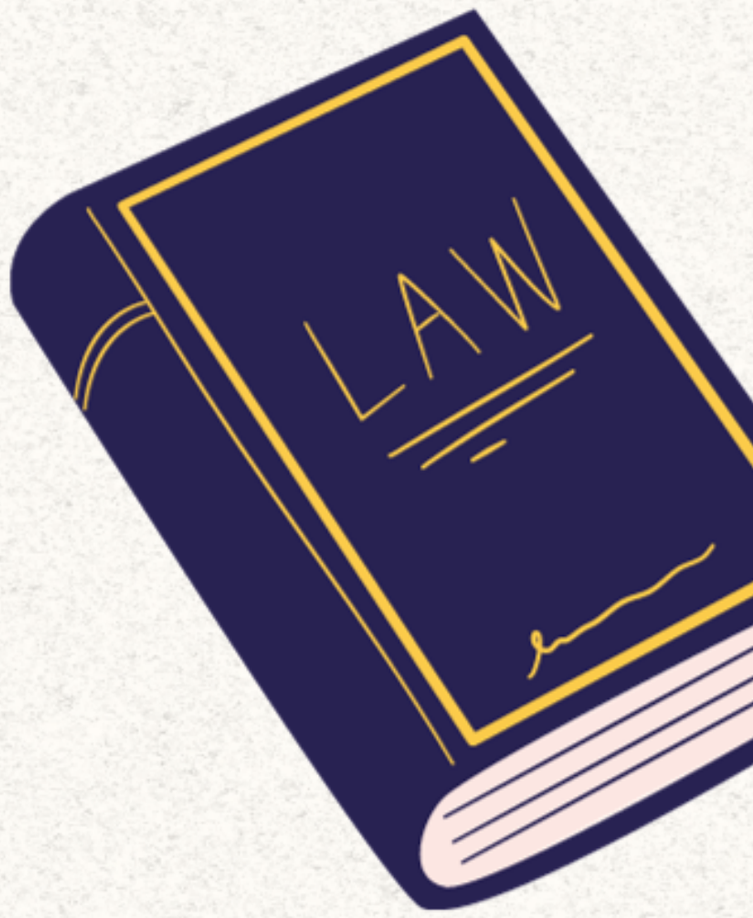
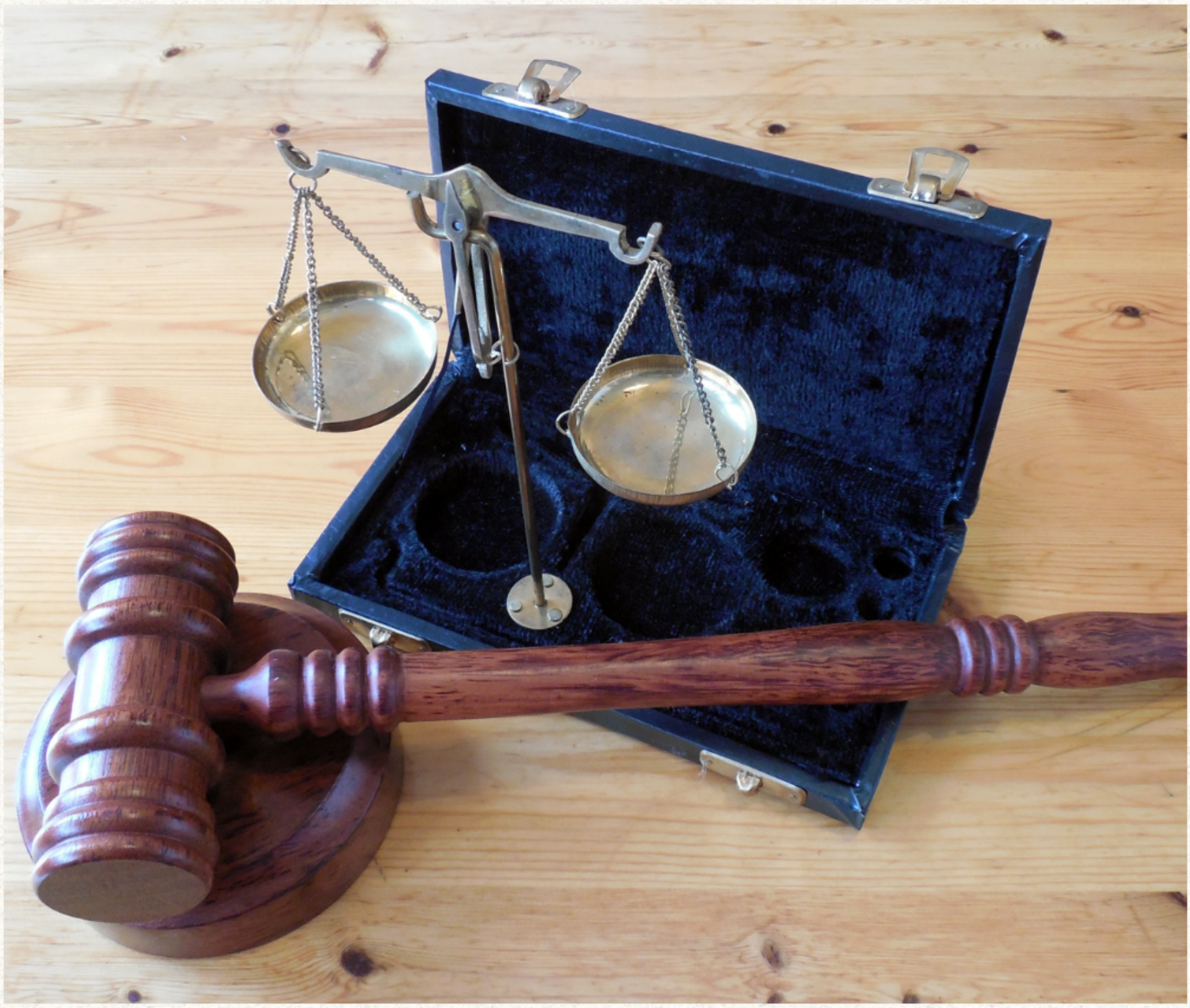
CASES OF BUSINESS LAW FOR DIPLOMA POLITEKNIK MALAYSIA





SUCCESS IS THE SUM OF SMALL EFFORTS, REPEATED"
- R. COLLIER

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CASES OF BUSINESS LAW FOR DIPLOMA POLITEKNIK MALAYSIA

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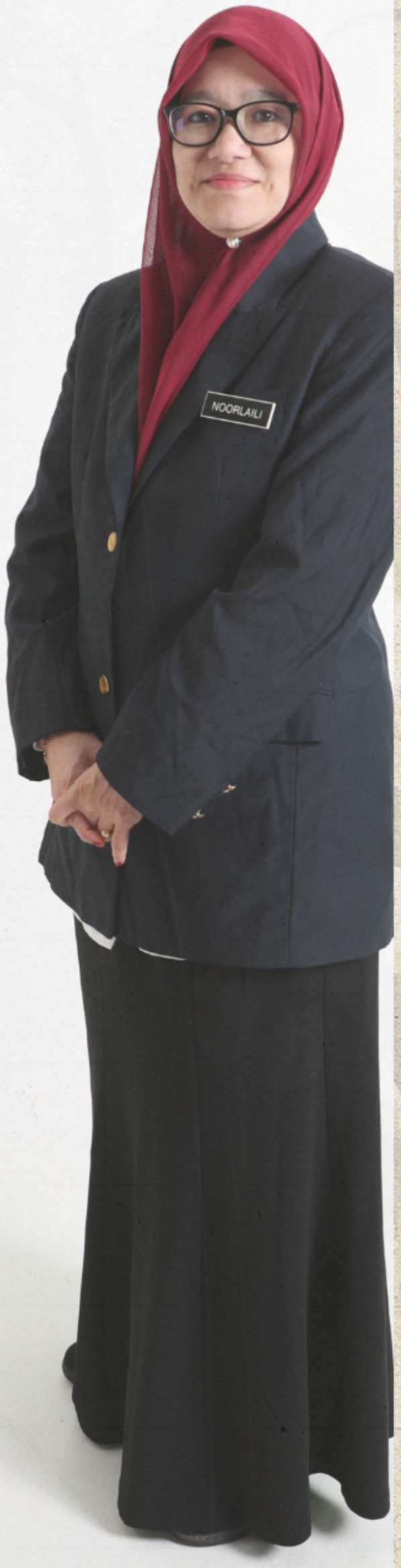

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PREFACE

Based on the exam results for Diploma students at the Sultan Salahuddin Abdul Aziz Shah Polytechnic, Business Law is the most disliked course for students. There are always case questions issued during the exam but unfortunately the majority of students are unable to answer. The main objective of this case summary book was created to make it easier for students to make references. It is arranged according to the title using easy-to-understand language so that students can master and appreciate the related cases.

ACKNOWLEDGEMENTS

First and foremost, praises and thanks to Allah for his showers of blessings throughout the project task to complete it successfully.

