

Introduction to business law essay sample



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Law of carriage means carrying goods from one place to another against the price. It is the branch of business. Carriage is the basis for the management and operation of business successfully and effectively. It is the factor of business activity that helps to mobilize the labor, raw material, and tools and machinery etc. Modern business activity are based on the exchange of goods and transportation of goods from one place to another. According to section 65 of Nepal contract act. 2056 ,” a contract is related to carriage shall be deemed to have been concluded, if it provides for transportation of goods from one place to another.” Classification of carriage: carriage can be classified into so many types but some of them are classified below they are as follows: 1. on the basis of fare or charges.

-Charge or fare carriage

-Non charge or non fare carriage

2. on the basis of things to carry

-passenger carrier

-goods carrier

3. on the basis of service

-private carrier

-public carrier

4. on the basis of way

-Carriage from land

-Carriage from air

-Carriage from sea

IMPORTANCE OF CARRIAGE

There are many importance of carriage for some of them are explained in points. They are as follows:

1. To operate and control the carriage business.
2. To settle the dispute legally, which are arise in carriage business.
3. To manage the rights and duties of carrier.
4. To supply raw material and distribute the finished product promptly for the effective marketing.
5. To increase and make easier for international trade and helps to national economy prosper.

RIGHT OF PUBLIC CARRIER.

1. Right to receive the fare or charges.
2. Right to receive the additional charges.
3. Right to take necessary step.
4. Right to take damages.
5. Right to sale the goods.
6. Right to limit the liability.
7. Right of particular lien.
8. Right to reject to carry goods.

DUTIES OF PUBLIC CARRIER.

1. To provide the service without any discrimination.
2. To provide the service according to agreed route.
3. To provide the service according to mentioned in contract i. e, place, time and person.
4. To do the work according to the owner of good or consignor.

5. To communicate the owner for any problems are arises in the transit.

6. To follow the instruction of consignor.

LIABILITIES OF PUBLIC CARRIER.

The liabilities are classified into different law. Different law classified it according to their countries rules and laws. Some of them are classified below. 1. According to English law, the public carrier is the insures, so if any loss or damages are arrived in transit at that time the public carrier is responsible for such damages. Some of the exception of this rule are as follows: i. When the damages are caused by natural calamity.

ii. When the damages are caused by an enemy of the domestic country. iii.

When the damages are caused by negligence of client. iv. When the damages are caused by delay.

v. When the damages are caused by perishable natural of goods. 2.

According to Indian carriage act. 1865, the liabilities of public carrier is depend upon the category of goods. The goods can be categorized in scheduled and non scheduled goods. i. The scheduled goods are the valuable which are mentioned in the act such as – gold, silver, pearl, precious stones, jewelers, bills, bundies, currencies, notes, maps, government securities. The carrier should liable for any loss or damages of this kind of good except in the uncontrollable forces. ii. The non schedule goods are those which need not be included in the list of scheduled goods. A public carrier is liable for any loss or damages of goods; while they are in transit except in uncontrollable circumstances. 3. According to Nepal contract act 2056, this law can explain the both the laws which explained above. And include the

following liabilities should be fulfilled by public carrier. i. To carry good in particular time, place, and person.

ii. The first carrier is liable if more than one carrier is involved in the same type of good. iii. The carrier should be liable for any damaged of goods. iv. To pay the compensation for any loss and damages of goods due to breakage. This kind of liability can be limited as ten thousand rupees. Sec. 65 of NCA. v. To insure the goods carried.

Exception of this laws:

the public carrier should not be liable except otherwise agreed in the contract to carrying the following goods.

- i. Valuable goods.
- ii. Government securities, negotiable instruments, certificates.
- iii. Currency
- iv. Perishable nature of products.
- v. Poisons etc.

Sale of goods act:

Definition of sale of goods:-

contract of sale of goods means transfer of ownership from one person to another against price. It is the act performed by seller and buyer. In other words, the term contract of sale is a contract whereby the seller transfer or agrees to transfer the property in goods to the buyer at a certain price. The contract of sale defines the term goods, according to business law the term goods can be defines as;" every kind of movable property other than the

actionable claims and money; and includes stocks, shares, growing crops, grass and the things attached to or forming part of land.” Types of goods:-

There are mainly three types of goods they are explained below: 1. Existing goods: existing goods are those goods which are owned and possessed by the seller at the time of contract of sale. This type of goods are further classified into three types they are as follows: i. Specific goods:- specific goods are those which are agreed and identified at the time of contract of sale. ii. Unascertained goods: - unascertained goods are those which are not agreed and identified at the time of contract of sale. These types of goods indicated and defined by description at the time of contract of sale. iii. Ascertained goods: the term ‘ascertained’ is used to those goods; which are ascertained after making the contract of sale. 2. Future goods:- future goods are those goods which are manufactured, produced and acquired by the seller after making the contract of sale. 3. Contingent good: contingent goods are those goods whose acquisition is depend upon the happening and non happening of certain event. i. e., contingent event. Difference between contract of sale and agreement to sale.

