CAMPBELL'S

COMMERCIAL LAW

FOR

Business Men

AND

COMMERCIAL SCHOOLS

F. CAMPBELL,

ADVOCATE.

THIRD EDITION.

SHERBROOKE, P.Q.

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PREFACE.

The object of this work is to present in a condensed form those legal principles which are of common use in the various transactions of business. It is also intended to supply an educational want that is every day becoming more keenly felt as the modes and relations of business grow more intricate and extended.

It is a well-known and universal rule of law that ignorance of the Law is no excuse. Everyone is presumed to know the Law, hence the plea or defence of ignorance avails nothing: we must suffer for every infraction. Therefore business men, who each day are liable to meet with new legal difficulties, require some book containing the essence of the various branches of Commercial Law, condensed into a convenient form.

It is the writer's hope that in preparing his third edition of this small volume he is affording business

men, as well as students preparing for commerce, and the public generally, a clear and safe guide and an effectual method of acquiring a knowledge of Commercial Law.

Respectfully,

F. CAMPBELL.

Sherbrooke, 9th September, 1893.

Sherbrooke, May 7, 1890.

MY DEAR MR. CAMPBELL,

I have read with great pleasure your book on Commercial Law for Business Men and Commercial Schools. It supplies a want which has always been felt here in the Province of Quebec, *i. e.*, a clear and concise declaration of our law as applied to matters of ordinary business, in a popular form. Your book should be in the hands of every business man, and should be carefully studied by every young man preparing for a business life.

I sincerely trust it may meet with the circulation which it deserves.

I am, yours very truly,

E. T. BROOKS,

Judge Superior Court.

Commercial Law regulates commercial transactions, it grew out of the customs and necessities of business. It is of very ancient origin, and is for the most part derived from the well established usages of merchants, which have been adopted, sanctioned and confirmed by the Courts, and in many instances re-declared by statute.

It is unnecessary to say that a knowledge of the principles of this part of the law is of great importance to all classes of men, and particularly to business men, whose interest it is to avoid, as much as possible, the hazards of litigation.

PRINCIPLES

OF

COMMERCIAL LAW.

CHAPTER I.

CONTRACTS.

1. The first thing in Commercial Law which calls for our attention is the contract.

2. A contract is an agreement, either written or verbal, upon "sufficient consideration to do, or not to "do, a particular thing."

3. It is also defined to be "an agreement by which "two parties mutually promise and engage, or one of "them only promises and engages to the other, to "give some particular thing, or to do or abstain from "doing some particular act."

4. There must be two parties to every contract: a promiser or party making the promise, and a promisee or party to whom the promise in made.

5. The contract is *conditional* when it is to have full effect only in case of the happening of certain events or the existence of a given state of things.

6. The contract is *express* when its terms are openly mentioned or written down at the time of making.

7. A contract is *implied* when the law presumes the parties to have made it, although the terms were not openly expressed.—Thus anyone who undertakes any office or employment impliedly contracts with the principal or employer to perform it with integrity, diligence and skill, and he also impliedly contracts to do whatever is fairly within the scope of his employment.

8. ELEMENTS.—In the Province of Quebec, four elements are required for the validity of a contract:

1°. Parties legally capable of contracting; there can be no contract without parties.

2°. Such parties' consent or mutual assent legally given, without which there can be no contract.

3°. A subject matter of contract or its object.

4°. A lawful consideration or matter upon which the consent or mutual assent reposes.

9. Parties competent to contract are all those not excepted by law.

10. Are excepted: minors, that is, persons who have not yet reached the age of twenty-one years.

11. Article 1005 of our Code says that minors carrying on business as bankers, traders or mechanics are, when acting as such, capable of being parties to a contract, as fully as persons having attained majority, being in this case subject to the same obligations and

being entitled to no more relief, even where their interest might suffer or be endangered.—I will remark here, that it is not the spirit of the law that minors should be debarred of the right of contracting; for it is a well-known fact, as well as an accepted principle of law, that minors may not only enter into contracts or agreements, but that such contracts will be binding in every case where the minor, but the minor only, will not be prejudiced in his interests; where, according to the expression of the Code, he will suffer no lesion.

Our Courts have held that the incapacity of a minor is established in his favor and not against him, and that the result of this incapacity is not that the minor cannot contract, but only that he cannot be injured by his contract; and when a minor is sued upon his contract, he cannot be relieved from it simply by pleading his minority, but he must also prove that he has been injured by the contract.

12. A contract made by a minor, for the necessaries of life, such as food and clothing, as long as such articles are in keeping with his position and standing in society, will be binding on the parents or proper guardians of such minors.—But this rule, I repeat, would apply only in the case of necessaries provided, certainly not in the case of luxuries.

Although extensively protected by the watchful eye of the law, in cases where their interests are in question on account of youth's inexperience, still, minors must

not forget that the law will hold them fully accountable for all acts, deeds or omissions of a criminal and unwarrantable nature.

13. The minor's position may be modified by what is known as emancipation. Emancipation is granted by the Courts, and gives minors the right to administer their property only, but they cannot sell or alienate their immoveables.—The emancipated minor may perform all acts of mere administration, and in such cases he is no more relievable from his acts than persons of age would be.

14. The second class of persons declared incapable of contracting is that of those suffering from derangement of the mind, either through illness, accident, drunkenness or any other cause.

15. The third class is the case of coverture, that is, the legal position of a married woman. She can enter into no valid contract without the authorization of her husband or of the Court or Judge, in the manner and in the cases provided by law.

16. Concerning married women, when separated as to property, they may without authorization contract for anything relating to the administration of their own property.—Outside of this, the principle of law is that unless they be *marchandes publiques*, that is, carrying on some trade or business with the authorization or, at least, knowledge of the husband, or, again, acting as agent or mandatary for the husband,

they cannot contract without his special and express authority.

Even then, and business men should be well aware of the fact, a married woman separated as to property from her husband cannot bind herself either with or for her husband, and the very words of our law are: that "any such obligation contracted by her is void and of no effect." Therefore I have no hesitation in saying that any obligation whatever entered into by husband and wife separated as to property, whereby they agree together to perform a certain thing or certain things, is null and void so far as the wife is concerned, and she cannot be held to anything whatever under such obligation; unless it can be established that the transaction was for her own personal affairs and interests.—For instance, a joint and several promissory note signed by the husband and his wife separated as to property would be null and void so far as she would be concerned, provided she has not benefited.

17. Persons civilly dead, *i. e.*, under a sentence of law which deprives them of all civil rights, as in the case of a person condemned to seclusion for life, to death or outlawed, and also in those cases of perpetual vows which are taken in certain religious societies or orders, when the party therein admitted renounces all intercourse with the outside world, and becomes towards it as one dead. In these instances, again, it is admitted that such persons are relieved from their disabilities, so far as to be allowed to enter

into a valid contract for procuring the necessities of life.

18. Interdicts, for reasons of prodigality, imbecility or madness, *i. e.*, persons who, on account of unreasonable and excessive expenditure of their fortunes or means, or of the unsoundness of their minds, are provided with curators, *i. e.*, a kind of a judicial guardian, whose duty is to watch over the interests of the interdict.

19. The incapacity of interdicts for prodigality, like that of minors, is established in their favor only. Capable parties contracting with them cannot set it up.

20. CONSIDERATION.—In contracts is the reason, motive or inducement upon the strength of which both parties consent to contract and to be bound.

21. It may consist in blood relationship, natural love and affection, or in something of value to be paid or done, or in some inconvenienee to be suffered.—In other words, it is the cause which moves a contracting party to enter into the agreement or contract. This cause is generally a sum of money, yet it may be some other valuable thing, or the affection a father, brother, mother or sister or other relative feels towards those who are nearly allied to them. A contract without a consideration, or with an unlawful consideration, has no effect. The consideration must always be conformable to law, morals and public

order. The same rule applies to the subject matter of the contract. The law will never sanction or enforce a contract contrary to law, morals or good order.

22. CONSENT.—In contracts is the mutual understanding between the contracting parties. It is either express or implied, and must not be unduly influenced or extorted, but be obtained by frank, honest and open means.