I would also like to express my gratitude to my colleague Pn Ainiza Binti Silim for her advice on the related cases. This project can not be completed without co-operation from her. Last but not least, I would like to extend my gratitude to the Politeknik Sultan Salahuddin Abdul Aziz Shah campus in Shah Alam for allowing me to work on this project.

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SUMMARY OF CASES

1. THE LAW OF CONTRACT

1.1 ELEMENTS OF VALID CONTRACT

1.1.1 OFFER

(a) Specific Offer

Only the addressee may accept the offer

BOULTON VS JONES (1857)

- Fact : Defendant normally had some business deal with Brocklehurst. Defendant offered to buy some goods from him but on the day the order was sent, Brocklehurst had sold his company to the plaintiff.

  Plaintiff then accepted the offer by sending the goods without inform the business had changed hands. When defendant knew he refused to pay.

- Held : Defendant was not liable to pay for the goods. No contract between them which the offer was not addressed to him.

(b) General Offer

CARLILL V CARBOLIC SMOKE BALL & CO

- Fact : Carbolic Smoke ball Co Ltd advertised that they would offer 1000 pounds to anyone who still succumbed to influenza after using a certain remedy for a fixed period. The plaintiff duly used it, but, nevertheless, contracted influenza. The plaintiff then sued for the money.

- Held : The plaintiff was entitled to the 1000 pound as she had accepted the offer made by the world at large.

The advertisement/reward of a unilateral contract was held to be an offer (not invitation to treat anymore)

1.1.2 CONDITION OF AN OFFER

(a) Certain

GUTHING V LYNN (1831)

- Fact: Lynn offered to buy a horse from Guthing on condition that if the horse brings luck to him, he will pay another £5 extra.
- Held: The offer was not final & incomplete. Therefore it was invalid.

TAYLOR V LAIRD(1856)

- Fact: Taylor resigned form being the captain of a ship owned by Laird during a voyage. He then assisted to sail the ship back without the knowledge of Laird. Taylor claimed remuneration from Laird for sailing the ship home.
- Held: Taylor did not communicate to Laird his offer. Therefore Laird did not know about the offer and do not have the chance to accept or reject. Laird not liable to pay the remuneration to Taylor.

1.1.3 TERMINATION OF OFFER

(a) Non acceptance within reasonable time/by lapse of time

RAMSGATE VICTORIA HOTEL CO LTD V. MONTEFIORE

- Fact : The defendant, Mr Montefiore, wanted to purchase shares in the complainant's hotel. He put in his offer to the complainant and paid a deposit to his bank account to buy them in June. This was for a certain price. He did not hear anything until six months

later, when the offer was accepted and he received a letter of acceptance from the complainant. By this time, the value of shares had dropped and the defendant was no longer interested. Mr Montefiore had not withdrawn his offer, but he did not go through with the sale.

- Issues : The complainant brought an action for specific performance of the contract against the defendant. The issue was whether there was a contract between the parties after the acceptance of the original offer six months after it was made.
- Held : The court held that the Ramsgate Victoria Hotel's action for specific performance was unsuccessful. The offer that the defendant had made back in June was no longer valid to form a contract. A reasonable period of time had passed and the offer had lapsed. The court stated that what would be classed as reasonable time for an offer to lapse would depend on the subject matter. In this case, it was decided that six months was the reasonable time before automatic expiration of the offer for shares. Yet, for other property, this would be decided by the court in the individual cases.

(b) Revocation of an offer (before offeree posted letter of acceptance)

BRYNE V.VAN TIENHOVEN (1880)

- Fact : V sent a letter to offer a sale of goods on 1st October; B received the letter on 11th October and accepted it immediately by post. On 8th October V revoked the offer. B accepted the revocation letter on 20th October
- Held :-The revocation was not effective until it was communicated to the offeree on 20th October.

-The acceptance has been made on 11th October, there was a contract between the parties.

-The fact that the letter of revocation had been posted or on its way is immaterial

(ç) Rejection to an offer /counter offer

HYDE V. WRENCH

- Fact: On June 6, W made an offer to H to sell his land with a price 1000 pounds. On 27 June H agreed to buy the land but at a lower price of 950 pounds. W has rejected it. However, on June 29. He expressed his agreement to buy the land at the original price of 1000 pounds. W refused to sell to H.
- Held: the court ruled that no valid contract existed here because when he expressed his agreement to buy the land at the price of 950 pounds, he was considered to have made a counter offer that cancelled the original offer

1.1.4 INVITATION TO TREAT (ITT)

(a) Auction

HARRIS V. NICKERSON

- Fact : An auctioneer advertised an auction in a newspaper. Harris saw the advertisement and travelled to the sale only to find that the items he was interested in bidding for had been withdrawn.
- Issue : Whether the advertisement to hold the auction was a declaration of intention to hold the sale or an offer that was accepted by attending.
- Held : The advertisement of the auction was not a guarantee that it would be held but simply a declaration of intention or an invitation to treat. There was, therefore, no contract.

(b) Advertisement

COELHO V THE PUBLIC SERVICE COMMISSION

- Fact : The plaintiff had applied for a position in response to the defendant's advertisement in the newspaper. He was later accepted for the position but due to some dispute, the defendant terminated the plaintiff during probation period. The plaintiff then sued the defendant.
- Held :The court held that the termination during probation is invalid as the advertisement is considered an invitation to treat and the plaintiff's application is considered an offer. The plaintiff won the case.

Exception : ITT become an offer if the advertisement is accompanied with another offer/promise/reward.

Case: CARLILL V CARBOLIC SMOKE BALL & CO

(c) Self service shop / Displaying of goods

PHARMACEUTICAL SOCIETY OF GREAT BRITAIN V. BOOTS CASH CHEMIST.

- Fact : The defendant charged under the Pharmacy and Poisons Act 1933(UK) which provided that it was unlawful to sell certain poisons unless such sale was supervised by a registered pharmacist. The case depended on whether a sale had occurred in the self service shop. When a customer selected articles which he desired to purchase and placed them in a basket. Payment was to be made at the exit where a cashier was placed and in every case involving drugs, a pharmacist supervised the transaction and was authorized to prevent a sale.

- Held : The court held that the display was only an invitation to treat. A proposal to buy was made when the customer placed the articles in the basket. In such a case, the contract of sale would only be made at the cashier's desk.

FISHER V BELL

- Fact : A flick knife was exhibited in a shop window with a price tag attached to it, the court had to determine whether this amounted to an invitation to treat or an offer for sale. If the presentation in the window was an offer for sale, the defendants had committed an offense under the Restriction of Offensive Weapons Act 1959 which prohibited the offering of flick knives for sale. The police sought a prosecution for the offense, but the court used the law of contract to determine the display as an invitation to treat and therefore not an offer for sale. The police officer (Fisher) sought an appeal.

- Held : The court held that in accordance with the general principles of contract law, the display of the knife was not an offer of sale but merely an invitation to treat, and as such the defendant had not offered the knife for sale within the meaning of the Act. Although it was acknowledged that in ordinary language a layman might consider the knife to be offered for sale, in legal terms its position in the window was inviting customers to offer to buy it. It is well established in contract law that the display of an item in a shop window is an invitation to potential customers to treat. The defendant was therefore not guilty of the offense with which he had been charged.

1.2 ACCEPTANCE

1.2.1 Acceptance by post

Postal Rule : Acceptance is complete when the letter is posted. Even though it has not come to the actual knowledge/receive by the offeror.

IGNATIUS V BELL

- Fact : The plaintiff sued for specific performance of an option agreement which purported to give him the option of purchasing the defendant's rights over a piece of land. This option was to be exercised on or before the 20th day of August, 1912. The parties had contemplated the use of the post as a means of communication. The plaintiff sent a notice of acceptance by registered post in Klang on August 16th, 1912 but it was not delivered till the evening of August 25th because the defendant was away. The letter had reminded in the post office at Kuala Selangor until picked up by the defendant.
- Held : The option was duly exercised by the plaintiff when the letter was posted on August 16

Postal Rule : Offerer is not yet bound until offeror received the acceptance letter .

HOLWELL SECURITIES LTD V HUGHES (1974)

- Fact : Defendant offered provides , "the said option shall be exercisable by notice in writing to the defendant…"The plaintiff then posted his acceptable letter to the defendant , but it never reached the defendant. Plaintiff claimed that there is already a valid acceptance.

● Held : Since the defendant provided in the offer that “the said…..”, it requires acceptance be communicated or notified to the offeror. Acceptance would only bind if it comes to the knowledge of offeror. By posting is not sufficient to bind the contract.

1.2.2 Acceptance subject to contract

LOW KAR YIT & ORS V MOHD ISA

● Fact : M offers L to purchase a piece of land subject to a formal contract being drawn up and agreed upon by the parties. L signed but the M failed to sign the agreement.

The L sued the M for breach of contract.

● Held : It was only an agreement to enter into another agreement which is not binding.

1.2.3 Revocation of acceptance

DUNMORE V ALEXANDER

● Fact : The letter of acceptance and the letter of revoking the acceptance were received by the offeror simultaneously.

● Held : The acceptance had been effectively revoked by the offeree. Therefore, there was no contract.

