Rajasthan Institute of Engineering & Technology, Jaipur

University Roll No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_

2nd Year MBA 4nd Semester  I Mid-Term Examination, Feb – 2019

Subject: -BUSINESS LAW SET- A

Time: - 2 Hrs. [Maximum Marks: -20]

 [Min. Passing Marks: 08]

Instructions to the Candidates:

Attempt any 4 questions from Section A and Section B is Compulsory.

Section A

1. **What is a contract? Write its essentials?** (3)

An agreement which can be enforced in a court of law is known as a contract. According to Salmond, a contract is an agreement creating and defining obligations between the parties

* Offer. An offer is the beginning of a contract. ...
* Acceptance. An offer can be accepted in writing, in person or over the phone. ...
* Consideration. Consideration is something of value that the parties are contracting to exchange. ...
* Competence/Capacity. ...
* Mutual Consent. ...
* Legality. ...
* Writing.

1. **Write rights and duties of partner?** (3)

Rights of Partner in Partnership

1. Right to manage business
All the partners have an equal right to be involved in the management and operation of the partnership business. A partner can involve in planning, decision making, organizing and controlling activities of the business.
2. Right to express views and ideas
All the partners have a right to give their ideas, knowledge, and experience by making any business decision. Such suggestion is discussed and decided with mutual consent of all partners.
3. Right to inspect books account
Every partner has right to inspect and take a copy of accounts and financial statements like trial balance, profit and loss account and balance sheet of business in a timely manner.
4. Right to share profit
Each partner is authorized to claim over a profit of a business. Profit is shared on the basis of a ratio of investment.
5. Right to be indemnified
All partners are authorized to get compensation for the loss and expenses made personally by partners for business.
6. Right to use property
All the partners have a right to use a property of business for growth and promotion of business. A partner doesn't have the right to use the property of the business for personal assistance.
7. Right to join the ownership
All the partners have the right to claim joint ownership of the property of the business firms. All the partners have joint ownership of the property. So that one partner can't sell the property of the firm without a consent of other partners.
8. Right to get retirement
A partner has right to get retire from business in the consent of other existing partners.
9. Right to bind other partners
A partner has a right to demand loss (compensation) for the loss or damage occur to the business due to the negligence of other partners.
10. Right to dissolve the business
A partner can purpose the dissolve of business if he does not see any future prospect.

Duties and Responsibility of Partners

1. Mutual confidence and understanding
As the partnership starts with an agreement between the partners, it is the duty of the partners not to break confidence, agreement, and understanding between the partners.
2. To share losses
All the partners are required to share loss from business in the proportion (ratio) of their investment.
3. Not to transfer interest
It is the duty of partner not to transfer his/her ownership in business without the agreement of partner.
4. To act within the scope of authority
No partner is allowed to work beyond his/her authority. It is the responsibility of the partner to perform within his authority.
5. Not to demand remuneration
Even the active partner is not authorized to demand remuneration if it is not mentioned in partnership deed.
6. To indemnify the business
The partner is required to compensate loss that has occurred in business because of his/her negligent.
7. Not to run a competitive business
It is the most important responsibility of partner that he shouldn't run similar nature of business by himself.
8. To maintain up to date account
An active partner must maintain up to date financial state like profit and loss a/c, balance sheet etc. They must be provided on time as demanded by partners.
9. Not to use the property of the business
The property of business must be used for business purpose only. It is the duty of partner that he must not use for personal benefits.

1. **What is conditions and warranties? (3)**
2. Condition and warranty
3. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
4. (2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
5. (3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
6. (4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

**4. Write about Bailment and Pledge? (3)**

Bailment is a delivery of goods for some purpose on an understanding that they are to be returned after achievement of such purpose. In case of a contract of bailment, there is only change of possession and not ownership.

Bailor remains the owner of the goods; bailee only gets the possession of such goods. There may be actual delivery or constructive delivery of goods.

