छ वा शर्तको उल्लङ्घन भए तापनि वस्तुहरू स्वीकृत गर्छ भने त्यो शर्त वारेन्टीमा रूपान्तरण हुन्छ। यस्तो अवस्थामा खरिदकर्ताले सामान फिर्ता नगरी क्षतिपूर्ति मात्र माग्न सक्छ।

4. What do you understand by merchantability?

Answer:

Merchantability refers to the quality of goods being fit for the general purpose for which they are sold. The goods must be of average or reasonable quality and suitable for sale under the contract. Merchantability भन्नाले वस्तु

व्यापारिक प्रयोजनको लागि उपयुक्त, औसत गुणस्तरको, र बेचन योग्य हुनुपर्छ भन्ने बुझिन्छ। वस्तु सामान्य प्रयोगको लागि फिट हुनु आवश्यक हुन्छ।

5. What is constructive delivery?

Answer:

Constructive delivery occurs when the goods are not physically delivered but ownership or control is transferred. This can happen when a third party acknowledges holding the goods on behalf of the buyer. Constructive Delivery भन्नाले जब वस्तुहरू प्रत्यक्ष रूपमा नभई अप्रत्यक्ष रूपमा हस्तान्तरण गरिन्छन् जस्तै, तेस्रो पक्षले वस्तुहरू अब खरिदकर्ताको लागि राखिएको स्वीकार गर्छ भने।

Descriptive Answer Questions [10 Marks]

6. (2078 Q. No. 14) Who is an unpaid seller? Explain the duties of an unpaid seller. [3+7]

Answer:

An *unpaid seller* is one who has not been paid fully or has received a conditional payment that has failed.

अपूर्त विक्रेता भन्नाले त्यस्तो विक्रेतालाई जनाउँछ जसले पूरा भुक्तानी पाएको हुँदैन वा चेक/बैंक ड्राफ्ट जस्ता सर्तसहितको भुक्तानी असफल भएको हुन्छ।

Duties of an unpaid seller:

1. **To deliver goods upon payment.** भुक्तानी पाएपछि मात्र वस्तु दिनु।
2. **To maintain reasonable care of the goods** until resale or delivery. वस्तुहरू सुरक्षित तरिकाले राख्नु।
3. **To notify the buyer** of resale in some cases. पुनःबिक्री गर्दा खरिदकर्तालाई जानकारी दिनु।
4. **To act in good faith** during resale. इमानदारीपूर्वक व्यवहार गर्नु।

7. (2077 Q. No. 15) What is a contract of sale of goods? Distinguish between sale and agreement to sell. [3+7]

Answer:

A *contract of sale of goods* is a legal agreement in which the seller transfers or agrees to transfer goods to the buyer for a price. वस्तु बिक्रीको सम्झौता भन्नाले विक्रेताले एक मूल्यको सट्टा वस्तु खरिदकर्तालाई हस्तान्तरण गर्न सहमत भएको कानुनी सम्झौतालाई जनाउँछ।

Difference between Sale and Agreement to Sell:

Basis	Sale	Agreement to Sell
Ownership Transfer	Immediate	Future or conditional transfer
Risk	With buyer	With seller
Consequences	Legal action for price	Only damages can be claimed
Nature	Executed contract	Executory contract

8. (2075 Q. No. 14) Explain the rights and duties of an unpaid seller.

Answer:

Rights of an unpaid seller:

1. Right of lien Lien को अधिकार (भुक्तानी नभएसम्म सामान रोकिने)।
2. Right of stoppage in transit ट्रान्जिटमा रोक्ने अधिकार।
3. Right of resale
4. Right to sue for price and damages मूल्य र क्षतिपूर्तिको लागि मुद्दा हाल्ने अधिकार।

Duties:

1. Care of goods until resale or delivery
2. To inform the buyer of resale (in some cases)
3. Fair dealing and proper notice

9. (2074 Q. No. 13) What is warranty? What implied warranties are applied in a contract of sale of goods? Explain.

Answer:

A *warranty* is a stipulation that is collateral to the main purpose of the contract. Breach of warranty allows the buyer to claim damages, not to reject the goods. वारेन्टी भन्नाले मूल उद्देश्यसँग प्रत्यक्ष सम्बन्ध नभएको सर्त हो। यसको उल्लङ्घन भए खरिदकर्ताले क्षतिपूर्ति मात्र माग्नु सक्छ।

Implied warranties:

1. Warranty of quiet possession शान्त स्वामित्वको वारेन्टी।
 2. Warranty of freedom from encumbrance भार वा कर्जा मुक्त भएको वारेन्टी।
 3. Warranty of merchantability व्यापारिक गुणस्तरको वारेन्टी।
 4. Warranty that goods correspond with description (if applicable) विवरणसँग मेल खाने वारेन्टी।
-

10. (2073 Q. No. 14) Explain the rules regarding the performance of contract of sale of goods.