1.3 CONSIDERATION

Promise in return which has value.

CURRIE V MISA

● Fact : Lizardi & Co. sold a number of bills of exchange to Mr. Misa, drawn from a banking firm owned by Mr. Currie, and were to be paid on the next day. However, Lizardi was in substantial debt to Mr. Currie’s bank and was being pressed for payment. A few days later, upon paying in the cheque, Mr. Misa learned of Lizardi’s

stopped payments and outstanding debts, instructing his bankers not to honour the cheque. The question arose as to whether the cheque was payable, particularly as to whether the sale of an existing debt formed sufficient consideration for a negotiable security, so as to render the creditor to whom it was paid, Mr. Currie, a holder for the value of the cheque.

- Held : The court held that at the time of contracting consideration had passed between Misa and Lizardi. The fact that the bills were only available to draw upon in Cadiz on 25th February by which time Lizardi had been made bankrupt was not important. Whether there has been valid consideration must be *evaluated at the time of contracting*, future events cannot be taken into consideration.

1.3.1 Agreement without consideration - Exception 1 (natural love)

RE TAN SOH SIM

- Fact : A woman on her death bed expressed her intention to leave all her properties to her four adopted children. When she died, her four adopted children want to claim her properties

- Held :It was held that the four adopted children cannot claim the properties because it was not written and there was no natural love and affection between the parties standing in near relation because the adopted children were adopted and did not have a natural relation (blood ties) to the woman.

1.3.2 Adequacy of consideration

PHANG SWEE KIM V. BEH I HOCK

- Fact : The respondent agreed to sell to the appellant a land for RM500 although the land was worth much more. The respondent later refused to honour the promise deal with that the promise was enforceable.
- Held: The agreement was valid even though consideration is inadequate ..

1.3.3 From whom consideration should move.

Consideration need not come from the promisee

VENKATA CHINNAYA V. VERIKATARA MA 'YA (1881)

- Fact : A sister agreed to pay an annuity of Rs653 to her brothers who provided no consideration for the promise. But on the same day their mother had given the sister some land, stipulating that she must pay the annuity to her brothers. The sister subsequently failed to pay the annuity and was sued by her brothers.
- Held : She was liable to pay the annuity. There was a good consideration for the promise even though it did not move from her brothers.

1.3.4 Waiver of consideration

KERPA SINGH V. BARIAM SINGH (1966)

- Fact : The appellant obtained judgment against the respondent for about RM8560. In July 1963, the respondent's son offered to pay RM4,000 as payment in full in order to discharge his father from liability and that if the appellant did not agree to the settlement, the money should be returned to him. The cheque was cashed and the

money retained by the appellant's solicitors. On 6 February 1964, the appellant took out a bankruptcy notice against the respondent.

The court ordered that the bankruptcy notice taken out by the appellant creditor be set aside on the grounds that the judgment debt had been satisfied by the tender by a third party of a cheque for a smaller amount than the sum due as a payment in full, which cheque was accepted and cashed by the creditor. The appellant appealed on the grounds that on the facts there was no accord and satisfaction.

- Held : As the creditor had accepted the tender by cashing the cheque and retaining the money he must be taken to have agreed to discharge the debtor from any further liability.

1.4 INTENTION

Social, Domestic & family Agreement

BALFOUR V. BALFOUR (1919)

- Fact :The claimant and defendant were husband and wife. The defendant was usually resident in Ceylon, but while he was on leave in England his wife took ill. She therefore had to stay behind while he returned to Ceylon. The defendant promised to pay the claimant a sum of money each month in return for her agreeing to support herself in England without calling on him for more money. The couple subsequently divorced, and the claimant sued the defendant to enforce the maintenance agreement. She claimed that the agreement was a binding contract.
- Held :The Court of Appeal held in favour of the defendant. The parties' domestic relationship strongly indicated that they did not intend their personal arrangements to be legally binding. As such, there was no contract.

MERRITS V MERRITS (1970)

- Facts: Mr. Merritt and his wife jointly owned a house and then Mr. Merritt left to live with another woman. There was £180 left owing on the house which was jointly owned by the couple. The husband signed an agreement whereby he would pay the wife £40 per month to enable her to meet the mortgage payments and if she paid all the charges in connection with the mortgage until it was paid off, he would transfer his share of the house to her. When the mortgage was fully paid, she brought an action for a declaration that the house belonged to her.
- Held: The agreement was binding. The Court of Appeal distinguished the case of Balfour v Balfour on the grounds that the parties were separated. Where spouses have separated it is generally considered that they do intend to be bound by their agreements. The written agreement signed was further evidence of an intention to be bound.

1.5 CAPACITY

Age of majority

1.5.1 Minor

TAN HEE JUAN V. TEH BOON KEAT (1934)

- Fact : The plaintiff in this case was an infant. The infant executed transfers of land in favour of the defendant. The transfers were witnessed and registered. Later, the plaintiff applied to the court for an order to set aside the transfers and for incidental relief.
- The Court ruled that the transactions were void and ordered the restoration of the property to the minor.

1.5.2 Contract of necessaries

NASH V INMAN

- Fact : The plaintiff was a tailor and he sued the defendant , an Oxford undergraduate student for monetary compensation of the price of 11 waistcoats which he had supplied to the student over 9 months.
- Held : The tailor had not shown that the waistcoats were necessary and so his action failed.

SCARBOROUGH V STURZAKER (1905)

- Facts: Sturzaker, a minor, periodically rode his bike to work for a distance of about 15 km. He bought a new bike and traded in his old one as part payment before the delivery of the new one. He then attempted to avoid the contract.
- Held : The bike was a class of goods that could be classified as necessary. In this case, it was in fact a necessary

1.5.3 Contract of scholarship

GOVERNMENT OF MALAYSIA V. GURCHARAN SINGH (1971)

- Fact : The Government sued the first defendant (the minor) and the second and third defendants (the sureties) for breach of contract. The amount of claim was RM11,500, being the sum spent by the Government for the minor's education. At the time when the contract was made, the first defendant was a minor.
- Held : The Court held that: The contract was void but since education was "necessaries", the minor was liable for the repayment of a reasonable sum spent on him. The amount ordered as payment to the Government was RM2,683 because the

minor has served the Government for three years and ten months out of the contractual period of five years.

ROBERT V GRAY

- Fact : The defendant in this case wished to become a professional billiards player and entered into an agreement with the claimant, a leading professional, to go on a joint tour. The claimant went to some trouble in order to organize the tour, but a dispute arose between the parties and the defendant refused to go. The claimant then sued for damages of £6,000.
- held : The contract was for the minor's benefit. Thus, the claimant could continue the action for damages for breach of contract. Damages of £1,500 were awarded.

1.6 CERTAINTY

1.6.1 Incompleteness

MAY AND BUTCHER LTD V THE KING

- Fact : Government’s disposal’s board agreed to sell tents to May and Butcher Ltd who left £1,000 as a security deposit for their purchases. According to the written agreement between the disposals board and the company, the price for the tents, and the dates on which payment was to be made were to be agreed between the parties, as and when the tents became available. Soon, a new disposal’s board took over and refused to sell the tents as they considered themselves not bound by the contract.

May and Butcher sued but were unsuccessful.

- Held : There was no agreement between the parties. A contract for the sale of the tents had never in fact been concluded. This was because a fundamental term of the

agreement that was necessary for the sale to be completed had not been agreed. As such, there could not be a contract. The agreement between the claimants and defendant therefore was simply an agreement to agree, and not enforceable. Therefore, no agreement had been made.

1.6.2 Vagueness

G SCAMMELL & NEPHEW V OUSTON (1941)

- Fact : Ouston agreed to purchase a new motor van from Scammell but stipulated that the purchase price should be set up on a hire-purchase basis over a period of two years, with some of the figure being part-paid by a van that Ouston already owned. Before the hire purchase terms had been agreed, Scammell refused to proceed with the sale and as a result of this, Ouston brought a claim for breaching the contract for the supply of the vehicle. Scammell claimed that the hire-purchase agreement had not been implemented and therefore neither party was bound, and the agreement was void on the basis of uncertainty. The trial judge awarded Ouston damages as it was believed that the contract had been wrongly repudiated. Scammell appealed to the Court of Appeal who dismissed his action. Scammell re-appealed the decision of the trial judge to the House of Lords.
- Held :The House of Lords held this was too vague for the contract to be enforced. There was no objective standard by which the court could know what price was intended or what a reasonable price might be. Viscount Simon LC, Viscount Maugham, Lord Russell and Lord Wright all gave speeches.

1.7 VOIDABLE CONTRACT

1.7.1 COERCION (threatening/unlawful detain of a person or property)

KESARMAL S/O LETCHMAN DAS V . VALIAPPA CHETTIAR

- Fact : A transfer of property which was made under ‘the orders of the Sultan, issued in the ominous presence of 2 Japanese officers during the Japanese occupation of Malaysia.
- Held : The agreement is not valid. This is because the consent given was not free and therefore the transfer became voidable at the will of the party whose consent was so caused.