23. Error, fraud, violence and fear are causes that will invalidate contracts, when it can be fairly established that the contract is their direct consequence.—There can be no consent when the parties have erred on the object of their agreement. If A... intends to sell a certain thing to B... who, on the other hand, understands he is getting this thing as a present, as a gift, there is then no sale or donation either. In the same manner will a contract be null if there is error or misunderstanding on the quality of the thing. Supposing A... sells to B... what is then and there represented as a gold watch, and which purchaser and seller both really believe to be such, but which turns out to be a brass watch, the agreement will be null, because the error on the quality destroys the consent which was to sell and buy a gold watch and not a brass one.

A person deceived into contracting by false representations on the part of him with whom he is dealing will be relieved by the Courts.

A party forced into a contract by threats or by fear of injuries, loss or harm of any kind whatever, either to himself or to some near kindred, would also be relieved by the Courts. This fear or violence would have to be reasonably serious, and would have to arise from some illegal and unjust source. The fear only of a party doing what he has a right to do, as, for example, of his bringing a suit or an action at law upon just grounds, would not invalidate the contract.

24. There are several kinds of contracts, the only ones which I need mention here being the *joint* contract, where two or more persons bind themselves to execute or perform a certain thing jointly, that is, together; and the *several* contract where each of two or more persons for himself agrees that he will perform the whole of it.

25. Contracts may be either verbal or written; but in all matters exceeding $50.00, and not essentially commercial, although it is not essential to the validity of the contract that it should be in writing, yet writing is in certain cases necessary to prove the existence of the contract, unless it be admitted by the party against whom it is invoked.—Excepting where there is a partial delivery in the case of personal property or payment of an account on the price thereof. Personal property, also called moveable property, is the species of property to which commercial law applies almost entirely.

QUESTIONS ON CONTRACTS.

1. What is the first thing in Commercial Law which calls for our attention?

2. What is a contract?

3. How is it also defined?

4. How many parties are there to every contract?

5. When is the contract conditional?

6. " " " " express?

7. " " " " inplied?

8. In the Province of Quebec, how many elements are required for the validity of a contract?

9. Who are competent to contract?

10. Who are excepted by law?

11. When are minors capable of being parties to a contract?

12. What do you think of a contract made by a minor for the necessaries of life?

13. Can the minor's position be modified?

14. What is the second class of persons declared incapable of contracting?

15. What is the third class?

16. What about married women, when separated as to property?

17. What is the fourth class of persons incapable of contracting?

18. What is the fifth class of persons incapable of contracting?

19. In whose favor is the incapacity of interdicts, etc., established?

20. What is consideration in contracts?

21. In what does it consist?

22. What is consent in contracts?

23. What causes could invalidate a contract?

24. How many kinds of contracts are there?

25. Must contracts be in writing?

CHAPTER II.

SALE OF PERSONAL PROPERTY.

1. A sale is a contract by which one party transfers to another his title and right as owner in a certain thing, in consideration of some price paid by the person acquiring.

2. The price paid must be in current money.

3. This contract differs from a barter or exchange in this: That in the latter the price, or consideration, instead of being paid in money, is paid in goods or merchandise.

4. It differs from the transaction because in that contract the thing is given for the purpose of quieting a claim, or terminating or avoiding litigation.

5. An *absolute* sale is that which is made and completed without any condition whatever.

6. A *conditional* sale is one which depends for its validity upon the fulfillment of some condition.

7. A *forced* sale is one made without the consent of

the owner of the property, by some officer appointed by the Courts of Justice, such as a Sheriff or Bailiff, in obedience to an order of a competent tribunal. It is also called a judicial sale.

8. This sale has the effect to transfer all the rights the owner had in the property.

9. It does not, like a voluntary sale of personal property, guarantee a title to the thing sold; it merely transfers the rights of the person as whose property it has been seized.

10. In case of eviction, the buyer may recover from the debtor, that is, the person whose property is so sold, the price paid with interest and the incidental expenses of the title.—He may also recover from the creditor or person in whose behalf or for the satisfaction of whose judgment the sale is made, and who has received the price along with interest.

11. An auction sale is one made publicly to the highest bidder; it is either forced or voluntary.—The forced or judicial sale I have mentioned above.—The voluntary sale by auction of goods, effects, wares and merchandise is when the owner chooses to sell his goods in this way.

12. Such a sale can be made by no other person than a licensed auctioneer.

13. Yes. (1) The sale of goods or effects belonging to the Crown or seized by a public officer under judgment or process of any Court, as already mentioned, or as being forfeited.

(2) The sale of goods and effects of deceased persons, or belonging to any dissolution of community of property, or to any Church.

(3) The sales by the farmers or inhabitants of rural districts, not for trading purposes, of their furniture, grain, cattle and other property not being merchandise and stock in trade, when changing their residence or finally disposing of the same.

Parties competent to contract are here necessary as in all other kinds of contracts.

14. The thing sold must have either an actual or a potential existence at the time of the sale.—The existence of the thing to be sold, or the subject matter of the contract, is, I repeat it,—for it is important that it should be well understood,—essential to the validity of the contract. If a horse be dead before the sale, or merchandise be destroyed by fire, both parties being ignorant thereof, the sale is wholly void.

If a substantial part of the thing sold be non-existent, the buyer has his option to rescind the sale or take the remainder with a reasonable abatement of the price. A mere contingent possibility not coupled with an interest is no subject of sale, as all the hay one will ever have; but a valid sale may be made of all the oats a certain field is expected to produce, or the future young born of a female animal then owned by the vendor.

15. The contract of sale is perfected by the sole con-

sent of the parties, although the thing sold be yet undelivered.

16. Yes, the seller has a *lien*, that is, a right of retention, on the goods, and can withhold them so long as their price is not paid.

17. Yes, where time is given; in other words, when the goods are sold on credit, when the buyer is entitled to immediate possession.

18. No, if subsequently to the sale and prior to delivery, the buyer should become insolvent, in which event the seller would not be obliged to deliver except for cash or on being sufficiently secured.

19. In the case of goods sold by the measure or weight, etc., the contract of sale is completed only when their quantity has been established by the weighing or measuring of the same.

Upon the sale of goods by admensuration, which may happen to be destroyed before measurement, the loss falls upon the seller. Stipulations of admeasurement and delivery at a particular place and time renders the sale conditional and incomplete until the occurrence of those events, and in the meantime the risk must be borne by the seller; and if such goods are so destroyed without any fault on the part of the vendor, and they cannot be replaced, the purchaser would have no action for damages by reason of the non-execution of the contract of sale, but could recover all moneys paid in advance of such contract.

20. The law will enforce all sales, provided every part of the agreement is entered into in good faith and in the absence of all fraud or mistake.—The mistake would have to be of the fact and not of the law, as every citizen is bound to know the latter. However, where a party voluntarily chooses to remain in ignorance, when ample opportunities of information are afforded him, he can hardly expect relief, should he later discover defects.

The law certainly expects every man to be reasonably careful in his dealings, and although it will not allow anyone to be cheated into giving assent to any agreement, yet it will not exact disclosure of such defects as are equally open to the observation of all parties.

21. The sale of a thing upon trial is presumed to be made under a suspensive condition, when the intention of the parties to the contrary is not apparent.

22. A simple promise of sale is not equivalent to a sale, but the party to whom the promise to sell has been made may force the party who has promised to execute a deed of sale in his favor according to the terms of the promise, or to pay him damages.

23. If the promise of sale be accompanied by the giving of earnest, either of the contracting parties may recede from it: he who has given the earnest by forfeiting it, and he who received it by returning double the amount.

24. Bar keepers or liquor dealers of any kind, sell-

ing intoxicating liquors to be drunk on the premises to any other but travellers, have in law no action to recover the price of such liquors.

25. There can be no contract of sale between husband and wife.

26. Tutors and curators cannot purchase the property of those under their care, except in sales by judicial authority, nor can mandataries or agents purchase such property as is entrusted to them for sale. —In fact, the same rule applies whenever parties are so situated with regard to property, as to create a strong presumption that they would favor themselves to the prejudice of the public or any particular individual.

