

Additional Study Support Material



CA SRI LANKA CURRICULUM 2015

KE3

Fundamentals of Law

(English)

This document is designed to use as an additional study support material. Students are advised to refer the content in the study text and the additional study support material under each chapter. The students who have already purchased the “Executive Level KE3-Fundamentals of Law” study text are also advised to refer this study support material.

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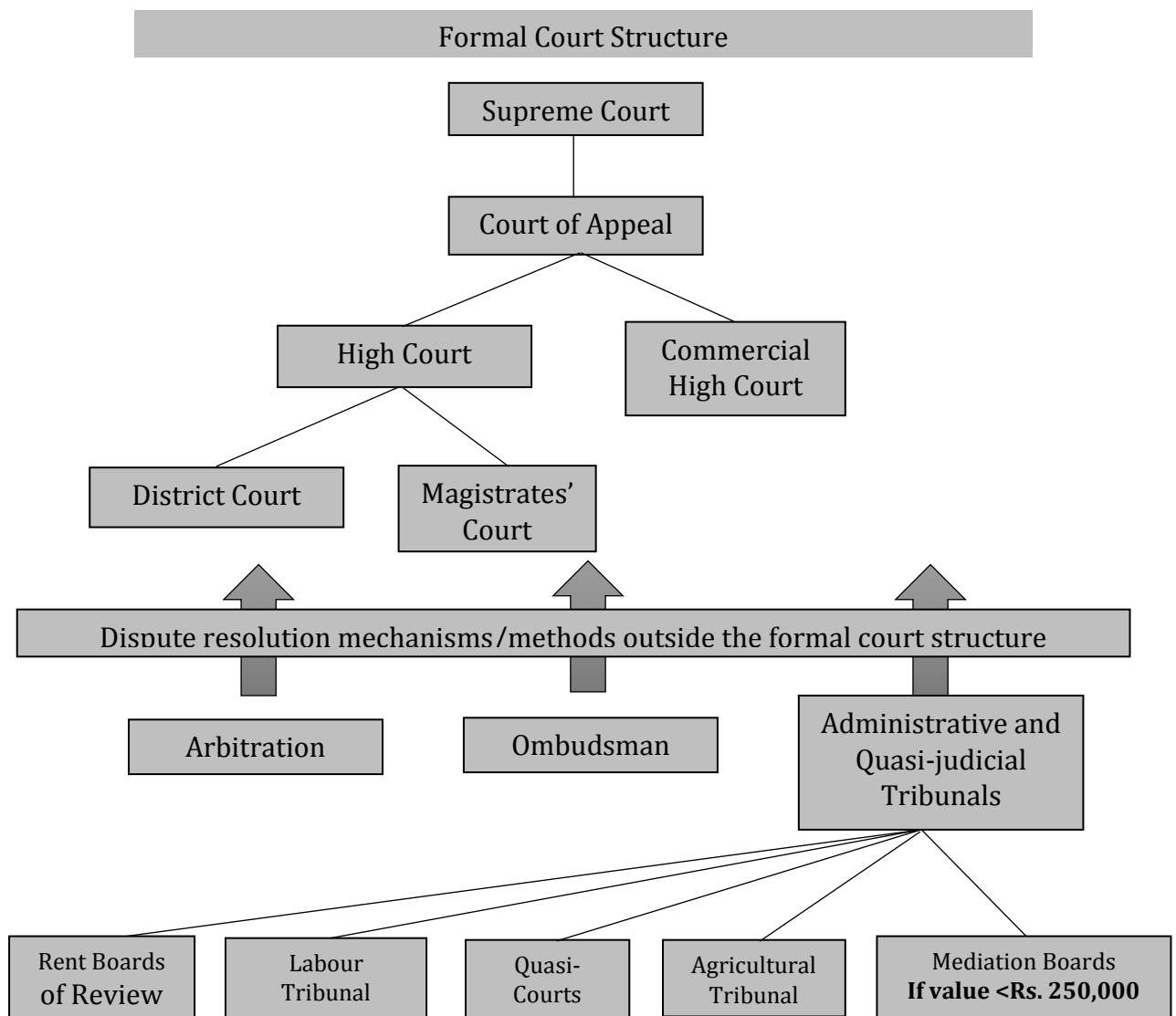
Additional Contents & Amendments to Chapter 1

Introduction to Laws of Sri Lanka and Regulatory Framework

Sub Heading: 3.6.1 Formal court structure in Sri Lanka

Page No: 13

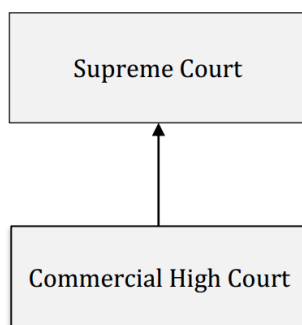
In the diagram 'Formal court structure', the word 'Civil Jurisdiction' (between the cages for "Court of Appeal" and "High Court") and the word 'Criminal Jurisdiction' (between the cages for "Court of Appeal" and "Commercial High Court") should be deleted. The diagram should be replaced as shown below.



Sub Heading: 3.6.2 Hierarchy of appealing within the court structure**Page No: 15**

In the following sentence, the 'Rs. 3 million' should be changed as "Rs. 5 million".

- Courts exercising jurisdiction over commercial matters where the value exceeds **Rs. 5 million**.



Sub Heading: 3.6.3 Main courts in Sri Lanka**Page Nos: 17-20**

Contents under the topic 'The Commercial High Court', all references to "Rs. 3 million" should be changed to "Rs. 5 million" as shown below.