1.7.2 UNDER INFLUENCE

INCHE NORIAH V SHAIK ALLIE

- Fact : Undue influence was convicted against a nephew by his elderly aunt. A deed gift had already been prepared by a solicitor and witnessed by another. The solicitor had confirmed that she understood it and agree to follow, but he had not briefed her enough about the situation that it was almost her entire property.
- Held :The gift failed for undue influence. The plaintiff 's relationship with the defendant at the moment the deed was executed, seemed helpful to increase the presumption of the defendant's influence over the plaintiff. The defendant must prove the gift was a voluntary act by the plaintiff, perform under conditions that cause her to develop an independent decision. The court was justified that the gift was the outcome of her free will. The defendant's evidence was incomplete to overcome the presumption of undue influence and the gift made to him by the plaintiff was dismissed.

1.7.3 FRAUD

LETCHEMY ARUMUGAM V. ANNAMALAY (1982)

- Fact : The Defendant made a fraudulent misrepresentation to the Plaintiff and induced her to enter a sale & purchase agreement. The Defendant had fraudulently represented to the Plaintiff that the document she was required to sign was a loan that she had taken. In fact, it was a sale agreement of the land.
- Held : The court held that the agreement was voidable at the option of the plaintiff, and the agreement was therefore rescinded.

INCHE NORIAH V SHAIK ALLIE BIN OMAR

- Fact: Undue influence was alleged against a nephew over his elderly aunt. One solicitor had drafted the deed of gift, and another had witnessed it. The solicitor had established that she understood it and entered into it freely but had not asked enough to establish that it was almost her entire estate, and had not advised her that a better way to achieve the result would be by will.
- Held: The gift failed for undue influence. Usually, a presumption of undue influence may be rebutted by showing that the transaction was entered into 'after the nature and effect of the transaction had been fully explained to the donor by some independent qualified person.' and: 'It is necessary for the donee to prove that the gift was the result of a free exercise of independent will.'

1.7.4 MISTAKE

RAFFLES V. WICHELHAUS

- Fact : Two parties agreed to a sale of a cargo of cotton arriving in London by a ship called The Peerless sailing from Bombay.
- Held : The court found that the contract of sale was void for mutual mistake.

1.7.5 MISREPRESENTATION

TAN CHYE CHEW V EASTERN MINING METALS

- Fact : The respondent entered into two contracts with appellants. In the first contract, the first appellant assigned to the respondents the right to prospect certain mining land included in an approved application for prospecting permit. While the second contract is for the payment of commission for the second appellant's part in bringing the first contract. The respondent alleged that the second appellant had shown to the respondent’s geologist some land that was later discovered not to be included in the approval application. The trial judge found the first and second appellant to be guilty of fraud for deliberately showing the wrong area. The appellants appealed.
- Held : The contracts entered into between the respondent company and the appellants were not voidable because of misrepresentation. The respondent company had not on the evidence proved that the second appellant was the agent of the first appellant in negotiating the contract.

1.8 TERMS OF CONTRACT

1.8.1 Express terms and implied terms

THE MOORCOCK (1889)

- Facts: The defendant wharf owner contracted with the plaintiff, a ship owner, to unload cargo at the defendant's wharf. Both parties were aware that the ship would go aground if moored to the wharf at low tide, but neither party expected the ship to suffer any damage as a result. As expected, the ship grounded at low tide while still being unloaded but she was damaged by a hard ledge beneath the mud. Nothing had been written into the contract between the parties to show how the situation would be resolved if the ship was damaged.
- Issue: Whether it was reasonable to expect that the defendant's wharf would be safe for ships to dock even at low tide.
- Held: It was reasonable to expect that the defendant would take reasonable care to determine that the riverbed would be safe to accommodate the ship during unloading. Without such an implicit undertaking, ships would not use the dock

PELLY v ROYAL EXCHANGE ASSURANCE [1757]

- Facts: Pelly had insured his ship and tackle during a voyage. On arrival, the tackle, according to the usage of shipmasters, was removed and put into a warehouse where it was accidently lost because of fire. The insurers claimed that as the loss had occurred on shore, it was not covered by them because it was not within the scope of the voyage.

- Issue: Whether the putting of the ship's tackle in a warehouse was such a normal practice that, if the parties had put their minds to it when making the contract, they would have included it as a term.
- Held: The insurer's claim was rejected on the basis that the placing of the ship's tackle in a warehouse was normal practice; that is, it was understood to be referred to in every policy

1.8.2 Conditions and warranties

ASSOCIATED METAL SMELTERS LTD v THAM CHEOW TOH

- Facts: In this case, the plaintiffs claimed damages for breach of warranty of a metal melting furnace. The defendants had agreed to sell the furnace to the plaintiff and had given an undertaking that the melting furnace would have a temperature not lower than 2600°F. The furnace supplied by the defendants did not in fact reach the required temperature.
- Held: The failure on the part of the defendants to supply a furnace which would meet the required temperature, constituted a breach of the condition of the contract, entitling the plaintiffs to treat such breach as a breach of warranty. Judgment was given for the plaintiffs.

1.9 DISCHARGE OF CONTRACT

1.Performance Ilustration (a) & (b) To Sec 38

2.Breach

3.Agreement Ilustration (c) to Sec 63

4.Impossibility Sec 57:

CUTTER V POWELL (1795)

- Fact : The defendant contracted with a sailor, promising to pay him thirty guineas to provide services as a second mate aboard a ship until it reached Liverpool. This was substantially more money than normal sailor contracts, which tended to pay a smaller sum per week of service. The sailor did his job but died before the ship reached Liverpool. The sailor's estate sued for his wages under the contract, or in the alternative under the *quantum meruit* rule in restitution.
- Held : The Court stipulated that, where parties conclude an express contract, no terms can be implied into the contract. On the facts, the contract between the parties expressly provided that the payment was conditional upon the completion of the voyage and only payable after the ship's arrival.

TAYLOR V. CALDWELL

- Fact : A music hall was rented by the plaintiff from the defendant for a series of concerts. However the hall was accidently burnt down before the date of the concert
- Held : The contract was void due to frustration.

KRELL V HENRY

- Fact :The defendant contracted with the claimant to use the claimant's flat on June 26. This was the date when King Edward VII's coronation procession was supposed to happen. The defendant intended to view the procession from the flat. The written contract did not expressly refer to the coronation procession, but both parties understood that the defendant only wanted the room to view it. The King fell ill, and the procession did not happen as a result.

- The claimant sued the defendant for the rest of the fee for the room. The defendant argued that he was not obliged to pay because it was no longer possible to use the room to view the coronation.
- Held : The Court of Appeal held that the contract was discharged. The objective circumstances made clear that the parties saw viewing the coronation procession as the foundation of the contract, and this had been rendered impossible. The defendant did not have to pay the fee.

1.10 REMEDIES FOR BREACH OF CONTRACT

1.10.1 Damages

HADLEY V. BAXENDALE

- Facts: Plaintiff operated a mill, which they were forced to shut down when their steam engine broke. Then, the plaintiff makes a contract with the defendant to replace the broken engine. Due to the defendant's negligence, the delivery of the new engine was delayed. and the plaintiff had to suffer losses.
- Held: The court held that the defendant is liable for damages suffered by the plaintiff due to loss of profits.

1.10.2 Rescission of contract

BERJAYA TIMES SQUARE SDN BHD V M CONCEPT SDN BHD

- Fact: The appellant is a property developer. It set out to develop a project originally called Berjaya Star City which is now known as Berjaya Times Square. The project is a massive venture. It has been completed. It comprises of various types of service outlets and offices. Parcels in the project were offered for sale to the public at large. The respondent is a private limited company. It wanted to purchase a commercial

shop lot in the project. It entered into an agreement with the appellant to purchase such a lot. The agreement is dated 24 August 1995. Under its terms the appellant was to deliver the respondent's lot to it on or before 23 November 1998. If the appellant delayed in making delivery, it had to pay liquidated damages to be calculated from day to day at the rate of 12% per annum of the purchase price. The agreement also made time of the essence. The appellant did not make delivery within the stipulated time. Several meetings were held between the parties to determine when delivery could be made. The appellant told the respondent that it would make delivery by the end of 2001. But that did not happen. After a very brief exchange of correspondence, the parties had another meeting on 1 October 2002 at which the appellant assured the respondent that the shop lot would be delivered by the end of 2002. That again did not materialise. In early March 2003, there was yet another exchange of correspondence. The respondent demanded the return of all sums in the hands of the appellant and the latter claimed that all it was liable to pay were the liquidated damages worked out according to the agreed formula. The respondent then commenced proceedings claiming, inter alia, a declaration that the agreement had been rescinded and for an order that the appellant refund the monies in its hands. There was also a claim for damages. The Federal Court denied the purchaser the right to rescind despite protracted delay in completion.

- Held: The court held that the defendant is liable for damages suffered by the plaintiff due to loss of profits.