Answer:

Rules include:

1. **Delivery and acceptance:** The Seller must deliver, and the buyer must accept the goods.
 2. **Time of performance:** As per agreement or within a reasonable time.
 3. **Place of delivery:** As agreed or where goods are at the time of sale.
 4. **Expenses of delivery:** Unless otherwise agreed, borne by the seller.
 5. **Part delivery:** Treated as delivery of the whole unless otherwise intended.
-

Unit – 4 Contract of Agency

1. (2077 Q. No. 5) List out the types of agents.

- General Agent सामान्य एजेन्ट
- Special Agent विशेष एजेन्ट
- Mercantile Agent व्यापारी एजेन्ट
- Broker दलाल (Broker)
- Auctioneer लिलामकर्ता
- Del-Credere Agent डेल-क्रेडरे एजेन्ट
- Sub-Agent सहायक एजेन्ट (Sub-agent)

2. (2076 Q. No. 10) Define an agency of estoppel.

Agency of estoppel arises when a person, by words or conduct, leads another to believe that a certain person is their agent, and later cannot deny that fact.

Estoppel को आधारमा भएको एजेन्सी त्यस्तो अवस्था हो जहाँ कसैले आफ्ना व्यवहार वा शब्दद्वारा तेस्रो पक्षलाई कुनै व्यक्ति आफ्नो एजेन्ट हो भन्ने विश्वास दिलाउँछ, र पछि त्यो अस्वीकार गर्न सक्दैन।

3. State any two essentials of agency.

- Mutual consent
 - Competency of principal (must be of sound mind and major)
 - आपसी सहमति
 - प्रधानको योग्यता (सुस्पष्ट दिमाग र वयस्क हुनुपर्ने)
-

4. Who is agent?

An agent is a person employed to do any act for another or to represent another in dealings with third persons.

एजेन्ट भन्नाले कुनै कार्य अरुको लागि गर्न वा तेस्रो पक्षसँगको व्यवहारमा अरुको प्रतिनिधित्व गर्न नियुक्त गरिएको व्यक्ति हो।

5. Who is a del-credere agent?

A del-credere agent is one who guarantees the performance of the third party and takes responsibility if the third party fails to pay.

डेल-क्रेडरे एजेन्ट त्यो हो जसले तेस्रो पक्षको तर्फबाट भुक्तानी नआएमा जिम्मेवारी लिन्छ र त्यसको ग्यारेन्टी दिन्छ।

6. When agency becomes irrevocable?

Agency becomes irrevocable when:

- The agent has an interest in the subject matter
- It is given for consideration
- It is coupled with interest

एजेन्सी अपरिवर्तनीय तब हुन्छ जब:

- एजेन्टको बिषयवस्तुमा स्वार्थ हुन्छ
- केही प्रतिफलको आधारमा दिइएको हुन्छ
- एजेन्टको स्वार्थसँग सम्बन्धित हुन्छ

Descriptive Answer Questions (10 Marks)

7. (2077 Q. No. 14) Explain the effects of non-registration of agency in Nepal.

Effects of non-registration:

- Cannot legally enforce contracts
- Cannot sue third parties
- May lead to penalties under law
- Agency's actions may be invalidated

एजेन्सी दर्ता नगरेको असर:

- कानुनी रूपमा सम्झौता कार्यान्वयन गर्न नसकिने
- तेस्रो पक्षमाथि मुद्दा हाल्न नसकिने
- कानून अनुसार जरिवाना हुनसक्ने
- एजेन्सीका क्रियाकलापहरू अवैध मानिन सक्ने

8. (2076 Q. No. 13 / 2075 Q. No. 13) Define contract of agency. Explain the modes of creating agency.

A contract of agency is an agreement where one person (agent) acts on behalf of another (principal).

Modes of creating agency:

- By express agreement
- By implied agreement
- By ratification
- By necessity
- By estoppel

एजेन्सीको सम्झौता भन्नाले त्यो सम्झौतालाई जनाउँछ जहाँ एक व्यक्तिले (एजेन्टले) अर्कोको (प्रधानको) तर्फबाट कार्य गर्छ।

एजेन्सी सिर्जना गर्ने तरिकाहरू:

- स्पष्ट सम्झौता
- परोक्ष (Implied) सम्झौता
- अनुमोदन (Ratification) द्वारा
- आवश्यकता अनुसार
- Estoppel द्वारा

9. (2074 Q. No. 12) What do you mean by agency by ratification? Explain the conditions for valid ratification.