The Commercial High Court

A new High Court known as the Commercial High Court was set up recently in Colombo, in order to take some of the caseload off the District Court.

The court commonly known as the Commercial High Court was established under the High Court of the Provinces (Special Provisions) Act (No. 10 of 1996). This Act provides the court to exercise jurisdiction to hear and determine certain civil actions.

Article 154(P) of the Constitution of the Democratic Socialist Republic of Sri Lanka provides for the establishment of the High Courts in the island. This article was introduced by the 13th Amendment to the Constitution by which the High Courts were established for the respective provinces.

The Parliament enacted the High Court of the Provinces (Special Provisions) Act (No. 10 of 1996) enabling the High Courts to exercise jurisdiction over some civil matters in specifically identified areas. These areas cover disputes in respect of high value commercial transactions and of the matters falling into the categories such as litigation under the Intellectual Property Law and a few matters under the Companies Act.

The establishment of this court was necessitated with the increasing number of business transactions both in the national and international arena. Unless there is a sound and speedy system to resolve disputes in the commercial world, the proper functioning of the system will not be possible.

As per the High Court of the Provinces Act, all actions where the cause of action has arisen out of commercial transactions (including causes of action relating to banking, the export or import of merchandise, services affreightment, insurance, mercantile agency, mercantile usage, and the construction of any mercantile document) in which the debt, damage or demand is for a sum exceeding one million rupees or such other amount as may be fixed by the Minister from time to time, by notification published in the gazette, other than actions instituted under the Debt Recovery (Special Provisions) Act (No. 2 of 1990), come within the purview of this court.

Therefore the actions that are filed under this provision should be on disputes arisen on commercial transactions of which **the value exceeds Rs. 1 million**. However before the commencement of the functioning of this court, the Minister, by gazette notification, increased the value to **Rs. 5 million**.

The attorneys who file actions must pay special attention to this matter (ie: the value of the commercial transaction). There will not be a problem in determining the value of the action, as the value of the action is decided on the basis of the claim of the plaintiff.

Then arises the issue as to the jurisdiction when the value in a counter claim of the defendant exceeds **Rs. 5 million**. If the claim of the plaintiff does not exceed **Rs.5 million**, the case should be filed and heard in the District Court.

The cases filed on this basis will remain in the District Court, although the counter claim of the defendant may exceed **Rs. 5 million**.

Therefore no applications will be allowed to transfer cases to the Commercial High Court merely because the value of the counter claim is more than **Rs.5 million**. This is clearly stated in Section 8 of the High Court of the Provinces Act. Therefore, when the cases are filed, the value of the action is decided solely on the claim of the plaintiff.

The other requirement, when a case is filed in the Commercial High Court is that the dispute between the parties must fall into the category of a "commercial transaction". There is no definition given in the High Court of the Provinces Act to, "commercial transaction". This issue was argued in the case of *Cornel and Company Limited vs Mitsui and Company Limited and ten others* {SC Appeal No. 36/98 - H.C. Civil No. 1/98(2)}.

In the Supreme Court judgment, Justice Mark Fernando, comparing the Sinhala and the English texts of the High Court of the Provinces Act, has given a wider meaning to the words "commercial transactions". In this case the Learned Judge of the High Court has held that the Commercial High Court has no jurisdiction to hear and determine this action because the dispute in this case does not fall into the category of a commercial transaction. The Supreme Court overruling this decision judged that the matter in dispute does fall within the meaning of a commercial transaction mentioned in the High Court of the Provinces Act.

However, the question of interpretation of the words "commercial transaction" will arise only when there is a doubt as to the nature of the transaction. Therefore, the matters such as land disputes can be ruled out at the outset and such applications cannot be entertained in this court even though the values of such actions exceed **Rs. 5 million**.

The matters coming under the Debt Recovery (Special Provisions) Act No. 2 of 1990 are also specifically excluded from the jurisdiction of this court, although these matters *ex facie* fall into the category of a commercial transaction. This is clearly mentioned in the First Schedule to the High Court of the Provinces Act.

Therefore, it is necessary to specifically identify the areas where this court has no jurisdiction. The First Schedule to the Act gives a list of instances falling within the ambit of a commercial transaction.

The matters mentioned in this schedule are the actions relating to banking, the export or import of merchandise, services affreightment, insurance mercantile agency, mercantile usage and the constructions of any mercantile document.

Therefore these instances can be made use of as a guideline in deciding what the commercial transactions are. You will now realise that the value of the action and the proper understanding of the words "commercial transactions" are the two most important criteria in filing actions in the Commercial High Court.

The other actions filed in the Commercial High Court are the actions under the Intellectual Property Act (No. 36 of 2003). Item 3 of the First Schedule to the High Court of the Provinces (Special Provisions) Act (No. 10 of 1996) was repealed by Section 205 of the Intellectual Property Act. Section 205 stipulates that all proceedings required to be taken under the Intellectual Property Act shall be taken in the Commercial High Court.

This court deals with all actions, where the cause of action has arisen out of commercial transactions. Examples are causes of action relating to banking, export or import of merchandise, insurance, agency, and relating to the construction of any commercial document in which the debt, damage or demand is for a sum exceeding **Rs. 5 million**.

Furthermore, this court has jurisdiction regarding all applications and proceedings under certain sections of the Companies Act, and all proceedings under the Code of Intellectual Property Act (No. 36 of 2003) (other than proceedings required to be taken in terms of this Act in the District Court of Colombo).