27. As a rule, the sale of a thing which does not belong to the vendor is null, but in commercial matters when the vendor acts as agent, etc., or where it afterwards happens to become the vendor's property, the sale is valid.

28. In the case of a thing lost or stolen, if purchased in good faith at a fair, market, public sale or from traders in things similar, the owner cannot revendicate or reclaim it without reimbursing the buyer the price paid for it.—This does not apply to judicial sales when there is no revendication possible.

Should the buyer become insolvent before the goods have been delivered, the seller may retain them; and in the case where they have been shipped,

the seller has the right to stop them before they reach destination.

29. Express warranty consists in any positive written or oral affirmation made by the vendor at the time of the sale in relation to the goods sold.

30. Implied warranty is the interpretation which law and custom give to the performance of certain acts.—For an example, if I sell you an article of any kind, there is implied warranty that I am owner of this article, or, at least, that I have a right or title in the same sufficient to allow me to sell it.

If there be no express warranty, the common rule will, generally speaking, imply none ; the rule is : let the purchaser take care of his own interests. But let it always be well remembered that this rule will never apply to cases of fraud. A seller is not obliged to disclose all he knows which lessens the value of the property he would sell. He may be silent, leaving the purchaser to inquire and examine for himself or to require express warranty,—but he must be very careful and not be more than silent. If by his acts or words he leads the buyer astray, or prevents his examination or inquiry, then he becomes guilty of a fraud which the law will take knowledge of.

In general, there is no implied warranty whatever arising from judicial sales.

Upon breach of warranty the buyer has a right to claim from the seller institution of the price paid and all damages suffered in consequence of such breach.

QUESTIONS.

1. What is a sale?
2. What must the price or consideration be?
3. In what does it differ from exchange?
4. In what does it differ from the transaction?
5. What is an absolute sale?
6. What is a conditional sale?
7. What is a forced sale?
8. What is the effect of a judicial sale?
9. Does it guarantee a title to the thing sold?
10. Has the buyer any remedy in case of eviction?
11. What is an auction sale?
12. What persons can make it?
13. Are there exceptions, and in what cases?
14. Must the thing sold have existence at the time of the contract?
15. How is a sale perfected?
16. Has the vendor a lien on the thing sold?
17. Are there any exceptions to this rule?
18. Is the vendor obliged to deliver to an insolvent purchaser?
19. In the case of goods sold by the measure or weight, when is the contract completed?

20. Will the law always enforce a contract of sale ?

21. What is the presumption in the case of things sold on trial ?

22. Is a promise of sale equivalent to a sale ?

23. What rule applies in the case of the giving of earnest ?

24. In what cases have liquor dealers no right of action to recover the price of liquor by them sold ?

25. Can there be a contract of sale between husband and wife ?

26. What is the rule respecting curators, tutors, mandataries, agents, etc. ?

27. When is the sale of property not belonging to the vendor valid ?

28. What is the rule in the case of things lost or stolen ?

29. In what does express warranty consist ?

30. What is implied warranty ?

CHAPTER III.

AGENCY.

1. Agency, which is known in our Code as Mandate, is a stipulation wherein a person called the Principal or Mandator commits a lawful business to the management of another who is called the Agent or Mandatary.

2. An agent is an authorized person to do some act or series of acts in the name and place of another who is the agent's principal.

3. It is a substitution of the agent for the principal. For it is a recognized principle of law that, whatever a man can do in his own right, he may, generally speaking, appoint another to do for him.

4. Agents are also known under other names according to the business they do.

5. A factor is an agent for the sale of property.

6. The broker is an agent who simply negotiates sales without the property being placed into his hands.

—The term agent is one of very wide application, and includes a great many classes of persons besides those I have just mentioned, and to which distinctive

appellations are also given, as attorneys, bank managers, auctioneers, clerks, consignees, masters of ships, and the like.

Agency may be express or implied.

7. By express agency is meant a special delegation of authority ; express authority is that given explicitly either in writing or verbally.

8. By implied agency is meant acting to the knowledge and with the apparent consent and approval of the principal; in other words, implied authority is that which the conduct of the person possessing the power warrants, and which the law presumes.

9. General authority is that which authorizes the agent to do everything connected with a particular business.

10. Special authority is that which is confined to an individual transaction.

11. Limited authority is that where the agent is bound by precise instructions.

12. Unlimited authority is that when the agent is left to pursue his own discretion.

13. Agency is essentially a gratuitous contract, but in general business is oftener than not undertaken for a remuneration, the amount of which is regulated by usage or by an agreement between the parties.

14. It may be for a special undertaking or for the management of the principal's affairs generally. But in the latter case, it only comprehends acts of ad-

ministration. For acts of alienation or which tend to transfer ownership, in real estate particularly, the mandate or power must be special and express to that effect.

15. The agent must never exceed the limits of his mandate, unless it be in things incidental and immediately connected with the affairs he is empowered to administer, and then only if he cannot communicate with his principal.

16. The agent's authority is to be so construed as to include, not only all the necessary and proper modes of executing it with effect, but also all the various means which are justified or allowed by the usages of trade.

17. Where an agent is employed to transact some specific business, and only that, yet he binds his principal by such subordinate acts as are necessary to, or are usually and properly done in connection with the principal act, or to carry the same into effect. And he has a reasonable discretion as to the execution of his authority.

18. But an agent is not at liberty to exercise this discretion in the choice of a mode of performing the duty imposed on him, if some other mode, and that only, is fixed either by usage or by the orders of his principal, if he is a general agent; or if he is a particular agent, by the principal's orders, for then he must adopt the very mode and no other.—An authority to sell does not carry with it authority to sell on credit,

unless such be the usage of the trade; but if there be such usage, then the agent may sell on credit, unless specially instructed and required to sell only for cash. And if he sells on credit, having no authority to do so, he becomes personally responsible to his principal for the whole debt.

19. Minors and married women may be agents. I might say that the only disability here is in the case of natural defects either physical or mental.

20. The agent is strictly and under penalty of damages bound to fulfill the obligations of his mandate faithfully and to the best of his ability, the law will expect him to care for his principal's interests even after the expiration of his authority for a reasonable time, unless it be revoked by the principal, when the completion of some urgent business or the absence of his principal or other like causes require it.

21. Yes; but he is answerable for any person whom he should substitute to himself in the management of the business to which he is appointed, in the cases where the law allows of such substitution.

.—I think it important to state here, that, when a bare power or authority has been given to another, the latter cannot, in general, delegate that authority, or any part of it, to a third person. This rule applies more particularly to cases where the principal obviously relies upon the intelligence, skill and ability of his agent, and cannot have the same confidence in a stranger. Of course there are numerous instances

when the agent can appoint a sub-agent, but in such cases the substitute appointed by an agent who has this power of substitution becomes the agent of the original principal, and may bind him by his acts, and is responsible to him as his agent, and may look to him for compensation.

22. The responsibility of an agent, whether for positive misconduct or for deviation from instructions, is measured by the loss or injury which he may cause his principal. An agent is bound to use great diligence and care in the performance of his duties and of his obligations towards his principal; probably not the utmost possible, but all that a reasonably careful man under the same circumstances would take of his own affairs. And he is bound to possess and exert the skill and knowledge necessary for the proper performance of the duties which he undertakes.

—So strictly does the law interpret the good faith which should exist in the agent, that it forbids him becoming in any way personally interested in the business he manages; should, for instance, the agent's employment be to sell or buy goods for his principal, the Courts would invalidate any sale which he would make to or purchase which he would make from his principal, acting as agent of course.

The agent's liability is always construed after his agreement with the principal, and he is answerable to him for all his acts. He is bound to render him a true account of his administration whenever called upon

to do so, and particularly at the expiration of the mandate.

So long as he acts within his powers, and third parties have ample opportunity to know that he is acting simply as agent, he renders his principal alone accountable towards them; but if he should exceed them, then he alone is answerable, unless he does so to the principal's knowledge, who either tacitly or expressly ratifies the act. Should the third party know that the agent is exceeding his powers, then the third party deals with him at his risks; but if in good faith, and when the principal has given him good cause to believe the agent empowered to act as he does, the principal is then liable to him.