Agency by ratification occurs when a person accepts and confirms the act of another who acted without authority.

Conditions for valid ratification:

- Principal must be in existence at the time of the act
- Full knowledge of the facts
- Within a reasonable time
- Legal act
- Whole act must be ratified

अनुमोदनद्वारा एजेन्सी भन्नाले त्यस्तो अवस्था जनाउँछ जहाँ प्रधानले आफ्नो अधिकारबिना गरिएका कामहरूलाई पछि स्वीकृति दिन्छ।

वैध अनुमोदनका सर्तहरू:

- कार्य गर्दा प्रधान अस्तित्वमा हुनुपर्ने
- सम्पूर्ण तथ्यको जानकारी हुनु पर्ने
- उचित समयमा अनुमोदन हुनु पर्ने
- कानून अनुसार वैध कार्य हुनु पर्ने
- सम्पूर्ण कार्य अनुमोदन गर्नु पर्ने

10. (2073 Q. No. 13) What is a sub-agent? Distinguish it from a substitute agent.

English:

Sub-agent is appointed by an agent and works under the agent's control.

Substitute agent is appointed by agent but directly works for the principal.

Basis	Sub-agent	Substitute Agent
Appointment	By agent	By agent with principal's approval
Control	Under agent	Under principal
Relationship	No direct relationship	Direct relationship

Sub-agent भन्नाले एजेन्टले नियुक्त गरेको सहायक हो जो एजेन्टको निर्देशनमा काम गर्छ।

Substitute agent ले प्रधानको लागि काम गर्छ, तर एजेन्टद्वारा नियुक्त हुन्छ।

आधार	Sub-agent	Substitute Agent
नियुक्ति	एजेन्टद्वारा	एजेन्टद्वारा, प्रधानको सहमति सहित
नियन्त्रण	एजेन्टको अधीनमा	प्रधानको अधीनमा
सम्बन्ध	प्रधानसँग प्रत्यक्ष सम्बन्ध हुँदैन	प्रधानसँग प्रत्यक्ष सम्बन्ध हुन्छ

11. Highlight the nature of agency and explain the rights and duties of agent. [3+7]

Nature of Agency:

- Fiduciary (trust-based) relationship
- Agent acts on behalf of principal
- Binding effect on principal

Rights of Agent:

- Right to remuneration
- Right to lien
- Right to indemnity

Duties of Agent:

- Duty to follow instructions
- Duty of care and skill
- Duty to maintain secrecy
- Duty not to deal on own account

एजेन्सीको प्रकृति:

- विश्वासमा आधारित सम्बन्ध
- एजेन्ट प्रधानको तर्फबाट कार्य गर्छ
- एजेन्टका कार्यहरू प्रधानमा बाध्यकारी हुन्छन्

एजेन्टका अधिकारहरू:

- पारिश्रमिक पाउने अधिकार
- वस्तु राख्ने अधिकार (lien)
- क्षतिपूर्ति पाउने अधिकार

एजेन्टका कर्तव्यहरू:

- निर्देशन पालना गर्ने
- ध्यान र सीप प्रयोग गर्ने
- गोपनीयता कायम राख्ने
- आफ्नै लागि कारोबार नगर्ने

15. What is agency? Explain the procedures of registration of agency in Nepal. [3+7]

✓ English Answer:

Meaning of Agency:

Agency is a legal relationship where one person (agent) acts on behalf of another person (principal) to create a legal relationship with third parties.

Procedures of Registration in Nepal:

1. **Application Submission** – Submit application to the concerned government office (Department of Industry or Office of the Company Registrar).
2. **Documents Required** – Include contract of agency, PAN/VAT, identity documents, and address verification.
3. **Name Approval** – The agency's name must be approved.
4. **Payment of Fees** – Pay prescribed registration fee.
5. **Registration Certificate** – Receive certificate upon successful verification.
6. **Tax Registration** – Must also register for PAN/VAT for business operation.
7. **Renewal** – Periodic renewal may be required.