Additional Contents & Amendments to Chapter 2

Law of Contracts (Basics)

Sub Heading: 1.4 Form of a contract

Page No: 33

3rd & 4th bullet points of the above sub heading should be detailed as follows;

- Section 18 of the Prevention of Fraud Ordinance (No. 7 of 1840) states that, in establishing a partnership where the capital exceeds Rs. 1,000, the agreement or deed creating the partnership must be in writing and signed by all the partners. If this condition as imposed by section 18 is not complied with, then this agreement shall not have any effect in law.
- Section 5 of the Sale of Goods Ordinance (No. 11 of 1896) states that for a contract for the sale of goods to be enforceable in law, it shall have to satisfy either of the following :
 - Be in writing, or,
 - The buyer accepts and receives at least a part of the goods so sold, or,
 - The buyer pays at least a part of the sales price.

Heading: 3 Offer and Acceptance

Page No: 35

Detailed description of the contents under heading 3-Offer and Acceptance is given below.

'In this section, we will discuss in detail the two main elements of a valid contract, namely, offer and acceptance. We will learn how these are made, communicated, how they lapse, and the various rules relating to them.



Offer is an expression of willingness to *contract* on certain terms, which is made with the intention that it shall become binding as soon as it is accepted by the offeree.

In other words an **offer** can be described as, a statement of the terms on which the offeror is willing to be bound by.



Acceptance refers to the offeree's compliance with the terms of an offer made by the offeror.

In other words, **acceptance** is, a promise or act by the offeree indicating a willingness to be bound by the terms and conditions of an offer.

Heading: 6 Genuine consent of the parties**Page No: 50**

The word “principal” should be replaced as “principle” in the last bullet point under the following paragraph.

Under certain instances, there is no reality of contract or genuine consent of the parties to contract. These instances are:

- Under the principle of “*laesio enormis*”.
-

Sub Heading: 6.1.4 Example: Judgemental mistake**Page No: 53**

Example 6.1.4 should be revised as follows;

X purchases certain goods, thinking its value is Rs 1 million. But eventually X finds out that its value is actually Rs 100,000.

Here X has made a mistake in his judgment of the actual value of the goods.

As such a mistake does not make a contract void, the contract entered into by X is valid.

Sub Heading: 6.3 Undue influence**Sub bullet point: Presumed undue influence****Page No: 56**

*Bullet points mentioned under **Presumed undue influence** are detailed as shown below;*

Some of these relationships are as follows;

- Parent and child
- Guardian and ward. [“Ward” refers to a child or young person who is under the care and control of a guardian appointed by the parents or by a court.]
- Doctor and patient
- Lawyer and client
- Spiritual advisor and disciple

Sub Heading: 11.6 To seek relief under the principle of unjust enrichment

Page No: 68

The word “principal” should be replaced with the word “principle” in the following sentence.

Generally the following elements should be satisfied in order for a court to grant relief under the principle of unjust enrichment:

Sub Heading: 12.1 Prescriptive periods in contracts

Page No: 69

‘The 1st paragraph under the sub-heading 12.1 should be read as follows;

12.1 Prescriptive periods in contracts

The Prescription Ordinance [No. 22 of 1871] and its amendments, lay down the laws regulating the prescription of actions. Section 6 of the Ordinance stipulates the time frame within which an action for a breach of a contract should be initiated by the aggrieved party.

Additional Contents & Amendments to Chapter 3

Sale of Goods (Basics)

Sub Heading: 1.2 What is a contract of sale of goods?

Page No: 80

Detailed description of the content under heading 1.2 is given below.

1.2 What is a contract of sale of goods?



What are the goods for which the Ordinance applies to?

Under the Sale of Goods Ordinance “**goods**” include, “all movables except money”

The term “**goods**” also includes, “growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.”

Therefore, it could be said that the Sale of Goods Ordinance applies to all goods, other than money, which are movable or will become movable under the sale of goods contract.



As per section 2 (1) of the Ordinance, “A 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 money consideration, called the price.”

A contract of sale includes **an agreement to sell** as well as **a sale**. [Section 59]

Sub Heading: 7.3.1 When the property in goods have passed to the buyer

Page No: 93

The above sub heading should be revised as below;

7.3.1 When the property in goods **has passed** to the buyer

Sub Heading: 7.3.3 When the property in goods have not passed to the buyer

Page No: 94

The following sub heading should be revised as below;

7.3.2 When the property in goods **has not passed** to the buyer

Sub Heading: Progress Test

Page No: 99

Question 4. (B.) should be revised as below;

*4. Choose the **incorrect** statement;*

- A. "The bulk of goods will correspond to the sample as well as the description."
This is an implied condition in a sale of goods contract.
- B. In relation to goods which are under a patent or trademark, there is no implied condition as to the fitness for purpose of such goods.
- C. Under a sale of goods contract, if an innocent buyer purchases goods from a person who is not the owner, the innocent buyer still gets a good title.
- D. The general rule relating to a contract of sale of unascertained goods is that the property in goods is not transferred to the buyer until the goods are ascertained.

Answer

'C'

Additional Contents & Amendments to Chapter 5

Law of Agency

Sub Heading: Case law: agency of necessity

Page No: 122

The name of the above case law should be read as follows.

'G.N. Ry. v Swaffield [1874] L.R. 9 Ex. 132' should be read as 'Great Northern Railway v Swaffield [1874] L.R. 9 Ex. 132'

Sub Heading: 2.3.2 Agency by ratification

Page No: 123

The points under the topic 2.3.2- 'A contract can be ratified under the following conditions' needs to be corrected as below.

