Final Assessment

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BBA Program

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Answer to the question No: 1

Negotiable instrument: A negotiable instrument is actually a written document. This document specifies payment to a specific person or the bearer at the instrument at a specific date. So we can define a bill of exchange as "a document signifying an unconditional promise signed by the person giving the promise, requiring the person to whom it is addressed to pay on demand, or at a fixed date or time:

Characteristics at negotiable instrument:

a) Must be in writing: A mere verbal promise to pay is not a promissory note. The method of writing (either in ink or pencil or printing etc.) is unimportant, but it must be in any form that cannot be altered easily.

b) Must certainly an express promise or clear understanding to pay: There must be an

express undertaking to pay. A mere acknowledgement is not enough. The following are not promissory notes as there is no promise to pay.
Example: 'Mr. B.I.O.U Rs. 10,000'. There is no promise to pay and therefore this is not a valid promissory note.

c) **Must be unconditional**: A conditional undertaking destroys the negotiable character of an otherwise negotiable instrument. Therefore, the promise to pay must not bepend upon the happening of some outside contingency or event. It must be payable absolutely.

d) **Signed by the maker**: The person who promises to pay must sign the instrument even though it might have not been written by the promisor himself. There are no restrictions regarding the form or place of signatures in the instrument. It may be in any part of the instrument. It may

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be in pencil or ink, a thumb mark or initials.

e) Must be certain: The note self must show clearly who the person is agreeing to undertake the liability to pay the amount. In case a person sings in an assumed name, he is liable as a maker because a maker is taken as certain if from his description subbicient indication follows about his identity. In case two or more persons promise to pay, they may bind themselves jointly or jointly and severally, but their liabity cannot be in the alternative.

f) The payee must be certain: The instrument must point out with certainty the person to whom the promise has been made. The payee may be ascertained by name or by designation.

g) The promise should be to pay money and money only: Money means legal tender

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money and not old and rare coins. A promise to deliver paddy either in the alternative or in addition to money does not constitute a promissory note.

h) The amount should be certain: One of the important characteristics of a promissory note is a certainty-not only regarding the person to whom or by whom payment is to be made but alsoregarding the amount.

Answer to the question No: 2

Contract of sale: Contract of sale of goods is a contract, whereby, the seller transfers or agrees to transfer the property in goods to the buyer for a price. There can be a contract of sale between one part-owner and another.

Essentials of a Contract of sale-

a) Two parties: There must be two distinct parties, a buyer and a seller. To the effect a contract of sale and they must be competent to contract. Buyer means a person who buys or agrees to buy goods.

b) Goods: The goods which form the subject-matter must be movable. Transfer of immovable property is not regulated by the sale of goods act.

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Associated Hotels of Bangladesh Vs Excise and Taxation Officer:

A hotel company provided residence and food making a consolidated charged for both the services. No rebate was allowed if food was not taken by the customers. Held, supply of foods was not sale of goods but simply a service as the transaction was an indivisible contract of multiple services and did not involve any sale of food.

c) Price: A agreed to exchange with B 100 quarters of Barley at $2 per quarter for 52 bullocks valued at $6 per bullock and pay the difference in cash. Held, the contract was a contract of sale.

d) Transfer of general property: There must be a transfer of general property as

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distinguished from special property in goods from the seller to the buyer.

If A owns certain goods, he has general property in the goods. If he pledges them with B, B has special property in the goods.

e) Essential elements of valid contract:

All the essential elements of a valid contract must be present in the contract of sale.

Answer to the question NO: 4 (a)

(a) Prospectus: The Companies Act, 2013 defines a prospectus under section 2(70). prospectus can be defined as "any document which is described or issued as a prospectus". This also includes any notice, circular, advertisement or any other document acting as an invitation to affers from the public. Such an invitation to offer should be for the purchase of any securities of a corporate body. shelf prospectus and red herring prospectus are also considered as a prospectus. Essentials for a document to be called as a prospectus.

Answer to the question No: 4 (b)

(b) **Directors as agents:** It has been held that directors are agents of the company as the company is an artificial person it can act through directors only (Ferguson v. Wilson (1904) SLR 41 601). The relation of a diractor and the company is like an ordinary relation of principal and agent. In the case of Indian Overseas Bank v. RM Marketing (AIR (2002) Delhi 344), it was held that the directors of a company could not be made liable marely because he is a director as he has not given any personal guarantee for a loan that has been taken by the company.

Answer to the question No: 4 (c)

Promissory Note: Section 4 of the Act defines, "A promissory note is an instrument in writing (note being a banknote or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments." On the other hand, promissory note is a promise to pay a certain amount of money within a stipulated period of time. And the promissory note is issued by the debtor.

Answer to the question No 4: (d)

General Crossing: In general crossing, the cheque bears across its face an addition of two parellel transverse lines and/or the addition of words 'and Co'. or 'not negotiable' between them. In the case of general crossing on the cheque, the paying banker will pay money to any banker. For the purpose of general crossing two transverse parallel lines at the corner of the cheque are necessary.

Answer to the Question No: 4 (e)

Restrictive crossing: Restrictive crossing involves the crossing of a cheque through two parallel lines on the left corner of a cheque. The word A/c payee are inserted inside the parallel lines According to this crossing, the cheque can be collected by the bank only for the person, whose name is written on the cheque.

Answer to the question No: 6

Consumer: A consumer is a person or a group who intends to order, orders, or uses purchased goods, products, or services primarily for personal social, family, household and similar needs, not directly related to entrepreneurial or business activities.

How Unfair Trade practice can be solved are given below:

An unfair trade practice which for the purpose of promoting the sale use or supply of any goods or for the provision of any service, adopts any unfair method or deceptive practice including any of the following:

1. False or misleading representation about quality, quantity and standard of goods.

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2. Bargain price.

3. Offering of gifts , prize and contest.

4. Non compliance of product safety standard.

5. Hoarding or destruction of goods.

6. Falsely represents any re-built, second-hand, renovated or old goods as new goods.

7. Represents that the goods or service have sponsorship, approval, perforrmance uses or benefits which such goods or service do not have.