

## **LL. B. III Term**

### **Paper – LB – 304 – Special Contracts** **(Partnership and Sale of Goods)** **(New Course w.e.f. 2015)**

#### **Objectives of the Study**

The law recognizes various Special Contracts, viz. (i) Partnership and (ii) Sale of Goods. The law relating to partnership has gone a drastic change with the enactment of the Limited Liability Partnership Act, 2008. The limited liability partnerships are more akin to companies but not exactly the same. The traditional concept of partnerships with unlimited liability, joint ownership and flexibility in registration permissible under the Indian Partnership Act, 1932 has been drastically modified under the Limited Liability Partnership Act, 2008. The need to have two kinds of partnerships along with registered companies deserves to be studied by keeping in mind the rationale in retaining these three forms of business associations.

The present course is aimed at a study of the Law relating to Agency particularly the provisions of sections 182-238 of the Indian Contract Act, 1872, the Indian Partnership Act, 1932, Limited Liability Partnership Act, 2008 and Sale of Goods in the light of judicial pronouncements.

#### **Prescribed Legislations:**

1. The Indian Partnership Act, 1932
2. The Limited Liability Partnership Act, 2008 (6 of 2009)
3. The Indian Contract Act, 1872
4. The Sale of Goods Act, 1930

#### **Prescribed Books:**

1. Sanjiv Agarwal and Rohini Agarwal, *Limited Liability Partnership: Law and Practice*.
2. G.C ., Bharuka, *The Indian Partnership Act*
3. Avtar Singh, *Law of Partnership*
4. V.P. Verma (Rev.), S. D. Singh and J.P. Gupta, *Law of Partnership in India*
5. R.G. Padia (ed.), *Pollock & Mulla, Indian Contract and Specific Relief Acts*
6. K. Ramamoorthy, *Pollock & Mulla The Sale of Goods Act*
7. V. Krishnamachari and Surender K. Gogia, *T.S. Venkatesa Iyer's Sale of Goods Act, 1930*

#### **Topic 1 – Concept of Agency and The Nature of Partnership**

‘Agent’ and ‘Principal’ defined; Who may employ an agent; who may be appointed as agent; Rights, duties and liabilities of principal and agent, scope and limitation, ratification and revocation of authority; appointment of sub-agent (The Indian Contract Act, 1872). Definition

of “partnership”, “partner”, “firm” and “firm name” (section 4); partnership not created by status (section 5); Mode of determining existence of partnership (section 6); partnership at will (section 7); Particular partnership (section 8), Concept and nature of Unlimited Liability Partnerships; Distinction between a partnership, a limited liability partnership and a company;

*Narandas Morardas Gajiwala v. SPAM Papammal*, AIR 1967 SC 333

*Kuchwar Lime and Stone Co. v. Dehri Rohtas Light Rly. & Co. Ltd.*,  
AIR 1969 SC 193

*Lakshminarayan Ram Gopal v. Govt. of Hyderabad*, AIR 1954 SC 367

*Snow White Indl. Corpn. v. Collector of Central Excise*,  
AIR 1989 SC 1555

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| 1. <i>K.D. Kamath &amp; Co. v. CIT</i> (1971) 2 SCC 873                        | 01 |
| 2. <i>Cox v. Hickman</i> (1860) 8 H.L.C. 268                                   | 10 |
| 3. <i>Mollwo, March &amp; Co. v. The Court of Wards</i> (1872) L.R. 4 P.C. 419 | 16 |

### **Topic 2 - Relations of Partners to One Another and to the Third Parties**

General duties of partners (section 9); duty to indemnify for loss caused by fraud (section 10); determination of rights and duties of partners by contract between the partners (section 11); the conduct of the business (section 12); Mutual rights and liabilities (section 13); The property of the firm (section 14); Application of the property of the firm (section 15); Personal profits earned by partners (section 16); Rights and duties of the partners (section 17). Partners to be agent of the firm (section 18); Implied authority of partner as agent of the firm (section 19); Extension and restriction of partner’s implied authority (section 20); Partner’s authority in an emergency (section 21); Mode of doing act to bind firm (section 22 Holding out (section 28); Right of transferee or a partner’s interest (section 30); Minors admitted to the benefits of partnership.