It is a special type of bailment. It is a bailment of goods as security for payment or performance of duty. The person who pledges the goods (or bailor) is the pledgor or pawner. The person to whom such goods are deposited is known as pledgee or pawnee (section 172).

It is the duty of the Pawnee to take care of the goods pledged. In a contract of pledge, any type of documents, goods, securities can be pledged. Government securities should be pledged by endorsement and delivery. Pawnee has a right to sell the goods pledged in some exceptional situations.

**5. What is promissory note? Explain (3)**

A promissory note is a financial instrument that contains a written promise by one party (the note's issuer or maker) to pay another party (the note's payee) a definite sum of money, either on demand or at a specified future date. A promissory note typically contains all the terms pertaining to the indebtedness, such as the principal amount, interest rate, [maturity date](https://www.investopedia.com/terms/m/maturitydate.asp), date and place of issuance, and issuer's signature.

Although financial institutions may issue them (see below), promissory notes are [debt instruments](https://www.investopedia.com/terms/d/debtinstrument.asp) that allow companies and individuals to get financing from a source other than a bank. This source can be an individual or a company willing to carry the note (and provide the [financing](https://www.investopedia.com/terms/f/financing.asp)) under the agreed-upon terms. In effect, anyone becomes a lender when he issues a promissory note.

 **6. Discuss transfer of property? (3)**

Transfer of Property in Goods

The property in the goods is said, to be transferred from the seller to the buyer when the latter acquires the proprietary rights over the goods and the obligations linked thereto. 'Property in Goods' which means the ownership of goods, is different from ' possession of goods' which means the physical custody or control of the goods.

The transfer of property in the goods from the seller to the buyer is the essence of a contract of sale. Therefore the moment when the property in goods passes from the seller to the buyer is significant for following reasons:

1. Ownership -- The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise the proprietary rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods, etc.
2. Risk follows ownership -- The general rule is that the risk follows the ownership, irrespective of whether the delivery has been made or not. If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at the time of damage or destruction. Thus the risk of loss prima facie is in the person in whom the property is.
3. Action Against Third parties -- When the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action against them.
4. Suit for Price - The seller can sue the buyer for the price, unless otherwise agreed, only after the gods have become the property of the buyer.
5. Insolvency - In the event of insolvency of either the seller or the buyer, the question whether the goods can be taken over by the Official Receiver or Assignee, will depend on whether the property in goods is with the party who has become insolvent.

Essentials for Transfer of Property -- The two essentials requirements for transfer of property in the goods are:

1. Goods must be ascertained: Unless the goods are ascertained, they (or the property therein) cannot pass from the seller to the buyer. Thus, where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained
2. Intention to PASS Property in Goods must be there: In a sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

**Section B**

1. **Write short note on dissolution of firm? (4)**

Dissolution of partnership is different from the dissolution of firm.

Dissolution of a partnership firm merely involves a change in the relation of partners; whereas the dissolution of firm amounts to a complete closure of the business. When any of the partners dies, retires or become insolvent but if the remaining partners still agree to continue the business of the partnership firm, then it is dissolution of partnership not the dissolution of firm. Dissolution of partnership changes the mutual relations of the partners. But in case of dissolution of firm, all the relations and the business of the firm comes to an end. On dissolution of the firm, the business of the firm ceases to exist since its affairs are would up by selling the assets and by paying the liabilities and discharging the claims of the partners. The dissolution of partnership among all partners of a firm is called dissolution of the firm.

Dissolution of a Partnership firm may be effected in the following ways:

• *Dissolution without the intervention of the Court.*

• *Dissolution by Court.*

Dissolution without the intervention of Court:-

1. By Agreement (S.40):- A partnership firm can be dissolved any time with the consent of all the partners whether the partnership is at will or for a fixed duration. A partnership can be dissolved in accordance with the terms of the Partnership Deed or of the separate agreement.