23. The principal is bound to indemnify the agent for all obligations, liabilities, expenses and losses which he might incur when acting strictly within the limits of his powers, as well as to pay the salary due him for his services, for which the law grants him the right of lien or retention upon whatever property of the principal he might have in his possession, however profitable the business confided to him might prove for the principal, so long as no fault would be imputable to him.

24. The agent must be very careful, and not forget that when his instructions are explicit he must strictly follow them, unless such unforeseen necessity or circumstances should arise as would warrant any prudent

man in deviating from them, or where such instructions would be contrary to law and order.

25. In the absence of instructions, the agent must pursue the accustomed course of that business entrusted to him.

—As already stated, the agent is bound to use all ordinary attention, skill and care in the execution of his mandate.

A factor, for instance, is liable to a certain extent for the safety of the goods put in his possession, and is expected to look after them as carefully as he would after his own.

26. Yes, the principal would be rendered responsible towards third parties by his agent acting within the scope of his authority, he is, moreover, liable towards them for the negligence or unskilfulness of the agent while in the execution of his mandate. So closely does the law identify the person of the agent with that of his principal, that it even seems to hold the latter responsible for the former's wilfully wrongful acts, unless the principal can satisfactorily establish that he was unable to prevent the act.

27. Our Code applies the above rule to parents for the acts of their minor children, to tutors and curators for the damages which the parties under their custody might cause, as well as to teachers and patrons for their pupils and apprentices, provided always that they might have prevented the evil.

—As already stated, brokers are a class of agents whose particular business is to negotiate purchases and sales between parties. Factors, also known as commission merchants, are agents to buy or sell goods for another, either in their own name or in that of the principal. They can be both parties' agents, that is, in a sale, for instance, they can be the seller's as well as the buyer's agent, and bind them both by their acts. The factor can conduct the business either in his own name or in that of his principal; but if the latter be absent in a foreign country, the factor is personally liable to the third parties with whom he contracts.

—From the foregoing principles, we understand that any person can safely contract with any agent for goods in his possession, or of which he is entrusted with the documents of title, such as bills of lading, warehouse keeper's receipts or orders for delivery of goods, etc.

28. The principal may at any time revoke his agent's mandate; but here it must be remarked that he cannot do so to the agent's detriment or damage without indemnifying him.

29. This revocation must be made reasonably public; if not, third parties, who in ignorance of it have contracted with the agent since it was made, have a full recourse against the principal, whose duty it was to give sufficient notice of the revocation.

30. The agent can renounce his mandate, after giving his principal reasonable notice of his intention to do so, but must do so at a time when such renunciation will not be injurious to the principal, unless there be a reasonable cause for it; otherwise he will be liable towards him for all damages which he might suffer thereby.

QUESTIONS.

1. What is known by agency?
2. What is an agent?
3. What is the object of agency?
4. Under what names are agents known?
5. What is a factor?
6. What is a broker?
7. What is meant by express agency?
8. What is meant by implied agency?
9. What is general authority?
10. What is special authority?
11. What is limited authority?
12. What is unlimited authority?
13. Is agency a gratuitous contract?
14. What acts does general agency or authority comprehend?
15. Can the agent exceed the limits of his mandate?
16. How is the agent's authority to be construed?
17. Is the agent allowed any discretion?
18. In what cases can the agent use his own discretion, and how far can he carry it?
19. Can minors and married women be agents?

20. In what manner must the agent fullfil his duties?

21. Can agents substitute other persons to themselves?

22. What are the duties and responsibilities of an agent?

23. What are the principal's obligations towards the agent?

24. Can the agent deviate from explicit instructions?

25. What course is the agent to follow in the absence of instructions?

26. Is the principal rendered responsible towards third parties by the agent's acts?

27. What is the rule for parents, teachers, curators, etc.?

28. When can the principal revoke his agent's mandate?

29. Under what conditions can he revoke the agent's mandate?

30. Can the agent renounce his mandate, and in what manner must he do so?

CHAPTER IV.

PARTNERSHIP.

1. Partnership is the relation existing between persons who have agreed to combine their property, labor or skill in some undertaking or business, and to share between them the profits as well as the losses arising therefrom.

2. It is strictly essential to this agreement, that it should be for the common profit of each of the partners who must contribute to it, in all or some of the things stated.—The receipt of a share of the profits or of an income varying with the profits made does not necessarily indicate the existence of a partnership, for this might be simply the salary offered the recipient for his services as servant; but it is perfectly lawful (and often happens) for a partner to stipulate that he will simply devote his time, skill and experience to the common undertaking.

As regards third parties, any agreement tending to exclude one or more of the partners from losses is null.

3. The business may be carried on under any busi-

ness-name which the partners choose to adopt, care being taken not to assume any style already borne or adopted by some other firm.

4. Four kinds: Universal, Particular, Civil and Commercial.

5. Universal partnership is that which is of all the property or of all the gains of the partners.—In universal partnership of property, all the property of the partners, moveable and immoveable, and all their gains present and future, are put in common; but unless the contrary is expressly stipulated, universal partnerships are presumed to be only of gains.

6. Particular partnership is that which applies only to certain determinate objects.

7. PARTNERSHIPS CONTRACTED FOR A SINGLE ENTERPRISE.

Commercial partnerships are those which are contracted for carrying on any trade, manufacture, or other business of a commercial nature. All others are civil partnerships.

8. Commercial partnerships are divided into: General, Anonymous, *En commandite* or Limited and Joint Stock Companies.

Before explaining these different kinds of partnership, I will mention and define the different kinds of partners.

9. A Nominal Partner is one who has no actual interest in the business or profits, and therefore is not a

partner in the strictest sense of the word, but as he allows his name to be given out to the public as such, and thereby strengthens the credit of the firm, he renders himself liable towards third persons.

10. The Real Partner is one who is in every way truly partner.

11. A Dormant Partner is one who is also in every respect partner, but who attempts to evade the obligations of the partnership by concealing the fact of his interest. So long as he remains unknown he is safe, but the moment his name is disclosed, he becomes equally liable as the rest of the partners, whether the firm was trusted on the strength of his membership or not.

12. A Limited Partner is one who is simply a contributor in a certain amount to the funds of a partnership in which his liability towards its creditors is limited to the sum contributed. His name does not appear in the firm, nor can he transact business on its account.

13. General partnerships are those formed for the purpose of carrying on business under a collective or firm name, consisting ordinarily of the names of the partners, or of one of them, all of whom are jointly and severally liable for the obligations of the partnership.

14. The partners may make such stipulations among themselves, concerning their respective powers in the management of the partnership business, as they see

fit, but, with respect to third persons, dealing with them in good faith, each partner has an implied power to bind the partnership for all obligations contracted in its name and in its usual course of dealing and business.

15. Anonymous partnerships are those having no particular name or firm.

16. The partners' liabilities here are the same as in partnerships under a collective name.

17. The partnership *En commandite*, or Limited partnership, is one wherein there are one or more persons called general partners, and one or more persons called special partners, who contribute in cash payments a specific sum or capital to the common stock.

18. The general partners are those who are jointly and severally responsible, being alone authorized to transact the business of the firm and bind the same.

19. The special partner is entitled to a certain share of the profits, according to stipulations, and is liable for the debts of the partnership only to the extent of his contribution.

20. Joint Stock Companies are those which, on account of the great number of partners, require the adoption of certain peculiar regulations.

21. They are formed either under the authority of a royal charter, or of an act of legislature, when they are governed by its provisions; if formed otherwise,

they generally come under the same rules as partnerships under a collective name.

22. The contract of partnership as well as its stipulations are generally evidenced by articles formally executed, although it can be formed by verbal agreement; and if no time be designated for its commencement, it takes effect from the date of the contract.

23. If no mention is made of the period of its duration, it is presumed to be life long, that is, as long as every one of the partners live.