- The agent must have been expressly contracted as agent.
- The contract can be ratified only by the principal who was named or was ascertainable when the contract was made.
- The agent must have a principal who was in actual existence at the time of making the contract.
- The principal must have had contractual capacity at the time of entering into the contract and at the time of ratification.
- At the time of ratification the principal must have full knowledge of the material facts, or intended to ratify the contract, irrespective of the facts.
- Ratification must be done within the specified time frame, or if no time frame is specified, within a reasonable time.
- Ratification must be of the entire contract, and not of a part of the contract. [If only a part of the contract has been ratified, then the ratification is not valid, and therefore the agent becomes liable for the entire contract.]

Sub Heading: 5.1 Duties of agent to principal (rights of principal against agent)**Page No: 128**

The following case “Case law: disclosure of material facts in agents’ knowledge” has been further elaborated as follows;

Case law: disclosure of material facts in agents’ knowledge

Heath (H) was appointed as agent by Parkinson (P) to find a purchaser for P’s leasehold premises for £2500. H knew that large tailoring firms were willing to pay this price. But P was under the impression that the landlord would not consent to the premises being used for a tailoring business.

As several tailors were anxious to buy P’s leasehold rights, H without informing P, obtained the landlords’ assurance that they would consent to a tailoring business being carried on in their premises.

H concealed from P, the fact that the landlord had so consented. H further concealed from P that the prospective buyer of the lease, was indeed a tailoring firm, and so induced P to sell his leasehold rights on the premises for a lower figure of £2250.

Held: The agent (H) should have disclosed to the principal (P) anything coming to his knowledge which was likely to influence P in the making of the contract. In this instance H had failed in carrying out this duty.

Heath v Parkinson [1926] 42 P.L.R. 693

Sub Heading: 5.1 Case law: When profit is not a secret profit**Page No: 129**

The name of the above case law should be read as follows.

‘Hippisley v Knee [1905] 1 K.B. 1’ should be revised as ‘Hippisley v Knee Bros [1905] 1 K.B. 1

Sub Heading: 5.1 Duties of agent to principal (rights of principal against agent) Page No: 130

The following case "Case law: dismissing the agent" should be included at the end of the section 5.1.

If the agent does make a secret profit without the principal's consent, the principal has a right to do any of the following:

- Refuse to pay the agent, his commission or remuneration.
- Repudiate the agency contract.
- To recover the secret profit, from the agent.
- To dismiss the agent without any notice.

Case law: dismissing the agent

Ansell (A) was the managing director of Boston Deep Sea Fishing & Ice Co. (B). Unknown to B, A was also a director of another boat building company.

A, as the managing director of B, placed several orders in B's name with this boat building co. In return he received bonuses and commissions from the boat building co.

B, found out about this and dismissed A.

Held: B is entitled to dismiss A, for accepting these secret profits. Further A is liable to account to B, for such profit.

Deep Sea Fishing and Ice Co. v Ansell [1883] 39 Ch.D. 339

Sub Heading: 7.1.1 When the agent is personally liable on a contract**Page No: 133**

The following case (Case law: contracting on behalf of a non-existing principal) has been further elaborated as follows;

Case law: contracting on behalf of a non-existing principal

The promoters of a hotel company entered into a contract on behalf of the company to be formed, for the purchase of wine on credit. After the company was formed it ratified this contract. The wine was consumed by the hotel's guests, but before the creditors were fully settled the company went into liquidation. The creditors sued the promoters, as agents, on this contract.

The promoters argued that as the company had ratified this contract, the liability under the contract had passed to the company.

Held: The promoters are liable on this contract personally, as the proposed company (principal) was not in existence at the time the agents entered into this contract.

Kelner v Baxter (1866) LR 2 CP 174; [1861-73] All ER 2009.

Sub Heading: Answer**Page No: 136**

The last bullet point of point (c) of the answer to the 'Ratification of Agency' question should be deleted as shown below;

(c) A contract can be ratified by a principal in the following instances:

- The agent must have expressly contracted as an agent.
- Ratification can be done only by the principal who had been named or who could have been ascertained when the contract was made.
- The principal should have been in actual existence at the time the agent made the contract.
- The principal must have contractual capacity, at the time of the agent making the contract and at the time of ratification.
- The principal must have full knowledge of the material facts at the time of ratification OR intend to ratify the contract, irrespective of the full facts.
- The principal must ratify within a reasonable time OR within the time set for ratification.
- ~~for ratification.~~

Additional Contents & Amendments to Chapter 6

Law of Partnership (Basics)

Sub Heading: 1.1 Applicable law

Page No: 142

Paragraphs under heading 1.1 should be revised as follows.

1.1 Applicable law



Here we discuss the law which governs partnerships in Sri Lanka.

Partnership is a concept derived from English law. Therefore in Sri Lanka the law governing partnerships is based on the English law. The law applicable to partnerships in Sri Lanka is contained in the Partnership Ordinance (No. 21 of 1886) and Judicial Decisions.

Sub Heading: 1.4 Limitation on the number of partners

Page No: 143

Paragraphs under heading 1.4 are elaborated in detail as follows;

1.4 Limitation on the number of partners



In the Sri Lankan context, the general rule is that a partnership cannot have an unlimited number of partners. But there are exemptions to this rule.

Section 519(1) of the Companies Act (No. 7 of 2007), restricts the maximum number of members a partnership in Sri Lanka can have, to 20.