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| 4. <i>Miles v. Clarke</i> (1953) 1 All ER 779  | 22 |
| 5. <i>Trimble v. Goldberg</i> (1906) AC 494 (PC)                                       | 26 |
| 6. <i>Holme v. Hammond</i> (1872) L.R. 7 Ex. 218 : 41 L.J. Ex. 157                     | 31 |
| 7. <i>Rhodes v. Moules</i> (1895) 1 Ch. 236 (CA)                                       | 35 |
| 8. <i>Hamlyn v. Houston &amp; Co.</i> (1903) 1 K.B. 81                                 | 39 |
| 9. <i>Tower Cabinet Co., Ltd v. Ingram</i> (1949) 1 KBD 1032                           | 41 |
| <i>Snow White Food Products Ltd. v. Sohan Lal</i> , AIR 1964 Cal. 239                  |    |
| <i>Scarf v. Jardine</i> (1882) 7 A.C. 345  |    |
| 10. <i>Shivgouda Ravji Patil v. Chandrakant Neelkanth Sadalge</i> ,<br>AIR 1965 SC 212 | 46 |

### **Topic 3 - Incoming and Outgoing Partners**

Introduction of a partner (section 31); Retirement of a partner (section 32); expulsion of partners (section 33); Insolvency of a partner liability of estate of deceased partner (section 35); rights of outgoing partner to carry on competing business (section 36)

*Syndicate Bank v. R.S.R. Engg. Works* (2003) 6 SCC 265

*Vishnu Chandra v. Chandrika Prasad Agarwal*, AIR 1983 SC 523

**Topic 4 - Registration and Dissolution of a Firm**

Application for registration (section 58); Registration (section 59); Disabilities attach with non-registration (section 69), Dissolution of a firm (section 39); Dissolution by agreement (section 40); Compulsory dissolution (section 41); Dissolution on the happening of certain contingencies (section 42); Dissolution by notice of partnership at will (section 43); Dissolution by the Court (section 44); Liability for acts of partners done after dissolution (section 45); Right of partners to have business wound up after dissolution (section 46); Continuing authority of partners for purpose of winding up (section 47); Mode of settlement of accounts between partners (section 48).

11. <i>CIT v. Jaylakhmi Rice &amp; Oil Mills Contractor Co., AIR 1971 SC 1015</i>	49
12. <i>Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd., AIR 1964 SC 1882</i>	52
13. <i>Haldiram Bhujawala v. Anand Kumar Deepak Kumar (2000) 3 SCC 250</i>	56
14. <i>Saligram Ruplal Khanna v. Kanwar Rajnath, AIR 1974 SC 1094</i>	63
15. <i>Santiranjan Das Gupta v. Dasuram Murzamull, AIR 1973 SC 48</i>	73
16. <i>M/s. Juggilal Kamlatpat v. M/s. Sew Chand Bagree, AIR 1960 Cal. 463</i>	76
17. <i>Sharad Vasant Kotak v. Ramniklal Mohanlal Chawda (1998) 2 SCC 171</i>	79
18. <i>S.V. Chandra Pandian v. S.V. Sivalinga Nadar (1993) 1 SCC 589</i>	87

**Topic 5 - General : Formation of Contracts of Sale**

The Sale of Goods Act, 1930 (sections 1-10)

The Hire-Purchase Act, 1972 (sections 3-5)

(a) Concept of 'Goods'

19. <i>R.D. Saxena v. Balaram Prasad Sharma, AIR 2000 SC 2912</i>	97
20. <i>Commr. of Sales Tax, M.P. v M.P. Electricity Board, Jabalpur, AIR 1970 SC 732 : (1969) 1 SCC 200</i>	104

(b) 'Sale' and 'Agreement to sell'

21. <i>State of Madras v. Gannon Dunkerley &amp; Co. (Madras) Ltd., 1959 SCR 379</i>	108
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(c) Statutory Transactions

22. <i>Vishnu Agencies (P) Ltd. v. Commercial Tax Officer, AIR 1978 SC 449 : (1978) 1 SCC 520</i>	120
23. <i>Coffee Board, Karnataka v. Commr. of Commercial Taxes, AIR 1988 SC 1487</i>	128