24. Our Code makes it a strict obligation for partnerships formed to carry on certain trades and traffics, to deliver to the Prothonotary of each district, and to the Registrar of each county in which they carry on such business, a declaration in writing, stating the object of their partnership, the names of its members, and the time from which it dates; the omission to perform this duty will subject the parties contravening to certain penalties.

25. The object of this provision of the law being to afford the public a certain protection, a source from which they can derive such information as will enable them to ascertain with whom they are dealing when transacting business with such firms.

26. No partner, whether he has signed or not this declaration, will be deemed to have ceased to be such until a new declaration, showing the change, has been made.

27. Partners whose names would be omitted in the declaration could not thereby disclaim liability for any of the firm's obligations.

28. The moment any man, by conduct, or by words written or spoken, leads persons to believe that he is a member of the firm, he renders himself responsible to them as such.

29. Each partner is bound to contribute to the partnership all he has agreed to, and owes interest upon the same from the day he is in default of paying in his share.

30. He is liable as well towards his co-partners for all damages he might cause them by such default, which is also a valid reason for the dissolution of the partnership.

—As well as the capital promised, every member of the partnership must devote to the common undertaking the skill and industry which he has agreed to contribute without the least deviation.

The principle being, that the contract once formed must be strictly adhered to, and can only be rescinded or varied by the consent of all the partners and not otherwise, and that the partners are bound to carry on the business of the firm for the greatest common advantage; to be true and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives, when reasonably requested.

So that, if a partner, without the knowledge and consent of his co-partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all the profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

To show to what extent the law expects the faithfulness of co-partners to be carried out between them, I will quote article 1843 of our Civil Code, which says: "When a partner is creditor individually of a person "who is also indebted to the partnership, and both "debts are actually payable, the imputation of any "payment received by him from the debtor is made "upon both debts in proportion to their respective "amounts, although by the receipt he may have "imputed it upon his private debt only; if by the "receipt he imputes the payment wholly upon the "partnership's debt, such imputation is to be main-"tained."

31. Each partner is liable to the partnership for damages caused by his fault, and, on the other hand, can recover moneys disbursed and be indemnified for obligations contracted in good faith for the firm.

32. When there is no agreement concerning the shares, the partners participate equally in the profits and losses.

33. In the absence of any special stipulation as to management of the firm's business, it is presumed that

its members have mutually given each other authority to manage, and the acts of one bind the others, provided they do not object before their completion.

34. Each partner is entitled to the use of the firm's property, provided he uses the same reasonably and in a manner unprejudicial to its interests or of that of his co-partners.

35. Each partner may be compelled to contribute towards the expenses necessitated for the preservation of the common property.

36. In the case of real estate belonging to the partnership, no alteration can be made thereto without the consent of all the co-partners.

37. Any one of the partners may, if he chooses, associate with himself an outsider in his own share of the partnership.

38. No, he cannot make him a member of the firm.

39. In commercial partnerships, partners are jointly and severally liable, *i. e.*, each not only for his share, but for the whole of the debts of the firm.

40. In non-commercial, partners are only jointly, *i. e.*, each for his share of the debts.

41. Each partner who does any act necessary or usually done in carrying on business, such as the partnership carries on, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.—For as regards the right of third

persons against the partnership, it is a general rule, that each partner is the accredited agent of the rest, whether he be active, nominal or dormant; and has authority as such, to bind them either by simple contracts respecting the goods or business of the firm, or by negotiable instruments circulated in its behalf to any person dealing *bona fide*. Let it be well noticed, that here, as everywhere else, the law will expect good faith, for if a third person deals with a member of the firm, knowing that the latter exceeds his authority, no recourse will lie against the partnership, unless the partnership benefits by this act, and also where, as already stated, one or more partners have in a sufficiently public manner been appointed to conduct the affairs of the firm, when no others but they can bind it, and these only within the scope of the authority conferred on them expressly, or by implication.

42. Where a partner engages the firm in a matter evidently unconnected with it and without his co-partner's assent, the firm will not be bound.

—If all or any of the partners give notice that the firm will not be bound by acts or by some class of acts done in the name of the firm, they cannot be bound by them, if done with a person to whose knowledge the notice has come.

LIMITED PARTNERSHIP.

43. In limited partnership the partners are obliged to make and severally sign a certificate containing :

(1) The name or firm of the partnership ;

(2) The general nature of the business to be carried on ;

(3) The names of all the general and special partners, distinguishing which are general and which special, and their usual place of residence ;

(4) The amount of capital stock contributed by each special partner ;

(5) The period at which the partnership commences and that of its termination.

44. Such certificate is to be made before a notary, who will duly attest it.

45. It must be filed with the Prothonotary of the Superior Court for the District and the Registrar of the County where the partnership has its principal place of business, for registration in a book open to public inspection.

46. The partnership will be deemed formed after the certificate is made, fyled and recorded in the above manner.

47. During the continuance of the partnership, no special member can withdraw from it the whole or any part of the amount he has contributed to the partnership fund.

48. He can annually receive lawful interest on the same, so long as it does not affect the amount of his contribution, and he may also receive his portion of the profits.

49. The general partners are the real partners, the active business parties in the partnership, and meet the liabilities of partners generally.

50. They are liable to account to each other, and to the special partners for the management of the firm's business, as ordinary partners under a collective name.

51. In case of insolvency, the special partners have no claim against the partnership until all its other creditors have been satisfied.

52. Limited partnerships cannot be formed to carry on the business of banking or insurance.

53. Their dissolution cannot take place but at the time stated in the certificate required for their formation, unless certain regulations required by law are complied with, and which are: a notice fyled in the office or at the place where the certificate mentioned was registered, and publication of the same notice during a certain time in certain papers.

54. JOINT STOCK COMPANIES—Are usually formed, in this Province, under a special statutory charter or under a certain act known as the "General Joint Stock Companies Act."

55. In either of which cases the liability of the

shareholders does not exceed or go beyond the mere loss of the stock held by them,—should the Company become insolvent. When not coming under any of these cases, then the partners' liabilities toward third persons are generally governed by the same rules and principles which regulate the common commercial partnership.

56. In these partnerships, the stock is generally divided into shares.

57. They are transferable by assignment or delivery.

58. The business is conducted by a chosen board of directors.—Under certain restrictions any partner may transfer his shares, but no partner acts personally in the affairs of the Company, the execution of their business being entrusted to officers for whom the partnership is responsible, though the superintendence of such officers is frequently committed to directors chosen from the body at large.

59. Partnership is dissolved by various causes, such as by the expiration of the time fixed for its duration, by the loss of its property or the accomplishment of its object, bankruptcy, death, etc.

60. Those which are not limited as to duration can be dissolved at the will of any one of its members, by his giving notice to his co-partners of his intention to withdraw, provided he does so in good faith and at such a time as will not be unfavorable and injurious to the partnership.

61. A failure to fulfil his duties, gross misconduct or physical or intellectual infirmity on the part of one of the partners will also be a cause of dissolution of the partnership. The death of one of the partners will also be a cause for dissolution, unless there be some provision to the contrary.

62. After dissolution, excepting for the completion of business begun during its existence, the partners' powers to act for the partnership cease.

63. A partner acting in ignorance of the dissolution and in good faith binds the others.

64. Upon dissolution, each partner or his legal representatives may demand an account and division of the partnership property.

65. The partnership creditors have a privilege upon its property for their claims, and have a right to be paid out of it in preference to its members.

66. Private creditors also have a recourse against the partners' private property, when that of the firm is not sufficient to cover their claims, but then, they only rank after such partner's private creditors.

QUESTIONS.

1. What is a partnership?
2. What is essential to the agreement between the partners?
3. Under what name can the business of the partnership be carried on?
4. How many kinds of partnerships are there?
5. What is a Universal partnership?
6. What is a Particular partnership?
7. What are Commercial partnerships?
8. How are Commercial partnerships divided?
9. What is a Nominal partner?
10. What is a Real partner?
11. What is a Dormant partner?
12. What is a Limited partner?
13. What are General partnerships?
14. Who can bind the partnership?
15. What are Anonymous partnerships?
16. What are the partners' liabilities in a General partnership?
17. What is partnership "En Commandite"?
18. Who are General partners?
19. To what is a special partner entitled?
20. What are Joint Stock Companies?