1.10.3 Specific performance

RYAN V MUTUAL TONTINE WESTMINSTER CHAMBERS ASSOCIATION

- Fact : This case involved a residential flat, in which the flats were leased to several tenants. The leases contained a covenant that agreed that the premises were let subject to the regulations made by the owners in relation to the resident porter. The regulations provided that the block should oversee a resident porter who would act as a servant to those in the blocks and was in constant attendance by himself or an assistant on a temporary basis. The owners appointed a cook to this role who employed others to perform his duties whilst he worked at a local restaurant. The owner brought an action on the basis that the lessee had breached the covenant in the agreement between the parties. The trial judge found that an injunction could be granted to prevent the further breach of the contract by the lessee. This decision was appealed.
- Held: Having considered the wording of the agreement between the parties and the facts, the court could not grant an injunction to prevent the cook from continuing the breach, or order specific performance for him to carry this out. On this basis, the court allowed the appeal from the lessee and reversed the earlier decision of the trial judge.

1.10.4 Quantum Meriut

SUMPTER V HEDGES (1898)

- Fact : A builder contracted to build two houses and stables for the lump sum of £565. The builder only completed part of the work, after which he abandoned the contract. The completed works amounted to a value of £333. A summary judgment found that

the builder abandoned the contract. The builder brought an action against the landowner for the full payment of the £333 for his partial performance of the contract.

- Held : The claimant's action failed. The court held that the defendant had no choice but to accept partial performance as he was left with a half-completed house on his land.

1.10.5 Injunction

Neoh Siew Eng & Anor v Too Chee Kwang (1963)

Held : where an injunction granted requiring the landlord to water supply open for his tenants.

1.10.6 Anton Piller Order

ANTON PILLER V MANUFACTURING PROCESSES LTD (1976)

- Fact : The appellant (Anton Piller KG) is a German manufacturer of frequency converters for computers. The respondents (Manufacturing Processes Ltd) and their two directors were the appellant's agent in the United Kingdom. These agents are dealers who get the machines from the appellant and sell them to customers in England.

- Held : The Court of Appeal allowed the plaintiffs' appeal and gave the following judgment. It granted the plaintiffs' second request and held that there are exceptional circumstances when the confidential documents in the defendants' possession are removed or destroyed. This would cause a very serious danger of actual or potential damage to a plaintiff.

- As regards the Court's jurisdiction, it held that it had jurisdiction to order defendants to allow the plaintiffs' representatives to inspect and remove the confidential documents. In these exceptional circumstances, the Court of Appeal held that it is justified to make such order in response to the plaintiffs' application.

2.0 LEGAL ASPECTS OF BUSINESS ENTITIES

2.1 Partnership

RATNA AMMAL & ANOR V TAN CHOW SOO

- Fact : The contract was made between the parties for the purpose of selling milk. The respondent had obtained the registration of trademark in respect of the milk and other dairy products.
- Held : Partnership exist between them but from the agreement, the trademark will remain with the respondent

2.2 Share but not partners

2.2.1 Co-ownership

DAVIS V. DAVIS

- Fact : A father left freehold business premises to his son. The sons carried on business & borrowed money by mortgaging the premises and used it to expand the workshop.
- Held : There was a partnership in the business, but not the premises

2.2.2 Sharing of gross returns

COX V. COULSON

- Fact :The defendant was the manager of a theatre and agreed with a Mr. Mill to provide the theatre and pay for the lighting and for the playbills. He was to receive 60% of the gross takings, whilst Mr. Mill was to provide and pay for a theatrical company and provide the scenery and receive the remaining 40%. The plaintiff was injured by a shot fired by an actor during the performance of a play at the

theatre. She sought inter alia to make the defendant liable on the ground that he was a partner of Mr. Mill.

- Held: The defendant could not be made liable on this ground because he was not a partner by virtue of Section 2(2) of the Partnership Act 1890 that is the sharing of gross returns did not of itself create a partnership.

2.2.3 Sharing of profit

Section (4) (c) (i) - payment by instalments

COX V. HICKMAN

- Facts: A, a trader, was unable to pay his creditors. A came to an agreement with the trustees of his creditors whereby he assigned his property to them as well as allowed the trustees to have influence over the running of the business. This was to enable the trustees to be paid out of the profits.
- Held: This arrangement did not create a partnership. At best, the business was carried out on behalf of A

Section (4) (c) (ii) - - joint tenancy/property, gross return & profit

WALKER v HIRSCH (1884)

- Facts: P lent money to H & Co which was controlled and owned by two persons P signed an agreement with H & Co which provided that P would be paid a salary and one-eighth of the profits and losses, and the agreement could be determined with four months' notice. P, who was a clerk, continued as such in H & Co after the agreement.
- Held : P was merely a servant and was not a partner

Section (4) (c) (iii) - annuity to widow or child for deceased partners

I.R.C V LEBUS'S TRUSTEES

- Facts: A deceased partner, in his will, bequeathed his share of the profits in a firm to his wife. The widow's share of the profits was not paid by the continuing partners and was in that year sur taxed by the Inland Revenue.
- Held: The widow was not a partner in the business and none of the assets of the firm belonged to her.

  Therefore, her share of profits should not have been surtaxed.

Section (4) (c) (iv) - loan given with a rate of interest varying with profits

RE YOUNG

- Fact : L and Y entered into an agreement by which it is provided that L should lend 500 pounds to Y in consideration for the payment to L of 3 pound per week out of the profits of the business. L was also to assist in the office and given some authority over the control of the firm's money.
- Held: Despite the extensive power given to L, he is a mere creditor and not a partner.

Section (4) (c) (v) - sales of goodwill

PRATT V STRICK

- Fact :A doctor sold his practice to a buyer on the agreement that he will continue on living at the place of business (a house) for another 3 months and introduce all his former patients to the buyer. All the income received, and expenses paid for those3 months will be shared out equally between them.
- Held: the vendor of the practice was not a partner of the purchaser as there was no intention to form a partnership.

CHUA KA SENG V BOONCHAI SOMPOLPONG

- Facts : The def was a partner in an architect firm, RSP of which the plf was an employee. The def later left the firm and set his own architect firm under the name CKS. The def requested the plf to resign from RSP and work with him at CKS. The plf alleged that in their agreement, he will be a partner who is entitled to 20% of the net profits. The def on the other hand claim that the plf was merely a salaried partner who was to receive 20 % of profit inclusive of salary and bonus.
- Held: The plf was only a "salaried partner" remunerated by a 20% of net profits inclusive of salary and bonus.

2.2.4 Liability of partners

2.2.4.1 Contractual liability

KENDALL v. HAMILTON (1897)

- Facts: K had given a loan to X and Y, two partners in a trading firm. K took legal action to recover payment from X and Y, and the court ordered X and Y to pay the debt. X and Y subsequently went bankrupt and could not afford to pay. Later K realized that the defendant was an undisclosed partner of X and Y, and that he was solvent. K then began legal action against the defendant to recover payment.
- Held: Court held that as the partners are jointly liable, the earlier action would not allow another action from being taken as the court's orders towards X and Y had extinguished the firm's liability, even if the debt had not been paid.

BAGEL v. MILLER (1903)2 KB 212

- Facts: B supplied goods to a firm of which M was a partner. Some of the goods were ordered and delivered before M died, but others were delivered after his death. B brought an action to recover payment from M' executors
- Held: Court held that in respect of the goods delivered before M's death B could be paid but in respect of those delivered afterwards, he would not be able to get payment, as the liability to pay arise after M's death, when M was no longer a partner.

2.2.4.2 Misapplication

RHODES V MOULES

- Fact : Rhodes wishes to obtain a loan, she mortgaged his property. He was told by Rew, a partner in the solicitor’s firm, that the mortgagees wanted additional security, and he handed him some share warrants. Rew misappropriated them, thus, Rhodes sued the firm in respect of the loss under the English equivalent.
- Held : The action succeeded as the warrants had been received by the firm in the ordinary course of the business. To make the firm liable for the acts of a partner, it is necessary that such a partner while receiving money or property from a third party acted within his apparent authority. If the act done is not permitted under such authority, the firm cannot be made liable for the same.

2.2.4.3 Criminal Liability

CHUNG SHIN KIAN & ANOR V PP

- Fact : Officers from the Trade Description Department raided the accused's tailor
- shop. At that time, there were 10 workers engaged in stitching materials into jeans and jackets. The premises were searched, and officers discovered various types of 'Texwood' labels and tags, and 'Texwood' jeans and jackets both finished and unfinished. During the raid, only the first accused was present in the shop. The second accused, a partner, was not present. The charge made against both the accused was that in the course of their business, they applied a false trade description name 'Texwood' to 10 pieces of jackets and fifty-seven pairs of jeans. Both accused were convicted and sentenced for an offense under Section 5(1)(a) of the Trade Description Act 1972
- Held :

1) The first accused's appeal was dismissed.

2) The second accused's appeal was allowed. There was no evidence showing that the second accused was implicated in the offense except that he was a partner of the shop

2.2.4.4 Duration of liability

(a) Liability of new partner

SUBRAMANIAM CHETTIAR V KADER MASTAN & CO

- Fact :
- Held : It was decided that mere abandonment and inactivity by a partner who has given up all hope of recovering his share does not affect his liability for the partnership debts.