But section 519(3) of the Companies Act gives instances where a partnership in Sri Lanka can have more than 20 members. These instances are as follows:

- If the partnership is carrying on the practice as attorneys-at-law, and all the partners are attorneys-at-law.
- If the partnership is carrying on the practice as accountants, and all the partners are chartered accountants.
- If the partnership is carrying on the practice as members of a licensed stock exchange, and all the partners are members of that licensed stock exchange.
- If the partnership is formed for a prescribed purpose, and all the partners are as prescribed.

Sub Heading: 1.5 The Prevention of Frauds Ordinance and the creation of a Partnership**Page No: 143**

Paragraphs under heading 1.5 are elaborated in detail as follows;

1.5 The Prevention of Frauds Ordinance and the creation of a partnership

A partnership deed is a document which spells out the agreement between the partners in carrying on the business of the partnership. However, the requirement to have a partnership deed in writing is made compulsory only in one specific instance.

Section 18 of the Prevention of Frauds Ordinance (No. 7 of 1840) states that, in establishing a partnership where the capital exceeds Rs. 1,000, the agreement or deed creating the partnership must be in writing and signed by all the partners.

If this condition imposed by section 18 is not complied with, then this agreement shall not have any effect in law.

Sub Heading: 1.6 How do you register a partnership?**Page No: 144**

In the following paragraph, 'The Business Names Act No' needs to be amended as below;

1.6 How do you register a partnership?

The Business Names Ordinance (No. 16 of 1918) and its amendments, provides for the registration of a partnership which carries on its business under a business name.

Section 2 of the Ordinance states that, "*every firm having a place of business in Sri Lanka and carrying on business under a business name which does not consist of the true full names of all the partners who are individuals and the corporate names of all partners who are corporations, shall*" register the name under which the partnership business is carried on.

Sub Heading: 3.1 New partner**Page No: 148**

Existing contents under sub heading 3.1 are described in detailed as follow;

3.1 New partner

A new partner refers to a person who is admitted as a partner into an existing firm.

A new partner **is not liable** to the creditors of the firm for anything done by the firm, before he became a partner.

But the new partner can if he so desires, agree to take over the liabilities which were incurred by the partnership before he joined it. This voluntarily accepting of the old liabilities of the firm is referred to as **novation**.



Novation means the substitution of the old contract with a new contract. This results in the cancellation of the old contract. A novation ordinarily arises when a new individual takes over an obligation, to pay what was incurred by the original party to the contract.

**Example: Novation**

X enters into a contract with Y, to supply on credit, the entire stationery requirement of Y for 2 months. X has already supplied a stock of stationery for which Y has to pay. As Y does not have sufficient funds to settle, he invites Z to join his firm as a partner. Z joins the firm, and also agrees to settle X for the stationery already supplied.

For this purpose X, Y and Z enter into a new agreement, which gives the fresh terms for the future supply of stationery, as well as the parties' consent for Z to settle X for the stationery already supplied.

In this situation, the 2nd agreement, replaces and cancels the 1st agreement. Therefore this is a novation.

Sub Heading: 3.2.1 Retiring/resigning partner**Page No: 149**

The following case (Case law: Retiring partner's liability to persons who had no previous dealings with the firm and did not know him to be a partner) is described in detail as follow.

Case law : Retiring partner's liability, to persons who had no previous dealings with the firm and did not know him to be a partner

Ingram (I) and **Christmas (C)** were partners in a firm called "Merry's". **I** retired in 1947, effectively dissolving the partnership. **C** undertook to give notice of **I**'s retirement, to those dealing with the firm. But no notice was given nor any advertisement published. After the dissolution, in 1948 **C** ordered goods from Tower Cabinet Co. Ltd. (**T**), using the firm's old note paper which had **I**'s name as a partner. **T** had not dealt with "Merry's" before and did not know that **I** was a partner before the dissolution, and that he had retired now. The price for the goods was not paid to **T** by "Merry's". As a result **T** sued "Merry's".

Held– As this was **T**'s first dealing with the firm, it was clear that **T** did not know **I** as a partner of the firm. Therefore no notice of his retirement was required to be given to **T**. Hence **I** is not liable to **T**, for the price of the goods ordered from **T** by the firm.

Tower Cabinet Co. Ltd. v Ingram [1949] 2 K.B. 397

Additional Contents & Amendments to Chapter 7

Law of Insurance

Sub Heading: 1.5 Concepts of “indemnity” and “subrogation”

Page No: 160

The word “principal” should be replaced as “principle” as shown below;

1.5 Concepts of “indemnity” and “subrogation”

Flowing from the concept of indemnity is a **fundamental principle of the law of insurance, which is:**

Heading: 7 Principle of “uberrimae fidei” or “utmost good faith”

Page No: 171

The word “principal” should be replaced as “principle” as shown below;



6 Principle of “uberrimae fidei” or “utmost good faith”

This principle of *uberrimae fidei* means that the person seeking the insurance owes a duty to disclose to the insurer **every material fact**, which he knows or ought to know, about the insurance, so that the insurer can properly evaluate the risk he is undertaking.

Heading: 8 Assignment of an insurance policy

Sub Heading : Answer

Page No: 175

In the 4th paragraph of the answer of the ‘Fire insurance’ question, the word “principal” should be replaced as “principle” as shown below;

ANSWER

This act of causing the fire by X, also is a breach of a fundamental principle of the law of insurance, which is, “No man can recover from a loss, which he himself has deliberately or fraudulently caused.”

Heading: Chapter roundup

Page No: 176

The word “principal” should be replaced as “principle” as shown below;

↪ Flowing from the concept of indemnity is a **fundamental principle** of the law of insurance, which is, “No man can recover from a loss, which he himself has deliberately or fraudulently caused.”