21. How are they formed ?

22. How is the contract of partnership evidenced ?

23. If no mention is made of its duration, how long is it presumed to last ?

24. What declaration must partnerships fyle ?

25. What is the object of this declaration ?

26. If a partner has not signed this declaration, will he be deemed a member of the firm ?

27. Partners whose names would be omitted, could they disclaim liability ?

28. If any man by conduct or by word makes persons believe that he is a member of the firm, is he liable ?

29. What is the partner's obligation towards the partnership ?

30. Is he as well liable towards his co-partners ?

31. Is each partner liable to the partnership for damages caused by his fault ?

32. How do the partners share in the profits and losses ?

33. Are all the partners entitled to manage the affairs of the partnership ?

34. Is each partner entitled to the use of the Firm's property ?

35. Can each partner be compelled to contribute towards the expenses ?

36. In case of real estate, how can alterations be made ?

37. Can partners associate outsiders with themselves ?

38. Can he make him a member of the firm?

39. What are partners' liability in commercial partnerships?

40. In non-commercial?

41. What is the principle when a partner does any act necessary or usually done in the business?

42. Where a partner engages the firm in a matter unconnected with it, what will be the result?

43. In limited partnerships, what are partners obliged to make and sign?

44. Before whom must this certificate be made?

45. With whom must it be fyled?

46. When will the partnership be deemed formed?

47. Can the special partner withdraw any money during the continuance of the partnership?

48. What can he receive?

49. What is the position of the general partners in the partnership?

50. Must they account to anyone?

51. Have the special partners any claim in the case of insolvency?

52. Can limited partnerships carry on Banking or Insurance business?

53. Can they be dissolved at any time?

54. How are Joint Stock companies formed?

55. To what extent are the shareholders liable in the case of the company's insolvency?

56. How is the stock divided?

57. How are the shares transferable?

58. How is the business conducted ?

59. What causes can bring on the dissolution of a partnership ?

60. What about those that are not limited as to duration ?

61. What other causes could cause dissolution of partnership ?

62. What are the partners' rights after dissolution ?

63. If a partner would act in ignorance of the dissolution, would he bind the other ?

64. Upon dissolution, can each partner demand an account and division of the partnership ?

65. Have the creditors of the partnership a privilege upon its property ?

66. What about private creditors ?

CHAPTER V.

INTEREST.

1. By interest is meant the remuneration or compensation paid by one party to another for the use or detention of his money.

2. It occurs in the case of a loan of a sum of money at a stipulated rate of interest, also on a debt overdue, or from its creation if there is an understanding to that effect.

3. A judgment will most always carry interest from the time the party against whom it is given has been summoned to answer the Plaintiff's demand.

—It was for a long time considered to be usury for anyone to loan money at a high rate of interest, at all events, above that fixed by statute; but now the Courts would not refuse to grant any such interest as might fairly be agreed upon.

4. The legal rate of interest is generally understood to be six per cent., and, if not mentioned, it is the rate collectable.—For instance, if a note be payable, let us say at three months from the date it bears without in-

terest, and is not honored at maturity, the holder can, along with the amount of the note, exact interest at six per cent. from its maturity.

5. On running accounts, interest is allowed from the demand of payment, which is generally judicially made, that is, by summoning the debtor before the Courts; still, when the time of credit is limited, and there is an agreement either express or implied to pay at a certain time, interest certainly begins to run from the expiration of such time.

6. Interest allowed on judgments is also at the rate of six per cent., unless it be rendered upon a claim or obligation bearing a different rate according to stipulations.

7. Compound interest, *i. e.*, interest upon interest, is allowable when there is a contract to that effect either express or implied.

QUESTIONS.

1. What is meant by interest?
2. When does it occur?
3. From what time will a judgment carry interest?
4. What is the legal rate of interest?
5. Is interest allowed on running accounts?
6. Is interest allowed on judgments?
7. Is compound interest allowable?

CHAPTER VI.

LEASE AND HIRE.

1. By lease and hire is meant a contract wherein a price or compensation is to be given for the use of personal property, or for labor, or both combined. There is also the hire of houses and farms, which is to a certain extent governed by rules particular to such contract.

2. In the lease or hire of things, the Lessor is the one that grants another party called the Lessee, or hirer, the use of a thing for a certain time, in consideration of a certain sum or rent.

3. In that of labor or services, the lessee undertakes to perform certain work for the lessor, on the same condition, *i. e.*, for consideration.

4. The principal kinds of work which may be leased or hired are:

(1) Personal services of workmen, servants and others;

(2) The work of carriers, by land and by water, who undertake the conveyance of persons or things;

(3) That of builders who undertake work by estimate or contract.

5. The employer is bound to pay the price stipulated, and conform to all the stipulations of the agreement with his employee.

6. The workman on his side must perform his work faithfully, diligently and well, and also act up to the agreement.

7. Carriers are those who undertake the conveyance of persons or things ; such as proprietors of railroad cars, steamboats, canal boats, stage coaches, as well as truckmen, teamsters, carters, etc.

8. They undertake to carry people or goods from one place to another for compensation.

9. The law declares them, in the case of property delivered to them for transportation, responsible for loss or damage caused in any way whatever, excepting where a theft would be committed by force of arms, or the damage would happen through inevitable accident of the owners' own acts of carelessness, or from defects in the thing itself.

10. A carrier may qualify his liability by a general notice to all who employ him, of any reasonable requisition to be observed on his part in regard to the manner of delivery and entry of goods, etc.

11. He cannot limit his responsibility imposed upon him by law, for his own gross neglect or misconduct.

12. This responsibility begins when the goods are delivered to the carrier, or to his proper servant, authorized to receive them for carriage.

13. They are bound to carry for all persons that apply, unless they have good reasons to refuse; but they are not obliged to receive goods which it is not their custom to carry, nor when their means of conveyance are all taken up, or before they are ready to depart.

14. They may demand their charges in advance, and these charges, for the same service, must be the same to all customers.

The carrier has a right to retain the thing transported until he is paid for the carriage or freight of it.

15. The delivery of the goods at the station or point where shipped must be done within the stipulated time, if any is stipulated, and at least according to the ordinary and reasonable course of business, under penalty of damages, unless the carrier is prevented from so delivering by causes which he cannot control, as in the case of fortuitous event or irresistible force.

16. The carrier is neither bound to deliver to the consignee personally, nor to give notice of the arrival of the goods, unless they arrive before or after time.

17. The reception of the goods transported and the payment of freight upon them, without protest, extinguishes all right against the carrier, unless there should be damage or loss such as could not have been known or discovered at the time when such receipt or payment was made, in which case a claim must be fyled immediately after the loss or damage is ascertained.

18. The goods shipped are generally mentioned and described in a document or paper called the bill of lading, which is evidence of the contract entered into by the carrier and consignor.

19. Carriers of passengers are only liable for their negligence, their undertaking being that as far as human care and foresight goes they will carry safely.

20. A very small degree of negligence is sufficient to render them liable.

21. They are liable in damages if their trains do not start according to time table. But special damages must be proved.

22. They must accept all that offer, unless they have some reasonable excuse. For instance, they are not bound to receive passengers who refuse to conform with reasonable regulations, or are not of a quiet and peaceful behavior, or for any reason are not fit associates for the other passengers: as if affected by contagion, or in any way offensive in person or conduct.

23. Passengers must produce their tickets when they are called for by a conductor having the official cap and badge. He may put off the train a passenger refusing to do so; but the carrier's servants cannot arrest a passenger for non-production of his ticket.

24. Passengers must be allowed reasonable time to alight at destination.

25. The carrier is bound to give warning or signal on leaving stations, and his neglect to do so will subject him to damages towards parties left behind thereby.

In the case of stoppage by snow blockade, the carriers are bound to make all reasonable exertion to forward the passengers.