(b) Liability of retired partners

MALAYAN BANKING BERHAD V LIM CHEE LENG & ANOR

- Facts: The respondents were partners of a firm called Berjasa Corporation. The appellants sued the respondents under a trust receipt which matured and became payable on 14 June 1975.

Two of the respondents resigned from the firm on 16 August 1976.

- Held: The respondents incurred the debt on the trust receipt before their resignations or retirement and they could not escape liability by merely pleading resignation or retirement Siew inn Steamship.co

(c)Liability of persons for holding out

WILLIAM JACKS & CO. (MALAYA) LTD. V CHAN & YONG TRADING CO

- Fact : The plaintiffs claimed against the defendants the sum of $12,734.91 for goods sold and delivered by the plaintiffs to the defendants. The writ was served on Chan and Yong the partners of the defendant firm. Yong did not take any steps to defend but Chan denied the plaintiffs' claim on the following grounds namely that:
  - (a) no firm by the name of Chan & Yong Trading Co ever existed and that if such a company did exist he was not a partner thereof
  - (b) he had not in any way represented or held himself out as partner of the said firm
  - (c) the goods bought from the plaintiffs were for the personal use of Yong who was a minor and that therefore the partners were not liable.
- Held : The court held that Chan had represented himself to be a partner in the firm by approaching a salesman of the plaintiffs to ask for credit facilities with the plaintiff

company, by registering the partnership with the Registrar of Businesses, and by opening a banking account with the Bangkok Bank, using his own money in the name of Partnership. Each mode of representation was sufficient to fix him with liability as a partner of the firm.

2.2.5 RIGHT AND DUTIES OF PARTNERS

LAW V LAW

- Facts: a partner transferred part of his shares to another partner for £21,000. The partner who bought the shares knew that the partnership assets comprised securities and charges but concealed the facts from the partner's knowledge.
- Held: An order setting aside the transaction would have been made but for the fact that in this case, a settlement of the claim had been made and the partner had agreed to be bound by it. Therefore, on the facts, the transaction could not be set aside.

ASS V. BENHAM

- Fact : a partner in a ship-brokerage firm assisted in the incorporation of a ship building company using information he obtained from the firm's business. He was then appointed a director in the said company and received a salary in consideration for the services he rendered. Other partners claimed for the benefit to be given to the firm
- Held : Other partners had no right to claim for the benefit since the ship building business was of different nature from the ship-brokerage business.

PATHIRANA V. ARIYA PATHIRANA

- Fact : a dispute arose between two partners who were the marketing agents for Caltex Ceylon company. The defendant gave three months e - notice to terminate the partnership. However, before the period of the notice ended, the defendant entered a new agency contract with Caltex under his own name.
    - Held : The profit gained by the defendant from the agency contract belonged to the firm because the defendant had used the firm’s goodwill to obtain the new contract before the partnership was dissolved.

3.0 AGENCY

3.1 LAW OF AGENCY

3.1.1 (a) PRINCIPAL sec 135 -136

MEYER v. HOLLEYs

- Fact: Respondent Holleys, an interracial (different races) couple, tried to buy a house listed for sale by Triad, a real estate corporation. A Triad salesman is alleged to have prevented the Holleys from buying the house for racially discriminatory reasons.
- Held: The Act imposes liability without fault upon the employer in accordance with traditional agency principles, i.e., it normally imposes vicarious/indirect liability upon the corporation but not upon its officers or owners.

3.1.1 (b) AGENT sec 135 - 137

GREAT NORTHERN RAILWAY VS SWAFFIELD

- Fact: The defendant had put his horse on one of the plaintiff's trains and did not specify the exact address that was to receive the animal. When the plaintiff had delivered the horse, there was no one to collect it. So, the plaintiffs put the horse under the care of a stable keeper. When the plaintiff finally got hold of the horse, he was told that he was to pay a sum for its upkeep by the stable keeper. He refused. Ultimately, the railway company settled the debt and sued the defendant for the money it expended on paying for his horse.
- Held: The court held that the defendant was to pay the money to the Railway company. This was because there was a genuine necessity to keep the horse under a stable. This meant that there was an agency of necessity at play.

3.1.2 EXPLAIN FORMATION OF AGENCY BY WAY OF:

(a) EXPRESS APPOINTMENT

KGN JAYA SDN. BHD. V. PAN RELIANCE SDN. BHD. [1966]

- Fact: Agency arrangement need not be in writing.
- Held: The Court of Appeal held that the law does not require that an agency or sub agency agreement must be in writing. Furthermore, Part X of the Contracts Act 1950, which contains the relevant provisions on agency, does not contain any requirement that the appointment of an agent or subagent has to be in writing or be evidence inwriting.

(b) IMPLIED APPOINTMENT

CHAN YIN TEE V. WILLIAM JACK & CO. (MALAYA) 1964

- Fact: Chan & Yong (minor) were partners in business. Chan told William Jack(third party) that Yong is his partner and has authority to act on his behalf. W.J supplied goods to Yong but no payment was made. W.J brought an action against Chan as a Principal of Yong.
- Held: Chan is responsible for Yong's act no matter if he is an adult or a minor.

(c) RATIFICATION

KEIGHLEY MAXSTED & CO V. DURRANT (1901)

- Fact: In the case of Keighley Maxsted & Co v Durant (1901), the appellants authorized Mr Roberts, a corn merchant, to buy wheat on a joint name for himself and them at a certain price. The agent, Mr Roberts, failed to buy wheat at the authorized price. Then he contacted the respondent, Mr Durant, purchased wheat from him in his own name

and at a higher price than authorised. The agent used his own name and did not disclose at any time that he was acting for a principal.

- Held: The House of Lords unanimously allowed Keighley Maxsted & Co's appeal and upheld the decision of the judge at first instance. The House of Lords found that the ratification of the contract was not possible in the circumstances of the present case. The contract was made without the authority of the appellants, Keighley Maxsted & Co. Therefore, the appellants, the undisclosed principals, were not bound by a contract made by Mr Roberts.

(d) NECESSITY

GREAT NORTHERN RAILWAY V. SWAFFIELD (1874)

- Fact: The defendant had put his horse on one of the plaintiff's trains without specifying the exact address to where the animal was to be transported. There was no one to collect the horse when the plaintiff delivered it. Then, the plaintiffs entrusted the horse to the care of a stable keeper. When the plaintiff finally obtained possession of the horse, the stable keeper informed him that he would have to pay a fee for its upkeep. He flatly refused. Later, the railway company paid the debt and sued the defendant for the money spent on his horse.
- Held: The court held that the defendant was to pay the money to the Railway Company. There was a necessity agency since the plaintiff was determined to have had no choice but to provide for the horse's proper care.

MISS GRAY V CATHCARD

Fact : The wife has bought clothes worth 215 pound sterling. The husband refused to pay. The shopkeeper demanded the price of the clothes from the husband. The husband has proved that he has given an allowance of 960 pounds a year to his wife.

Court Held : The husband is not liable for the debt of his wife.

(e) ESTOPPEL

FREEMAN & LOCKYER V BUCKHURST PARK PROPERTIES LTD

- Fact: There were 4 directors, one of them contracted on behalf of the company with T(3rd party) without any authority. Other director knew about the contract but did not inform T that A had no authority to act on behalf of the company.

- Held: the company is estopped from denying that A is the company's agent & had authority on behalf of the company.

3.2 TYPES OF AGENCY

3.2.1 AGENT BY FUNCTION

(a) FACTOR

BARRING V CORRIE (1818)

- Fact: Factor as a person to whom goods are consigned for sale by a merchant residing abroad or at a distance away from the place of sale and who normally sells in his own name without disclosing that of his principal.
- Held: General lien of the factors extends to all its lawful claims against the principal as a factor, whether for advances, of remuneration, or for losses or liabilities incurred in the course of his employment in respect of which he is entitled to be indemnified.

(b) COMMISSION AGENT

TURPIN V BILTON (1843)

- Fact: The principal has given the agent instruction to obtain insurance for the principal's vessel. The agent, on the other hand, failed in this endeavour. As a result of the vessel's loss, the principal is responsible for a portion of the loss.
- Held: The agent is accountable for failure to perform his or her duties because he disobeyed the principal's orders. The agent is accountable for the loss.

KEPPEL V WHEELER (1927)

- Fact: Having found a buyer subject to contract, the agent passed on another offer, not to the vendor, but to the buyer. On the facts it was found that the agent honestly believed he had discharged his duties to the vendor by finding a buyer subject to contract, so commission was due.

JOHN MCCANN & CO V POW (1975)

- Fact: The defendant appointed the plaintiffs to act as estate agents in the sale of his flat. The plaintiffs described themselves as sole agents on their advertisements of the flat. They sent particulars of the property to another firm of estate agents but withheld the vendor's name and telephone number. The second agents copied out the particulars but put their own name to them. The purchaser found out about the flat from the second agents. As these agents did not know the name and address of the vendor, an employee telephoned the plaintiffs for this information and passed it on to the purchaser. He then went to view the property. When asked if he had come from the plaintiffs, he informed the defendant that he had not and that he had come privately. So, the defendant assumed he could deal directly free of commission. When the plaintiffs discovered that the purchaser had been sent by the second agents, they claimed commission on the basis that the second agents were their subagents.