2.        (i) Compulsory Dissolution (Sec.41):- In case, any of the following events take place then it becomes compulsory for the firm to dissolute:

Insolvency of Partners:- In case all the partners or all the partners except one become insolvent

(ii) Unlawful Business:- In case the firm’s business become unlawful on the happening of a subsequent event. e.g. trading with alien country

. Dissolution on the happening of contingent event (S.42) A firm may be dissolved on the happening of any of the following contingent event:-

(i) Expiry of Fixed Period:- If the firm is constituted for fixed period, then the firm is dissolves automatically.

(ii) On achievement of specific task:- If the firm has been constituted for the achievement of specific task, on achievement of that task, firm ceases to exist, unless there is an agreement to the contrary.

(iii) Death of Partner:- Death of any of the partner dissolves the partnership.

1. (iv) Insolvency of Partner:- in the absence of a contract to the contrary, the insolvency of any of the partner may dissolve the firm.the rule shall apply even though the partnership has been constituted for a fixed term and the term has not yet expired or has been constituted for particular ventureand the same has yet not been completed.

(v) Resignation of Partner:- Resignation by any of the partners dissolves the partnership

4. Dissolution by notice (S.43) :-In case of partnership at will, a partner can dissolve it by giving written notice of dissolution to other partners duly signed by him. Notice must be very clear and certain. A notice once given cannot be withdrawn without the consent of other partners. Banarsidas v. Kanshi Ram A.I.R. (1963) S.C. 1165 In those cases where a partner has given notice of dissolution at a time when dissolution will give him some advantage over the other partners, he may be held in the firm till the pending transactions are completed.

Dissolution by Court:-

The court may order for the dissolution of the firm on the following grounds:-

(i) Insanity of Partner:- On the application of any of the partner, court may order for the dissolution of the firm if a partner has become of an unsound mind. Lunacy of a partner does not itself dissolve the partnership but it will be a ground for dissolution at the instance of other partners. It is not necessary that the lunacy should be permanent. In the case of a dormant partner the court may not order dissolution even on the ground of permanent insanity, except in special circumstances.

(ii) Incapacity of Partner:- If a partner has become permanent in capable of discharging his duties and obligations then court may order for the dissolution of firm on the application of any of the partner.where a partner is imprisoned for a long period of time the court may dissolve the partnership. Whitwell v. Arthur 1865 beva 140. [2]

(iii) Misconduct of Partner:- If any partner other than partner suing is responsible for any loss to the firm, which amounts to misconduct and prejudicially affects the carrying on of business then the court may order for the dissolution of the firm.

(iv) Constant breach of agreement by partner:- The court may order for the dissolution of the firm if the partner other than the suing partner is found guilty for constant breach of agreement regarding the conduct of business or the management of the affairs of the firm and it becomes impossible to continue the business with such partner.

(v) Transfer of Interest:- When any of the partner other than the suing partner transfers whole of its share to the third party for permanently.

(vi) Continuous Losses:- The court may order for dissolution if the firm is continuously suffering losses and there is no more capital available for the future growth of the firm.

(vii) Just and Equitable:- The court may order for dissolution on any other ground which court think is just, fair and equitable. e.g. loss of total confidence between the partners. Havidatt singh v. Mukhe Singh A.I.R. 1973, J&K , 46

**2 What are the penalties in case of dishonor of cheque? (4)**

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account

[3[](http://bdlaws.minlaw.gov.bd/print_sections.php?id=46&vol=&sections_id=1519) \* \* \*] is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to [4[](http://bdlaws.minlaw.gov.bd/print_sections.php?id=46&vol=&sections_id=1519) thrice] the amount of the cheque, or with both:

(3) Notwithstanding anything contained in sub- section (1) and (2), the holder of the cheque shall retain his right to establish his claim through civil Court if whole or any part of the value of the cheque remains unrealized.]

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within [5[](http://bdlaws.minlaw.gov.bd/print_sections.php?id=46&vol=&sections_id=1519) thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of