26. Carriers of passengers are liable as common carriers for their ordinary baggage, and a check is evidence against the carrier of the receipt of such baggage. Checking, however, is but an extra precaution to prevent the baggage being given to the wrong persons, as the carrier will be in the same manner responsible for the loss of unchecked articles.

If a check be refused when demanded, the carrier will be liable to a fine.

27. It ceases when the passenger chooses to take the exclusive control of his own baggage, and the carrier will not be liable for the loss, unless caused by the carrier's own negligence or fault.

—The responsibility of the carrier for a passenger's baggage, after it has reached destination, continues until the owner has had reasonable time and opportunity to take it away. After that, the carrier is only bound to give it the same care as any prudent man would to his own property, and no more.

28. The carriers are released from liability for large sums of money or other securities; or for gold, silver, precious stones or other articles of an extraordinary value, contained in any package received for transportation, unless it is declared to them that the package contains such valuables.

—Notice by carriers, of special conditions limiting

their liability, is binding only upon persons to whom it is made known; and nothwithstanding such notice and the knowledge thereof, carriers are liable whenever it is proved that the damage is caused by their fault or the fault of those for whom they are responsible.

29. THE HIRE OF WORK BY ESTIMATE AND CONTRACT.—Is that wherein a party undertakes the construction of a building or other work, as a whole, for a fixed price. It may be agreed that this party shall furnish labor and skill only, or that he shall also furnish materials.

30. In the former case the loss of the thing worked upon, before the work is perfected, falls upon the lessee; and as for the work itself, if it is to be perfected and delivered as a whole, and the thing perish before the work has been received, the owner not being in default of so receiving it, the workman has no claim, unless the loss is due to some defect in the materials or is the owner's fault. In the latter case, if the workman's contract is to furnish and deliver the work as a whole, its loss before delivery falls upon him; again, unless it is caused by the lessee's fault or he should be in default of receiving it.

31. It is fitting here to mention a few important provisions of law relating to the building of houses. Article 1688 of our Code states that: "If a building should wholly or partially perish within ten years from the time it was erected, from some defect in the

construction, or even from the unfavorable nature of the ground, the architect superintending the work and the builder will be held jointly and severally liable for the loss.

"If the architect only furnishes the plan and does not superintend the work, he will then only be liable for such loss as might happen through defects in the plan."

In a case of St. Louis *vs.* Shaw, it was decided that: "A builder is liable for damage occasioned to his "work by frost, if he agreed to execute the work at "a season when it was liable to injury from that cause."

A builder undertaking to put a building or perform some other work by contract upon a plan and specifications, for a certain price, cannot claim additional charges for any deviation from such plan and specifications, or for any increase in the labor or materials, unless such changes are authorized in writing and their value be fixed upon with the employer.

Architects, builders and other workmen have for the payment of their labor, as well as for the materials they furnish, a privilege upon the work they construct.

QUESTIONS.

1. What is meant by lease and hire?
2. Who is the lessor?
3. Who is the lessee?
4. What are the principal kinds of work which may be leased or hired?
5. What are the obligations of the employer?
6. What are the obligations of the workmen?
7. What are carriers?
8. What duties do they undertake?
9. What responsibility does the law fix upon them?
10. Can a carrier qualify his liability?
11. Can he limit the responsibility imposed by law?
12. When does the carrier's responsibility commence?
13. Are carriers bound to carry for all persons?
14. Can they demand their charges in advance?
15. Within what time must the delivery of goods shipped be made by the carriers?
16. Is the carrier bound to deliver to the consignee personally?

17. When are rights of action against the carrier extinguished?

18. How are the goods generally mentioned?

19. For what are carriers of passengers liable?

20. What degree of negligence would be sufficient to render them liable?

21. Are they liable if their trains do not start according to *time-table?*

22. Must they accept all passengers?

23. Should passengers produce their tickets when asked for?

24. Should passengers be allowed reasonable time to alight?

25. Is the carrier bound to give warning on leaving station?

26. Are carriers liable for the baggage of passengers?

27. When does the liability cease?

28. In what cases are the carriers released from liability?

29. What is meant by hire of work by estimate and contract?

30. What rules govern this kind of contract?

31. Mention a few important provisions of law relating to the building of houses?

CHAPTER VII.

NEGOTIABLE PAPER.

1. Negotiable paper is a species of personal property possessing a peculiar mercantile property found in its transferable quality.

2. Negotiable is a term applied to a contract, the right of action of which is capable of being transferred by indorsement and of which delivery is an essential part.—It is in commerce an instrument of the greatest help and importance. It originated chiefly from the customs, usages and requirements of trade.

3. There are several kinds of such paper, the best known and the most in use being the Bill of Exchange, the Promissory Note, the Check, Bonds, Bills of Lading, etc.

4. They are commercial substitutes for money, evidences of indebtedness and the general mediums of business and mercantile exchange.

BILLS OF EXCHANGE.

5. The Bill of Exchange is an order or request from one person to another for the payment of a sum of

money, at a fixed time, without any condition and at all events to a third party.—In other words, it is a written order, whereby A... orders B... to pay to C... or to his order, or to bearer, a sum of money absolutely and at a certain time. A... is the Drawer, B... the Drawee, and C... the Payee. If the bill is presented to B... and he agrees to obey the order, he writes the word "accepted" across the face of the bill, and then signs his name below this word "accepted," and thus becomes the acceptor. If C...., the payee, wishes to transfer the paper and all his rights under it to some other person, he may do so by writing his name on the back of the bill, this is called an indorsement, and it makes C... an Indorser. The person to whom the bill is transferred is an Indorsee, who may also transfer the bill by himself, writing his name below that of C...., the former indorser, and this process may go on indefinitely.

In order that this matter may be better understood, I will add more explanations further.

The necessity of providing some safe and easy way of transmitting money or making payments from one place to another was felt by traders as far back as 1181, and it was found in the Bill of Exchange.

6. The bill of exchange must necessarily be in writing, payable at all events.

7. It must contain the name of the drawer, that is, the party writing or making the bill.

8. The person to whom the letter is directed is termed the drawee.

9. The person in whose favor it is made is the payee.

10. New parties may subsequently be added to the bill, as where the payee endorses the same by writing his name on the back to transfer it to another party who becomes the indorsee, more generally known as the holder. He also may do the same thing to another, and so on *ad infinitum.*

11. Other parties may be warrantors upon the face of the bill, as generally expressed *par aval*, as when one puts his name on the bill to strengthen its worth, simply as a warrantor, for any one of the parties on the paper, he is then liable as surety.

12. Acceptors *au besoin* are those to whom the payee is referred in case the intended acceptor's acceptance could not for some reason or other be obtained.

13. Acceptors *supra protest* are those who accept to save the credit of the drawer as a mere act of friendship or courtesy.—It must be carefully noticed that the rule now is everywhere in the Dominion, that a person who signs otherwise than as a drawer or acceptor incurs the liabilities of an indorser to a holder in due course, and is subject to all the provisions respecting indorsers. The *donner d'aval* is now an indorser subject to the same rules as any other indorser.

14. The bill of exchange can be made payable to the party therein named, to his order, to the drawer's

order or to bearer.—It is the great object of commercial paper that it be almost as easily transferable as bank notes; and it is only in that manner that it can facilitate the ends of trade in the way it does, by securing the most perfect, rapid and safe method of transferring the large sums of money such paper represents, from one hand to another, from city to city,—in fact, from country to country.

15. If the name of the payee should happen to be left in blank, its legal holder may fill it up.

16. If no time be specified in the bill for its payment, it is held to be payable on demand; and if no place for such payment is specified, it is payable generally.

17. Bills of exchange are of two kinds: foreign and inland.

18. By foreign is meant one drawn by a person in one country upon one in another country.

19. The foreign bills are generally drawn in sets of several parts, all of which the drawer is bound to deliver to the payee.

20. The inland bill is one drawn by a person of a country upon another also in the same country.

NEGOTIATION OF BILLS.

21. A bill is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder of the bill.

22. The transfer of a bill of exchange is accomplished by indorsement, when made to order; when payable to bearer, it is of course transferred by simple delivery.