Heading: Chapter roundup

Page No: 176

The word “uncertainly” should be replaced as “uncertainty” as shown below;

↪ **Life insurance** is different from all other types of insurance in that death is certain, with the only uncertainty being as to when death will occur, whereas in all other types of insurance the **uncertainty** lies in the happening of the event insured against.

Heading: Progress Test

Page No: 178

The word “principal” should be replaced as “principle” as shown below;

- 3 **State** what is meant by the principle of *uberrimae fidei*, in relation to insurance.

Additional Contents & Amendments to Chapter 8

Hire Purchasing, Leasing and Loans

Sub Heading: 1.1 Applicable law

Page No: 182

Sub Heading 1.1: to be revised as follows;

1.1 Applicable law

In Sri Lanka, hire-purchase is governed by the **Consumer Credit Act (No. 29 of 1982)** and its amendments. This Act mainly defines and regulates the duties of parties in relation to hire-purchase agreements.

Sub Heading: 1.9 Rights of the owner

Page No: 184

Existing contents under heading 1.9 are described in detail as follows;

1.9 Rights of the owner

The main rights of an owner in hire-purchase are as follows:

- After giving the required notice in writing to the hirer, to terminate the hire-purchase agreement when there is a default in the payment of the instalment or a breach of the agreement by the hirer.

In such a situation, the owner is entitled:

- To retain the instalments and the initial deposit paid by the hirer, and to recover the balance due, if any.
- To recover possession of the goods without going through courts, when less than seventy-five per centum of the hire purchase price has been paid by the hirer.

But where seventy-five per centum or more of the hire purchase price has been paid, the owner can recover possession of the goods only through a court action.

- To claim damages for any loss he suffered.
- To assign his rights and obligations under the hire-purchase agreement to another party.

Sub Heading: 2.1 Applicable law

Page No: 185

Contents under the sub heading 2.1 to be revised as follows:

2.1 Applicable law

The law governing **finance leasing** in Sri Lanka is the **Finance Leasing Act (No. 56 of 2000)** and its amendments.

Sub Heading: 2.2 Concept of leasing

Page No: 185

A new sub heading no. 2.2A is to be inserted after the existing sub heading no. 2.2, as follows:

2.2A Who can carry on a business of finance leasing in Sri Lanka?

Section 2 of Finance Leasing Act says that, “no person shall carry on finance leasing business” unless such person has been registered under the Act

2.2A.1 Persons eligible to be registered under the Act:

Section 3 of the Act, gives the qualifications required for a person to be registered as finance leasing business in Sri Lanka. These are as follows:

- A licensed commercial bank, under the Banking Act, No. 30 of 1988;
- A licensed specialized bank, under the Banking Act, No. 30 of 1988;
- A finance company, under the Finance Companies Act, No. 78 of 1988;
- A public company having the prescribed issued and paid up capital, and incorporated under the former Companies Act, No. 17 of 1982.
[But as the former Companies Act was repealed by the Companies Act, No.7 of 2007, it could be said that all public companies incorporated under the Companies Act, No.7 of 2007, having the prescribed capital are eligible to be registered as finance leasing businesses under the Finance Leasing Act.]

Sub Heading: 3.4.1 Parate execution by financial institutions**Page No: 192**

The word “invested” should be replaced as “vested” as shown below;

3.4 Debt recovery**3.4.1 Parate execution by financial institutions**

“**Parate**” is a term derived from Roman-Dutch law, which means “immediate”; “**parate execution**” means a debt recovery process where a mortgagee is given or vested with, the power to sell the mortgaged property, without seeking the assistance of the Courts.

Heading: Chapter Roundup**Page No: 196**

The word “invested” should be replaced as “vested” as shown below;

↪ **Parate**” is a term derived from Roman-Dutch law, which means “immediate”; **parate execution** means a debt recovery process where a mortgagee is vested with a power to sell the mortgaged property without recourse to the courts.

Heading: Answers to progress test**Page No: 198**

The word “invested” should be replaced as “vested” as shown below;

Question 3

State briefly what is meant by “parate execution” by a financial institute under the Recovery of Loans by Banks (Special Provisions) Act (No. 4 of 1990).

Answer

“**Parate execution**” means a debt recovery process where a mortgagee is vested with the power to sell the mortgaged property without going through the Courts.

Additional Contents & Amendments to Chapter 9

Labour Law

Heading: Introduction & Knowledge Component

Page No: 199

The word 'Shop and Office Act' under above topics should be replaced as 'Shop and Office Employees Act (Regulation of Employment and Remuneration) Act No. 19 of 1954.'

Heading: Chapter contents

Page No: 200

'Employment Provident Fund Act (No. 15 of 1958)' should be replaced as Employees' Provident Fund Act (No. 15 of 1958).

&

Employees Trust Fund Act (No. 15 of 1958)' should be replaced as 'Employees' Trust Fund Act (No. 15 of 1980)'.

Sub Heading: 2.5 Maternity benefits

Page No: 204

The following contents should be included under the above heading.



Confinement is defined in the Act as;

- labour resulting in the issue of a child whether alive or dead, or
- The issue of a foetus of at least 28 weeks gestation.

Sub Heading: 2.5.2 After the date of confinement

Page No: 204

The contents under the sub heading 2.5.2 needs to be replaced with the following.

Maternity leave

- 84 days for the 1st and 2nd confinements, resulting in the issue of a live child/children.
- 42 days for all other confinements, whether such confinement results in the issue of a live child or not.