(d) Contract for 'Works' / 'Labour' (Pre and Post 46<sup>th</sup> Constitutional Amendment)

24.	<i>Commr. of Commercial Taxes v. Hindustan Aeronautics Ltd.</i> , AIR 1972 SC 744 : (1972) 1 SCC 395	142
25.	<i>Sentinel Rolling Shutters &amp; Engg. Co. (P) Ltd. v. CST</i> , AIR 1978 SC 545 : (1978) 4 SCC 260	145
26.	<i>Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi</i> (1978) 4 SCC 36 & (1980) 2 SCR 650	152
27.	<i>State of Karnataka v. Udupikrishna Bhawan</i> (1981) 3 SCC 76	155
28.	<i>Larsen &amp; Toubro Ltd. v. State of Karnataka</i> , (2014) 1 SCC 708	156
29.	<i>Kone Elevators v. State of Tamil Nadu</i> (2014) 7 SCC 1	179
30.	<i>State of Karnataka and Ors. v. Pro Lab and Ors.</i> AIR 2015 SC 1098	198
(e) Hire-Purchase Agreement		
31.	<i>K.L. Johar &amp; Co. v. Dy., C.T.O.</i> , AIR 1965 SC 1082 : (1965) 2 SCR 112	212
32.	<i>Sundaram Finance Ltd. v. State of Kerala</i> , AIR 1966 SC 1178 : (1966) 2 SCR 828	223

### **Topic 6 : Conditions and Warranties**

Stipulations as to time; Implied Conditions and Warranties – as to title, quality, fitness, etc.,  
Sale by Description and by Sample; Treating conditions as warranties

The Sale of Goods Act, 1930 (sections 11-17, 62, 63)

The Hire-Purchase Act, 1972 (sections 6-7)

*Priest v. Last* (1903) 2 KB 148

33.	<i>British Paints (India) Ltd. v. Union of India</i> , AIR 1971 Cal. 393	231
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*Niblett v. Confectioners Material Co. Ltd.* (1921) 3 KB 387

*Wallis v. Patt* (1911)AC 394

*Baldry v. Marshall* (1925) 1 KB 260 (CA)

Doctrine of Caveat Emptor

34.	<i>Jones v. Just</i> (1868) 3 Q.B. 197	237
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35.	<i>Richard Thorold Grant v. Australian Knitting Mill, Ltd.</i> AIR 1936 PC 34	243
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*Bristol Tramways v. Fiat Motors Ltd.* (1910) 2 KB 831

### **Topic 7 : Effects of the Contract of Sale**

Transfer of property; Doctrine of *Nemo dat quod non habet* – sale by a person other than the  
owner, sale by joint owner, sale by mercantile agent, sale under voidable contract, sale by  
seller or buyer in possession after sale; sale in Market Overt

The Sale of Goods Act, 1930 (sections 18-30)

The Hire-Purchase Act, 1972 (section 8)

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| 36. | <i>CIT v. Mysore Chromite Ltd.</i> (1955) 1 SCR 849 :<br>AIR 1955 SC 98                                  | 254 |
| 37. | <i>P.S.N.S. Ambalavana Chettiar v. Express Newspapers Ltd.</i><br>(1968) 2 SCR 239 : AIR 1968 SC 741     | 259 |
| 38. | <i>Agricultural Market Committee v. Shalimar Chemical Works Ltd.</i> (1997) 5 SCC 516 : AIR 1997 SC 2502 | 267 |
| 39. | <i>Pearson v. Rose &amp; Young, Ltd.</i> (1950) 2 Ch. D. 1027  | 271 |

**Topic 8 : Rights of Unpaid Seller**

Who is an un-paid seller ? Un-paid Seller's Rights – Right of lien, Right of stoppage in transit; Transfer of goods by buyer and seller

The Sale of Goods Act, 1930 (sections 45-54)

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| 40. | <i>Mysore Sugar Co. Ltd., Bangalore v. Manohar Metal Industries, Chikpet, Bangalore</i> AIR 1982 Kant. 283 | 278 |
| 41. | <i>Gopalakrishna Pillai v. K.M. Mani</i> (1984) 2 SCC 83 :<br>AIR 1984 SC 216                              | 281 |



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### **Special Contracts** **(Partnership and Sale of Goods)**

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