✓ नेपाली उत्तर:

एजेन्सीको अर्थ:

एजेन्सी एक कानुनी सम्बन्ध हो जहाँ एक व्यक्तिले (एजेन्टले) अर्कोको (प्रधानको) तर्फबाट तेस्रो पक्षसँग व्यवहार गर्न कार्य गर्दछ।

नेपालमा एजेन्सी दर्ता प्रक्रिया:

1. **निवेदन दिने** – सम्बन्धित निकाय (उद्योग विभाग वा कम्पनी रजिष्ट्रारको कार्यालय) मा निवेदन दिनु।
 2. **आवश्यक कागजातहरू** – एजेन्सी सम्झौता, प्यान/भ्याट, परिचयपत्र, ठेगाना प्रमाण आदि।
 3. **नाम स्वीकृति** – एजेन्सीको नाम अनुमोदन गराउनु।
 4. **शुल्क तिर्नु** – तोकिएको दर्ता शुल्क तिर्नु।
 5. **दर्ता प्रमाणपत्र पाउनु** – सम्पूर्ण प्रक्रिया पूरा भएपछि प्रमाणपत्र प्राप्त हुन्छ।
 6. **कर दर्ता** – प्यान वा भ्याटमा पनि दर्ता गर्नुपर्ने हुन्छ।
 7. **नवीकरण** – समय समयमा नवीकरण गर्नु पर्नेछ।
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16. "Delegatus non potest delegare." Comment and state the circumstances where an agent delegates his authority with difference between sub-agent and substituted agent. [15 marks]

✓ English Answer:

Meaning of "Delegatus non potest delegare":

This Latin maxim means "a delegate cannot further delegate." An agent appointed to perform duties cannot delegate those duties to another without the principal's consent.

Exceptions (When an agent can delegate):

1. Express permission by principal
2. Custom or trade practice
3. Ministerial acts (non-discretionary tasks)
4. Emergency situations
5. With principal's implied consent

Difference Between Sub-Agent and Substituted Agent:

Basis	Sub-Agent	Substituted Agent
Appointment	Appointed by agent	Appointed by agent for principal
Control	Under agent's control	Under principal's control
Relationship	No direct relation with principal	Direct relation with principal
Responsibility	Agent responsible for sub-agent's act	Agent not responsible after good choice

✓ नेपाली उत्तर:

"Delegatus non potest delegare" को अर्थ:

यो लेटिन वाक्यांशले जनाउँछ - "प्रतिनिधिले अर्को प्रतिनिधि नियुक्त गर्न सक्दैन"। एजेन्टले प्रधानको अनुमति बिना आफ्नो कार्य अरुलाई दिन सक्दैन।

अपवादहरू (एजेन्टले अधिकार सुम्पन सक्ने अवस्था):

1. स्पष्ट अनुमति भएमा
2. व्यापारिक अभ्यास अनुसार
3. सामान्य वा साधारण कार्यहरूमा
4. आपतकालीन अवस्था भएमा

5. परोक्ष अनुमति (Implied consent) भएमा

Sub-agent र Substituted agent बीचको भिन्नता:

आधार	Sub-agent	Substituted Agent
नियुक्ति	एजेन्टद्वारा	एजेन्टद्वारा प्रधानको लागि
नियन्त्रण	एजेन्टको अधीनमा	प्रधानको अधीनमा
सम्बन्ध	प्रधानसँग प्रत्यक्ष सम्बन्ध हुँदैन	प्रधानसँग प्रत्यक्ष सम्बन्ध हुन्छ
जिम्मेवारी	एजेन्ट उत्तरदायी हुन्छ	एजेन्ट जिम्मेवार हुँदैन यदि उचित व्यक्तिलाई चुनेको हो भने

17. Give the meaning of agency and describe the situation where an agency is terminated. [15 marks]

✓ English Answer:

Meaning of Agency:

An agency is a legal relationship in which one person (agent) is authorized to act on behalf of another (principal) in dealings with third parties.

Termination of Agency:

An agency is terminated in the following situations:

1. **By mutual agreement**
2. **By completion of work**
3. **By expiry of time**
4. **By death or insanity (of agent or principal)**
5. **By insolvency of principal**
6. **By revocation by principal**
7. **By renunciation by agent**
8. **By destruction of subject matter**
9. **By principal becoming an alien enemy**

✔ एजेन्सीको अर्थ:

एजेन्सी भन्नाले एक व्यक्तिले (एजेन्टले) अर्को व्यक्तिको (प्रधानको) तर्फबाट तेस्रो पक्षसँग व्यवहार गर्न कानुनी अधिकार प्राप्त गरेको सम्बन्ध हो।

एजेन्सी अन्त्य हुने अवस्था:

1. दुवै पक्षको सहमतिद्वारा
 2. कार्य सम्पन्न भएपछि
 3. समयावधि समाप्त भएपछि
 4. मृत्यु वा पागलपन (एजेन्ट वा प्रधानको)
 5. प्रधानको दिवालियापन भएमा
 6. प्रधानद्वारा अधिकार फिर्ता लिईएमा
 7. एजेन्टद्वारा पद त्यागेमा
 8. संबन्धित बस्तु नष्ट भएमा
 9. प्रधान शत्रु राष्ट्रको नागरिक भएमा
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