Basis of difference| Contract of sale | Agreement to sale.| Ownership of goods| Buyer is said to the real owner| Seller is said to the real owner.| Nature of contract| Executed in nature | Executory in nature| Transfer of risk| Seller can transfer the risk to the buyer in the condition of sale| Seller can't transfer the risk to the buyer up to the time of contract of sale. | Loss and damages of goods| All the losses and damages are bound by the actual buyer| All the losses and damages are bear by the actual seller.| Right to sell the goods by the seller.| Seller has no right to sell the goods without consent of actual
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buyer. Certain exception are there| Seller has the only the right to sue for the price of goods from the buyer.| Types of goods| Sale include the executed goods , specific goods only.

Agreement to sale include only the future goods and unascertained goods.| Right when buyer is insolvent| If the buyer become insolvent without paying price; the ownership having passed to the buyer. The seller shall have to deliver the goods to the official assignee.| In this circumstance, the seller can refuse to deliver the goods. | Right when seller is insolvent| The buyer can claim the goods from the official receiver.| In this circumstance the buyer can't claim the goods.| Nature of right available to the buyer.| The sale creates the right in rem. i. e against the whole world.| An agreement to sale creates a right in personam. i. e, against the specific person only.|

Definition of warranty:-

A stipulation shall be the warranty where the same is collateral to the main purpose of contract. A breach of warranty gives rise to claim for damages and loss only. The aggressive party only claim for damages but not reject the goods and not to repudiate the contract. Remedies for breach of warranty:-

1. The buyer has no right to repudiate the contract. He may claim for damages and loss.
2. The buyer may demand for discount in price of goods by the amount of damages.
3. The buyer may sue for the amount of damages which are in excess of the price of the goods.

Definition of condition:-

A stipulation shall be the condition where it is essential to the main purpose of contract. The breach of condition entitles to the buyer for the treatment of

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contract or to repudiate the contract. The buyer has the option either repudiate the contract or only claim for damages depend upon his interest. i. e., the buyer may treat the condition as a warranty but the warranty can't treat as a condition. Remedies for breach of condition:-

1. The buyer can repudiate the contract.
2. The buyer can reject the goods.
3. Buyer has the option to treat the breach of condition as a breach of warranty.
4. Buyer can allow waiver to the seller without taking any action.

Distinction between warranty and condition:-

Sn.| condition| warranty|

1. As a value| A stipulation shall be the condition where it is essential to the main purpose of contract.| A stipulation shall be the warranty where the same is collateral to the main purpose of contract.|
 2. Breach| The breach of condition entitles to the buyer to treat the contract and to repudiate the contract of sale .| The breach of warranty gives rise to claim for damages or loss only. It should not contain to repudiate the contract.|
 3. Treatment | The condition is may or may not treat as a warranty. It is depend upon the choice of the buyer.| The warranty is not treating as a condition. It can't provide for reject the goods and repudiate the contract.|
- Transfer of ownership:-

Transfer of ownership means transfer the property of goods to the other at a certain price. According to Latin maxim " NEMO DAT QUAD NON HABET" it means nobody can transfer the better title than he himself has. since sale of good involves transfer of ownership by the seller to the buyer; how can a seller who himself does not have the ownership; transfer the same to the

buyer thereof. Hence we can say- where goods are sold by the seller to the buyer; who is not the real owner thereof and who doesn't sell them under the authority and with the consent of original owner. This general rule have certain exceptions they are as follows: FOUL MJSS

1. Sale by mercantile agent.
2. Sale by finder of goods
3. Sale by official assignee
4. Sale by the unpaid seller
5. Sale by liquidator of the company
6. Sale by joint owner
7. Sale by seller in possession of goods after sale.
8. Sale by buyer in possession of goods after sale.
9. Sell by the seller who has possession of goods under the avoidable contract.