- Held: The Court of Appeal held that the defendant was not liable for the commission, as the plaintiffs had no authority to appoint a subagent. The court stated that there is no implied authority to appoint a subagent, because an estate agent holds a position of discretion and trust. The court rejected the submission for the plaintiff that there was only a limited form of sub agency restricted to ministerial duties. Lord Denning said that '... functions and duties of an estate agent, certainly of a sole agent, require personal skill and competence.'

ANDREW V RAMSAY & CO

- Fact: The plaintiff instructed the defendant estate agents to sell his property. The defendant found a buyer. It transpired that the defendant had had dealings with the buyer before, and the buyer had paid the defendant's commission for the transaction with the plaintiff. The plaintiff sought to recover both the secret commission and the commission he had paid. The defendant paid the secret commission into court but claimed the right to keep the commission on sale.

- Held: The Court of Appeal held that a principal is entitled to have an honest agent, and it is only the honest agent who is entitled to any commission. In my opinion, if an agent directly or indirectly colludes with the other side, and so acts in opposition to the interest of his principal, he is not entitled to any commission.' Commission was forfeited.

(c) DEL CREDERE

BROWN V. TORRANCE (1900)

- Fact: T. wrote a letter agreeing to guarantee payment for goods consigned on *del credere* commission to R., on condition that he should be allowed, should occasion arise, to take over the goods consigned. Shortly afterwards the creditor, without giving any notice to T., closed the agency, withdrew some of the goods and permitted others to be seized in execution and removed beyond the reach of T. The creditor did not give T. any authority to take possession of the goods as stipulated in the letter of guarantee. In an action by the creditor to recover the amount of the guarantee
- Held: that the condition of the guarantee had not been complied with by the creditor and that he could not hold the warrantor responsible.

(d) POWER OF ATTORNEY

WAN SALIMAH BTE WAN JAFFAR V MAHMOOD BIN OMAR (ANIM BTE ABDUL AZIZ, INTERVENER) (1988)

- Fact: This case involved a lease agreement between the plaintiff and the defendant where the defendant agreed to lease his share in certain lands to the plaintiff who then built houses thereon. Meanwhile, the defendant sold the lands to the intervener. At the trial, the intervener was represented by Harun bin Faudzar who claimed to be the holder of power of attorney granted by the intervener.
- Held: The document that was said to grant a power of attorney to Harun was null and void and of effect at all because it went against the provisions of the Powers of Attorney Act 1949. Therefore, Harun was empowered to give evidence on behalf of

the intervener, and he too could not transact any business to purchase the land from the defendant on behalf of the intervener.

(e) AUCTIONEER

BARRY V DAVIES (2000)

- Fact: Two brand new engine analyser machines owned by customs and excise were put up for auction by the defendant auctioneer. Each could be procured from the manufacturer for £14,521 but despite this were listed without a reserve price. The auctioneer failed to obtain bids of £5000 and £3000, upon which the claimant bid £200 for each machine, but the auctioneer refused to accept these bids and withdrew the machines from auction. A few days later the machines were sold for £750 each through an advert in a magazine. The claimant brought proceedings against the defendant, contending that in an auction without a reserve price the auctioneer was bound to deliver the goods to the highest bidder.

- Held: The Court held that the holding of an auction for sale without reserve is an offer by the auctioneer to sell to the highest bidder, so the defendant was contractually obliged to sell to the claimant. The reasoning behind this was that the auctioneer acted as agent of the owner in the formation of the contract with the highest bidder, and this gave rise to a collateral contract with the auctioneer himself. There was consideration in the form of detriment to the bidder, as his bid could be accepted unless and until it was withdrawn, and benefit to the auctioneer as the price was driven up (and also that attendance at the auction is likely to increase if it is said that there is no reserve).The claimant was awarded damages reflecting the difference between the value of the machines and the price he had bid.

3.2.2 TYPES OF AGENT BY AUTHORITY

(a) ACTUAL

WATTEAU V. FENWICK. [346]

- Fact: Defendant owned a hotel-pub that employed Humble to manage the establishment. Humble was the exclusive face of the business; Humble's name was on the bar and the licence of the pub. Defendant explicitly instructed Humble not to make any purchases outside of bottled ales and mineral waters but Humble still entered into an agreement with Plaintiff for the purchase of cigars. Plaintiff discovered that Defendant was the actual owner and brought an action to collect from Defendant.

- Held: Defendant is liable for damages. Humble was acting with an authority that was inherently reasonable for an agent in that position. The situation is analogous to a partnership wherein one partner is silent but is still liable for actions of the partnership as a whole.

(b) APPARENT

FIRM OF T AR CT V SV KR ALIAS SEENA VANA KANA RUNA (1955)

- Held: The Privy Council decided that an agent had authority to part with the firm's money had in the circumstances of the case, a necessary implied authority to receive repayment for the firm.

3.3 THE RELATIONSHIP BETWEEN PRINCIPALS & AGENTS

3.3.1 RIGHTS & DUTIES OF AN AGENT TOWARDS HIS PRINCIPAL

TAN KIONG HWA V ANDREW S.H. CHONG (1974)

- Fact: Mr. Tan (plaintiff) bought a flat house from a company. He then appointed Mr. Andrew (defendant) who was the managing director of a house agency company to resell the flat house at the price of RM45,000 on behalf of him. Mr. Andrew (agent) managed to sell the flat house at the price of RM54,000. However, without informing Mr. Tan (principal), Mr. Andrew (agent) credited an extra RM9000 into his company's account. Mr. Tan was not satisfied with Mr. Andrew (agent) when he came to know that the extra profit of RM9000 was credited into the account of the agent's company. He brought an action against the agent for breach of duty for making secret profit out of the principal's property and to claim the extra RM9000.
- Held: The principal was entitled to claim the extra RM9000 from the defendant who had breached his duty as an agent for no secret profit S.169 Contracts Act 1950.

3.3.2 RIGHTS & DUTIES OF A PRINCIPAL TOWARDS HIS AGENT

KINGAN & CO. V. SILVERS ET AL.

- Fact: The facts of that case briefly are that a note had been signed by a principal and his surety and was by the principal delivered to the agent of the payees. In a short time after the delivery the note was altered in a material respect, by the person to whom it had been delivered. Such change was made in the presence of the principal, and with his consent; but the change was without the knowledge or consent of the surety.

- Held: The court held that there could be no recovery in such an action against the surety. It seems to us that the bare statement of the facts shows the correctness of the holding. The note was changed in a material respect, and yet the effort was to enforce it in its altered condition. The position occupied by the person making the change was wholly immaterial to the decision of that case. If he was a stranger to the note, and his act a spoliation, the note could not be enforced against the surety in its altered condition.

3.4 TERMINATION OF AGENCY

SOHROBJI V ORIENTAL SECURITY ASSURANCE CO (1946)

- Held: Three and half months' notice was not adequate to properly terminate an agency which had lasted nearly 50 years. In this circumstance, 2 years notice would have been reasonable notice. 3 ½ months of notice given by the P was NOT adequate to terminate the agency properly which had lasted nearly 50 years.

4.0 SALES OF GOODS

4.1.1 GOODS : Fixtures are not goods, however if it's attached to land, have been @ will be severed from land can be classified as goods.

MORGAN V RUSSEL

- Fact: The vendor(Morgan) was the lessee of certain land, which was composed of slag & cinders/ash. He sold to the purchasers all the slag at 2s 3d (11p) per ton on his premises so much as the purchasers should desire to remove. Morgan failed to make the slag available.
- Held: The sale of cinders and slag was not a sale of goods, but a sale of *an interest in land* , like a licence to mine. The vendor did not sell any definite quantity of mineral, which could be said to be a *separate thing*.

4.2.1 IMPLIED CONDITIONS & WARRANTIES

(a) IMPLIED CONDITION AS TO TITLE

ROWLAND V. DIVALL

- Fact: Plaintiff bought a car and after using it for 4 months, plaintiff discovered that it was actually stolen from someone else, and the defendant (seller) actually had no title to it. Plaintiff had to return the car to the true owner.
- Held: Defendant had breached the condition as to title and therefore the plaintiff was allowed to rescind the contract and claim for the full price of the car from the defendant.

(b) IMPLIED CONDITION THAT IN SALE OF GOODS BY DESCRIPTION, THE GOODS MUST CORRESPOND WITH THE DESCRIPTION

NAGURDAS PURSHOTUMDAS & CO V. MITSUI BUSSAN KAISHA LTD

- Fact: Under previous contract between the parties for the sale of flour, the flour had been sold in bags bearing a well-known trademark. Subsequently, flour was ordered "the same as our previous contract". Flour of the same quality was delivered but it did not bear the same well-known trademark.
- Held: The flour did not comply with the description.