The mother-to-be, has the option of taking the 84/42 days of maternity leave mentioned above, either before and/or after the date of confinement as described below under 2.5.1 and 2.5.2, or to take the total maternity leave entitlement after the date of confinement.

Further the 84 and 42 days mentioned above are inclusive of the date of confinement.

The following “Note” at the very end of the section 2.5.2, should be deleted.

i.e :Note :

The 70 and 28 days mentioned above are inclusive of the date of confinement.

Heading: 3. Employment Provident Fund Act (No. 15 of 1958)

Page No: 205

The above heading should be replaced as “Employees’ Provident Fund Act (No. 15 of 1958)”

Sub Heading: 3.1 Definitions**Page No: 206**

In the following content, the word “principal” has been replaced as “principle”.

**Superannuation:**

This is a principle of law, which shows that there is a “joint responsibility” on both the employer and employee.

Sub Heading: 4.1 Applicability of the Act**Page No: 210**

The 1st paragraph of the above sub heading should be replaced as follows.

The provisions of this Act shall apply to every state and private sector undertaking belonging to any class or category of state or private sector undertaking, as is specified in an order made by the Minister and published in the Gazette.

Sub Heading: 4.4 Withdrawals from the ETF, by a member/employee**Page No: 211**

The 2nd bullet point should be replaced as follows;

- When the employee reaches 60 years of age, and ceases his/her employment.
-

Heading: Chapter Roundup**Page No: 216**

The word ‘Shop and Office Act’ in the 4th & 5th points should be replaced as ‘Shop and Office Employees Act (Regulation of Employment and Remuneration) Act No. 19 of 1954.’

Heading: Chapter Roundup**Page No: 216**

In the 10th point, the “Employment Provident Fund Act (No. 15 of 1958)” should be replaced as “Employees Provident Fund Act (No. 15 of 1958)”.

Additional Contents & Amendments to Chapter 10

Offences Related to the Business Environment and New Regulations

Heading: Offences Related to the Business Environment and New Regulations

Page No: 221

L.O 8.2.1 should be replaced as follows.

Knowledge Component			
8	Offences Related to the Business Environment and New Regulations		
8.1	Main offences in the business environment and defences	8.1.1	Define fraud, theft, money laundering, bribery, negligence and explain the main defences.
8.2	A few regulations in the business environment	8.2.1	State briefly on each of these Acts: Prevention of Money Laundering Act No. 5 of 2006, Electronic Transactions Act No. 19 of 2006, Computer Crimes Act, Consumer Affairs Authority Act (No. 9 of 2003), Intellectual Property Act No. 36 of 2003.

Sub Heading: 2.3 Punishment for money laundering

Page No: 223

The content under the heading 2.3 should be replaced with the following.

2.3 Punishment for money laundering

Any person found guilty of the offence of money laundering by the High Court is liable for either:

- A fine not less than the value of the property and not more than 3 times such value, or
- Imprisonment for 5-20 years, or
- A fine and imprisonment, both.

Sub Heading: 2.5 To whom does this Act apply?**Page No: 223**

The content under the heading 2.5 should be replaced with the following.

2.5 To whom does this Act apply?

The Act applies to the following:

- Any resident person in Sri Lanka who commits an act, which is an offence under this Act,
 - Any institute carrying on business in Sri Lanka, whether incorporated in Sri Lanka or outside Sri Lanka, which is an offence under this Act,
 - Any act committed in Sri Lanka, which is an offence under this Act,
-

Sub Heading: 3.3 Investigations**Page No: 225**

The content under the heading 3.3 should be replaced with the following.

3.3 Investigation of computer crimes

Investigations for computer crimes are generally conducted under the Code of Criminal Procedure. The procedure to be followed in conducting an investigation is also laid out in Part II of the Act, and is briefly explained below:

The Minister in charge of the subject, has the power to appoint a public officer having the required qualification and experience in electronic engineering or software technology to assist the police in the investigation of an offence under this Act. The person so appointed is referred to in the Act as an “**expert**”.

In relation to an investigation under this Act, the expert too is given certain powers, and they are as follows:

- To enter into any premises along with a police officer (who is not below the rank of a sub-inspector).
- To access any information system, computer or computer system or any programme, data or information held in such computer.
- To require any person to disclose any traffic data.
- To verbally question any person.
- To do such other things as may be reasonably required, for the purposes of this Act.

The Act authorizes the expert or a police officer, under the authority of a warrant issued in that behalf by a Magistrate, to do the following:

- To obtain any information, including subscriber information and traffic data, in the possession of any service provider.
- To intercept any wire or electronic communication, including subscriber information and traffic data, at any stage of such communication.

But even without a warrant they can perform any of the above mentioned tasks, under the following circumstances:

- if the investigation needs to be conducted urgently; and
- there is a likelihood of the evidence being lost, destroyed, modified or rendered inaccessible; and
- there is a need to maintain confidentiality regarding the investigation.

Whenever possible, every police officer and expert engaged in the investigation, must ensure that they do not hamper the use of any computer in its ordinary course of legitimate business.

A police officer has the power to arrest, search, or seize any information accessible within the premises being investigated, in the manner provided by the law. It is compulsory for any person, who is required to make any disclosure or to assist in an investigation, to comply with such requirement.

All persons engaged in an investigation under this Act, must maintain strict confidentiality, with regard to all information that may come to their knowledge in the course of such investigation.

Sub Heading: 4.5 Certification Authority

Page No: 227

The content under the heading 4.5 should be replaced with the following.