Definition of delivery of goods:

Delivery means voluntarily transfer the possession of goods from one person to another i. e. seller to the buyer. If the delivery can't provides the voluntarily transfer by the seller ;(by coercion and theft) the contract of sale is voidable; and the buyer can't get the effective title of goods. Thus delivery may be in anyone the following: 1. Actual delivery.

2. Symbolic delivery
3. Constructive delivery.

Rules regarding delivery of goods: MMEET PIDA RED

1. Modes of delivery

2. Manner of delivery
3. Examine of delivery
4. Expenses of delivery
5. Effect of part delivery
6. Time of delivery
7. Place of delivery
8. Installment delivery
9. Delivery of wrong quantity of goods
10. Application of delivery
11. Reject of goods
12. Delivery by carrier
13. Delivery and payment are concurrent conditions.

Who is the unpaid seller

The seller of goods is deemed to be a unpaid seller.

1. When the whole of the price is not paid or tendered
2. When the bill of exchange or the negotiable instrument is received as conditional payment and is dishonored by any cause provided by Indian sale of goods act 1930 and English law 1979. But Nepal law has no any remedies for this. RIGHTS OF UNPAID SELLER

The right of unpaid seller can be classified into two categories they are as follows:

1. Right against the goods and
2. Right against the buyer personally

Right against the goods is also classified into these:

- i. Right of lien: the unpaid seller of goods who has possession of good is

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entitled to retain possession of them until payment or tender of price. ii.

Right of stoppage of goods in transit: it means the right of an unpaid seller to stop movement of goods further in transit with a view to regain actual or constructive possession of the goods. iii. Right of resale: the unpaid seller, who has retained possession of the goods in exercise of his right of lien or who has regained possession from the carrier upon insolvency of the buyer, can resell the good as per following conditions: 1. Where the goods are perishable.

2. Where the seller expressly reserves a right of resale.

3. In all other cases after giving reasonable notice.

Bailment.

Definition of bailment:

Bailment is one of the commercial security measures like – pledge, repair, finding of lost goods etc. bailment is derived from the French word ‘ baillier’ which means delivery of goods. Bailment is also a kind of special contract and caused by the delivery of goods. Bailment is the change of possession of goods not a transfer of ownership of goods as in a sale. Right and duties of bailer:

The following are the right of bailer:

1. Enforcement of duties of bailee.

i. To demand compensation, in case of damages of goods.

ii. To demand damages in case of unauthorized use of goods.

iii. To demand damages in case of unauthorized mixing of goods with the other goods. iv. To return the goods in specified time.

2. To terminate the contract.
3. Restoration of goods lent gratuitously.

The following are the duties of the bailor:

1. Duty to disclose the dangerous nature of goods.
2. Duty to disclose the known defect of the goods.
3. Duty to bear extraordinary expenses.
4. Duty to indemnify the bailee.
5. Duty to receive back the goods.

Right and duties of bailee:

1. Enforcement of bailee duties:

i. To indemnify the damages caused by a lack of information about the known defect of goods. ii. To demand extraordinary expenses for the goods bailed. iii. To indemnified for the damage caused by unauthorized goods or defect titles of goods. iv. To demand compensation for not receiving backs the goods in time. v. Right to return the goods to the bailor, even through the real owner is another person. 2. Right to deliver the goods to one of the several owners. 3. Right of special lien.

4. Right to deliver goods in good faith to the untitled bailor. Duties of bailee:

1. Duty not to make unauthorized use of the goods bailed. 2. Not to mix the bailed goods with other goods.
3. Duty to return the goods to the bailor in time.
4. To return the goods with their natural profit or increments. 5. To follow the terms of contract and the instruction of the bailor. 6. Duty to compensate the loss or damage caused by him.

Finder of lost goods:-

Finder of lost goods means an innocent finder of the lost goods of others.

The person, who finds in a public place and holds them with the intention of saving them for the true owner is not a trespasser he will be regarded as a bailee. The finders of lost goods and true owner of the goods are regarded as indirect contracting parties they are unknown in each other. In this circumstance the loser of the goods and the finder acquire some rights and duties automatically by operation of law. RIGHTS OF FINDER OF LOST GOODS:-

1. Right of possession
2. Right of lien
3. Right to sue for reward
4. Right to sell the goods.

Termination of bailment of contract:-

1. on the fulfillment of purpose.
2. On the expire of time
3. On an act inconsistent with the terms
4. On the death of the either party
5. On the destruction of subject matters.
6. On the condition of gratuitous bailment.
7. On the void condition of the contract.