(c) IMPLIED CONDITION THAT GOODS MUST BE REASONABLY FIT FOR PURPOSES FOR WHICH BUYER WANTS THEM

BALDRY V. MARSHALL

- Fact: The buyer, B had asked the dealer, M for a car suitable for touring. M recommended a Bugatti car and stated it would meet the need the client requested. After the purchase, B realized the Bugatti was not fit for touring.
- Held: The buyer, B was entitled to return the car and receive the full cost of the car back. The dealer, M was liable because the buyer had relied on the dealer's skill & judgement in the selection of a suitable car.

(d) IMPLIED CONDITION THAT GOODS MUST BE OF MERCHANTABLE QUALITY

WILSON V. RICKET, COCKERALL & CO.

- Fact: Plaintiff who is a housewife has ordered a trade name 'Coalite' coal from the defendant, coal merchants. When the coal was put on fire in an open grate in

plaintiff's house, plaintiff was injured due to the explosion that occurred in plaintiff's house. So, plaintiff want to claim for the damages that were caused by the breach of warranty in the Sale of Goods Act 1893(c 71)(repealed) s 14.

- Held: The court held that the defendant was liable for this consignment whereby the whole consignment including the explosive piece is not of merchantable quality as required by Section 16(1)(b).

GODLEY V PERRY

- Fact : A boy bought a catapult. While using it, the catapult broke and he lost the sight of an eye. The shopkeeper had bought it from the wholesaler by sample and tested it by pulling back the elastic. The shopkeeper was sued for the boy's injury.
- Held: The catapult was not fit for the purpose for which the buyer wanted it and that it was of unmerchantable quality. The shopkeeper then filed an action against the wholesaler. Although the shopkeeper made a reasonable examination, the defect was not one which was apparent on such examination. Thus, he succeeded in his action against the wholesaler.

(e) IMPLIED CONDITIONS FOR SALE BY SAMPLE

ROWLAND VS DIVALL (1923)

- Fact: The claimant, a car dealer, bought a car from the defendant for £334. He painted the car and put it in his showroom and sold it to a customer for £400. Two months later the car was impounded by the police as it had been stolen. It was then returned to the original owner. Both the claimant and defendant were unaware that the car had been stolen. The claimant returned the £400 to the customer and brought a claim against the defendant under the Sale of Goods Act.

● Held: The defendant did not have the right to sell the goods. Ownership remained with the original owner. Therefore, the P was allowed to rescind the contract and claim for the return of the full price of the car paid to the defendant

(f) IMPLIED WARRANTY THAT THE BUYER SHALL HAVE QUIET POSSESSION OF THE GOODS

MICROBEADS A.G V VINHURST ROAD MARKINGS LTD [1975]

● Fact: The defendants bought some road marking machines from the plaintiffs in April 1970. Defendants found machines unsatisfactory and did not want to pay for them. Plaintiff sued the defendants. The Plaintiff was being sued by a third party who was granted a patent right in the machines for breach of their patent.

● Held: no breach of s. 12 (1). In April 1970 the plaintiffs had every right to sell the goods. As for s 12(2), there was a breach of implied warranty as the buyer did not enjoy the future quiet enjoyment of the goods. Not confined to the time of the contract only but also the future.

(g) IMPLIED WARRANTY THAT THE GOODS ARE UNENCUMBERED

STEINKE VS EDWARDS

● Fact: The plaintiff who had bought a car from the defendant. The plaintiff had to pay off the tax which was still owed to the government by the defendant. The plaintiff sought to recover the amount he had paid for the tax from the defendant/ seller.

● Held: The plaintiff was entitled to recover the money as the defendant had breached the implied warranty. The right of the government to levy a tax on a vehicle coupled with a right to seize the car to enforce collection was a charge or encumbrances within the meaning of the provision.

4.3 TRANSFER OF PROPERTY & TITLE UNDER SALES OF GOODS

Deliverable state means when there is nothing else to be done by the seller on the goods for the buyer. The property passes to the buyer at the time the contract is made.

UNDERWOOD LTD V BURGH CASTLE BRICK & CEMENT

- Fact: a CONTRACT FOR THE SALE OF A CONDENSING ENGINE TO BE DELIVERED ON RAIL IN London. At time of the contract, the engine was affixed to the seller's premise and it had to be separated from the concrete floor and to be dismantled before it could be delivered on rail.

  While the main engine was being loaded on a railway truck, it was partially broken by an accident.

- Held: The property in the goods had not passed to the buyer at the time of the accident. The engine was still at the seller's risk.S.20 could not be applied.

When goods are delivered to the buyer 'on approval @ on sale or return, the property in goods passes to the buyer

KIRKHAM V ATTENBOROUGH

- Fact: The buyer received some jewellery from the seller, which was subject to " on sale or return", the buyer then pledged the jewellery to a 3rd party.
- Held: The buyer had *adopted the transaction*. The property in the jewellery has passed to the buyer.

4. 3.1 THE CONCEPT OF PROPERTY & POSSESSION

BADRI PRASAD V. STATE OF MADHYA PRADESH

- Fact: Badri Prasad purchased standing trees form the forest department of state of M.P. The trees were destroyed by a fire accident after they were selected and marked by the buyer but before they were cut down for the purpose of delivery as agreed.
- Held: The court of law held that the loss should be borne by the seller, because the ownership had not passed to the buyer.

4.4 PROTECTIONS TO BUYERS & OWNERS

4.4.1 CAVEAT EMPTOR PRINCIPLE

GRIFFITHS V. PETER CONWAY LTD

- Fact: A bought a tweed coat from B. After wearing the coat for sometime, A developed a dermatitis (skin trouble). It was discovered that the coat was fit for the use of a normal man. A's skin trouble was due to her oversensitive skin.
- Held: The court held that the implied condition as to fitness for buyer's purpose was broken, as the coat was fit for the use of a normal man. In this case it was A's duty to disclose the fact of her over sensitiveness to the seller at the time of sale.

4.4.2 THE PRINCIPLE OF NEMO DAT QUOD NON HABET & THE EXCEPTIONS

LIM CHUI V. ZENO LTD

- Fact: Chairman of the board of directors of Zeno Ltd made a contract with a contractor named Ahmad. While Ahmad had a contract with Petaling Jaya Authority, Zeno bought all the materials needed by Ahmad for construction of culverts (drain under road). Zeno came to know that Petaling Jaya Authority had cancelled their contract with Ahmad. Once Zeno made an attempt to sell the materials, they came to know that the materials had been sold to the appellant by Ahmad where Ahmad received part of the payment.
- Held: Appeal dismissed. Ahmad was merely the bailee (a person to whom goods are delivered for repair or custody without transfer of ownership) and not the owner of the chattels at the time he sold them to the appellant. As he had no title to the chattels or authority to sell them, he could not give the appellant any title.

4.5 BREACH OF CONTRACT & REMEDIES OF CONTRACT OF SALE

4.5.1 TYPES OF BREACH OF SALE OF GOODS CONTRACT

(a) BY THE BUYER

COLLEY V. OVERSEAS EXPORTERS[II]

- Fact: there was a contract for the sale of some unascertained leather goods to the buyer on term fob Liverpool. In this case, though the seller sent the goods, yet they could not be put on board as no definite ship had been named by the buyer
- Held: When an action was brought by the buyer against the seller, it was held that the seller was not entitled to pay the price as the goods had not yet moved into the

possession of the buyer. In the absence of an agreement relating to the payment of price on a certain day, irrespective of the delivery, the seller is not entitled to sue the buyer for payment but can bring about an action for damage.

(b) BY THE SELLER

DRUMMOND V VAN INGEN

- Fact: The cloth supplied by the seller was equal to samples previously examined but because of latent defects not discoverable by a reasonable examination.
- Held: The seller is liable of the subsection

4.5.2 REMEDIES FOR SELLER

MORDAUNT BROTHERS V BRITISH OIL AND CAKE MILLS [1910]

- Fact: British Oil (BO) contracted to sell oil to Crishon(CB), who then resold it to MB. Possession of the sold oil remained with BO, who had not been paid by Crichton, even though Morduant(MB) had paid Crichon for its purchase. Critchon sent delivery orders to BO to deliver the oil to Morduant and the orders were then entered onto its records. Crichton fell into arrears and BO exercised its rights of lien as an unpaid seller and refused to make deliveries. Morduant sued BO as they claimed they had assented to the sale of oil by Crichton to Morduant and therefore under s.47(1) BO had prevent their right of retention/possess or lien
- Held: Court held the act of entering the orders did not amount to the necessary assent(agree/approve/accept), the assent must be given as to show an intention on the part of the unpaid seller to renounce his right against the goods. The assent did

imply an intention of making delivery to a sub-purchaser but until payment was made under the original contract. BO wasn't told of the sub contract until it had been given effect. British Oil had only therefore acknowledged the sub-sales existence. The position is different where the seller is anxious to sell, e.g. bc of a falling market, and where he is aware that his buyer will only be able to pay him out of the money he obtains from reselling the goods to his own customers which only come about against delivery orders in favour of those customers. *An unpaid seller will not be deemed to assent* to a resale by the buyer and thereby lose his lien unless he intends to renounce his rights against the goods and take the risk of the buyer's honesty that he will pay .