4.5 Certification Authority

The Act provides for the creation of a Certification Authority. It is entrusted with the implementation of the provisions of the Act. The Certification Authority is also empowered to ensure the proper functioning of the certification services by the accredited Certification Service Providers.

Sub Heading: 5.3.2 Duration of a copyright**Page No: 229**

The content under the heading 5.3.2 should be replaced with the following.

5.3.2 Duration of a copyright

The general rule is that, once a copyright is registered, it is protected during the entire lifetime of the author and for a further period of seventy years from the date of the death of the author.

However, there are exceptions to this rule. They are as follows:

- (i) In the case of a work of joint authorship, the copyright will be protected during the life of the last surviving author and for a further period of seventy years from the date of the death of last surviving author.
- (ii) In the case of a collective work, (other than a work of applied art), and in the case of an audio visual work, the protection will be for seventy years from the date on which the work was first published, or failing publication within seventy years from the making of the work.
- (iii) In the case of a work published anonymously or under a pseudonym, the protection will be for seventy years from the date on which the work was first published. But if the author's identity is revealed before the expiration of these seventy years, then whichever of (i) or (ii) is applicable and will apply.
- (iv) In the case of a work of applied art, the protection will be for twenty-five years from the date of the making of the work.

Each time period mentioned above, shall run to the end of that particular calendar year in which it would otherwise expire.

Sub Heading: 5.5 Patents**Page No: 230**

The content under the heading 5.5 should be replaced with the following.

5.5 Patents

An **invention**, as per the Act, refers to “an idea of an inventor which permits in practice the solution to a specific problem in the field of technology.” Further “an invention may be, or may relate to, a product or process.”

A **patent**, as per the dictionaries, is the official legal right given to an inventor, to make or sell his invention for a particular number of years:

An inventor has a right to patent his invention, provided that this invention is new, involves an inventive step, and is industrially applicable.

If satisfied, the Director General will register the patent and cause it to be recorded in the Register of Patents.

This register is a public document which can be inspected by any person.

A patent is valid for a period of 20 years from the date of filing of the application for its registration, provided the annual renewal fee is paid (section 83(2) of the Act).

The owner of a patent has certain specified and exclusive rights in relation to the patented invention. They are as follows:

- to exploit the patented invention ;
- to assign or transmit the patent ;
- to conclude license contracts. [Refer 5.6.4, page no 231]

Sub Heading: 6.3 Main functions and powers of the Consumer Affairs Authority

Page No: 233

Following definition of an 'Anti-competitive practice' should replace the previous content.



An **anti-competitive practice** is a practice by which a person, in the course of business, pursues a course of conduct likely to have the effect of preventing competition, in relation to any goods or services in Sri Lanka.

Sub Heading: 6.3 Main functions and powers of the Consumer Affairs Authority

Page No: 234

Point no 17 should be changed as follows;

[17] To inquire, and make order, on complaints made by consumers on a breach of an implied warranty in a sale of goods or services contract.

Sub Bullet Point: Illegality

Page No: 239

Contents under illegality in the above section is detailed as follow.

- **Illegality**

This defence is based on the Latin maxim, "*ex turpi causa non oritur action*", which means, according to a legal dictionary: that if one is engaged in an illegal activity, then one cannot sue another person for damages arising out of that illegal activity.

Additional Contents & Amendments to Chapter 11

International Trade

Sub Heading: 1.2.2 CIF contracts

Page No: 247

*Following contents under **1.2.2 CIF contracts** are amended as below.*

The CIF “price” consists of the following costs:

- Cost of the goods
 - Insurance cost
 - Freight cost
-

Sub Heading: 1.2.2 CIF contracts

Page No: 247

Following points under the sub heading ‘Duties of a CIF buyer’ are described in detail.

- To accept the shipping documents, if they are in conformity with the contract of sale.
 - To pay the price of the goods, on delivery of the documents. He cannot defer payment until after he has inspected the goods.
 - To bear the cost of the freight involved in this contract of sale.
 - To pay the cost of unloading, lighterage and landing at the port of destination according to the BOL.
 - To pay all import duties and wharfage charges, if any.
-

Sub Heading: 5.2 Mediation

Page No: 256

Following contents are to be inserted under the heading 5.2.

There are two aspects in relation to mediation.

1. Mediation in general
2. Mediation under the Mediation Boards Act

Sub Heading: 5.2.2 The process of mediation

Page No: 256

The following sub heading should be revised as below;

5.2.2 The process of mediation - in general

Sub Heading: 5.2.3 Mandatory mediation

Page No: 256

The content under the heading 5.2.3 should be replaced with the following.

Mediation under the Mediation Boards Act

The Mediation Boards Act No. 72 of 1988 and its subsequent amendments, govern the law relating to mediation in Sri Lanka.

This Act provides for the establishment of Mediation Boards and defines the powers and duties of such Boards.

Any person may make an application to the Chairman of the Mediation Board, for the settlement by mediation of any dispute or offence specified in the Act, which occurs wholly or partly within the area under that particular Mediation Board.

But no application so made shall be entertained by the Chairman of that particular Mediation Board, if one of the disputants is as follows:

- (a) The state or
- (b) A public officer acting in his capacity as such officer, where the dispute relates to the recovery of any property, money or other dues or
- (c) The Attorney-General, where the offence is an offence in respect of which, proceedings are instituted by the Attorney General.

Further, section 7 of the Mediation Act states, that all disputes where the value of the claim is less than Rs. 250,000/-, must be referred to mediation under the Act. If such dispute cannot be resolved by mediation, the **non-settlement certificate** issued by the Mediation Board must be produced in the relevant court of law, in order to initiate court action.