23. The transfer by indorsement is either in blank or in full, which is also called special indorsement.

24. The indorsement is in blank when made by the indorser's only writing his name on the back of the bill, and no more. This indorser must of course be the person to whose order the bill is made payable.

25. The indorsement in full occurs when the paper is indorsed as made payable to the indorsee or his order, and then signed by the indorser.

—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

—By the first mode of indorsement, the bill, if made payable to order, is, after the first payee's or indorsee's indorsement, transferable by mere delivery *ad infinitum*. A bill so indorsed becomes payable to bearer.

By the second, it can only be transferred through the indorsement of the indorsee. I will perhaps be better understood by saying that the writing of the name of the payee, with nothing more, is an indorsement in blank; and a blank indorsement makes the paper, bill or note transferable by delivery just as if it had been originally payable to bearer.

If the indorsement consists of an order to pay to some specified person, followed by the signature of the

indorser, then the indorsement is called in full, and the note or bill can be paid to no one else; nor can the property in it be fully transferred except by the indorsement of the indorsee.

The special indorsement specifies the person to whom or to whose order the bill is to be payable.

Where a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement, by writing above the indorser's signature a direction to pay the bill to, or to the order of himself or some other person.

26. The effect of indorsement on a bill of exchange or negotiable paper is to transfer the property on the note or bill to the person mentioned in the indorsement, when it is made in full, or to any person into whose possession it may lawfully come thereafter, even by mere delivery when it is made in blank, so that the possessor or holder may sue and secure upon it in his own name as well as if he had been named as the payee.

27. Any person who has possession of the instrument is presumed to be the legal *bona fide* owner for value, until the contrary is shown.

28. The indorsement must be of the entire bill. A partial indorsement, that is to say, an indorsement purporting to transfer to the indorsee a part only of the amount payable, does not operate as a negotiation of the bill.

29. If the bill is payable to the order of two or

more payees or indorsees, who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

30. Where, in a bill payable to order, the payee or indorsee is wrongly designated or his name is misspelt, he may indorse the bill as therein designated, adding his proper signature; or he may indorse by his own proper signature.

—The transfer may be made before or after the maturity of the bill; but with this great difference which no one should ignore, that in the first case the holder acquires a perfect title, free from all liabilities and objections which any parties may have against it in the hands of the indorser; while in the other, it is open to all the liabilities and objections which could have been raised against it, when in the hands of the former holder. The person receiving the bill before maturity does so upon the credit of the paper alone, and is not bound to inquire into any equities or defences which might be raised by prior parties. The necessities of commerce require it to be so. But if it be received after due, the matter is altogether changed, for the bill is then disgraced, and this gives rise to the presumption that there must have been some reason why it was not duly honored.

—Such reason in fact as makes it incumbent upon the party receiving it to look into the merits of this cause or reason. But here as everywhere else the law exacts good faith.

31. A bill payable on demand is deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time.—Except where an indorsement bears date after the maturity of the bill, every negotiation is deemed to have been effected before the bill was overdue.

Our Bills of Exchange Act (1890) says that: "The holder in due course of a Bill of Exchange holds it free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill."

A holder in due course is a holder who has taken a bill, complete and regular on the face of it under the following conditions, namely:—

That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.

That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

An indorsement is restrictive which prohibits the further negotiation of the bill, which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of ownership thereof, as, for example, if a bill is indorsed as follows "Pay D only," or "Pay D. for the account of X," or "Pay D., or order, for collection."

A restrictive endorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorizes him to do so.

32. An indorsement may be restrictive, qualified or conditional, and the rights of the holder under such indorsement are regulated accordingly ; but no indorsement other than that by the payee can stop the negotiability of the bill.

33. An indorser may always prevent his own responsibility by writing "without recourse," or other equivalent words, over his indorsement; and any agreement between the indorser and indorsee, written or verbal, that the indorser shall not be sued, is good as against that indorsee, but not against subsequent indorsees, unless notice is given.

ACCEPTANCE. 34.—Bills of exchange payable at sight, or at a certain period of time after sight or after demand, must be presented for acceptance. Acceptance applies to bills and not to notes.

35. The presentment is made by the holder or in his behalf to the drawee or his representative.

36. At his domicile or place of business, or if the drawee be dead or cannot be found, and is not represented, presentment is made at his last known domicile or place of business. If there be also a drawee *au besoin*, presentment must be made to him in the

same manner.—The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment; such person is called the referee in case of need. It is in the option of the holder to resort to referee in case of need or not, as he thinks fit; where a dishonored bill contains such a reference, in case of need it must be protested for non-payment before it is presented to him for payment.

By drawing and delivering the bill, the drawer is understood to contract with the payee and every subsequent holder, that the drawee will, upon presentment and demand of payment thereof, accept and pay the bill according to its tenor.

37. This presentment for acceptance when necessary must be made within a reasonable time from the making of the bill.

38. The acceptance must be in writing upon the bill. No particular form is necessary. The law holds expressions indicating an intention to pay the bill when due, sufficient. It must be absolute and unconditional; however, if the holder agrees to a conditional or qualified acceptance, the acceptor is bound by it.—In order to be good and valid, the acceptance must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient, and it must not express that the drawee will perform his promise by any other means than the payment of money.

Where in a bill the drawee is wrongly designated, or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature.

39. By acceptance the drawee becomes the principal debtor, and liable towards any *bona fide* holder receiving the bill in the ordinary course of business.

40. In the case of refusal or inability to accept by the drawee mentioned in the bill, there can be a particular kind of an acceptance known as "Acceptance for honor."

41. Acceptance for honor is to secure the negotiability of the bill, or save the credit of its drawer or of any of the indorsers thereon, some friend steps forward, and, with the holder's consent, accepts the bill in the place and stead of the intended drawee.

42. This acceptance only benefits the holder who is subsequent to all other in whose honor it is made.

43. A conditional or qualified acceptance is one which renders payment by the acceptor dependent on the fulfillment of a condition therein stated, such as "As soon as he should sell such goods" or "on condition that it be renewed."

44. A general acceptance is an engagement to pay the bill absolutely according to its tenor. The holder may refuse any acceptance which is not general.

45. A qualified acceptance varies the tenor of the bill, either by being made for a smaller sum, or by changing the date of maturity or the place of payment.

—In all cases of qualified acceptance, the holder should at once notify the prior parties, and if they fail to express their dissent within a reasonable time, they are deemed to have assented to it.

46. The acceptor for honor of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security, and is not overdue.

—Any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn.

47. When this acceptance for honor is made after the bill has been protested, it is called acceptance *supra protest.*

NOTING AND PROTEST FOR NON-ACCEPTANCE.

48. If the drawee refuses or fails to accept the bill, it may be forthwith protested for non-acceptance; and after due notice of such protest has been given to the parties liable upon the bill, the holder may demand immediate payment of it from such parties, exactly as if the bill had become due, and been protested for non-payment instead of for non-acceptance.

49. It frees the holder from the obligation of presenting the bill for payment, or if he does so, to give notice of dishonor.

—The law provides also, that instead of protesting for refusal to accept, the holder has the option of having the bill noted for non-acceptance only, when no notice to the parties secondarily liable is necessary; but noting is only a preliminary step to protest, and where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill or note has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as if the date of the noting.

Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix its maturity; also where a bill expressly stipulates that it shall be presented for acceptance, or where it is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented by payment. In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

Although the student, from what has been already said, very likely understands what is meant by parties secondarily liable, I might as well add here, that the law distinguishes two classes of parties in

negotiable paper. Those who are *primarily* liable, who are the real debtors, such as the acceptor in the case of a bill of exchange, and the maker in that of a promissory note; and those who are *secondarily* liable, whose liability is contingent, conditional upon the failure of those primarily liable to pay, such as the drawer and indorser of a bill, and indorser of a note.

I should here also mention another division of negotiable paper into business and accommodation. The former is where the acceptor of a bill of exchange or the maker of a note is really indebted; and the latter, on the contrary, when there is no indebtedness, the paper being given or accepted simply to oblige, to enable the party to whom it is given to raise money. In the first case, the payee or holder has a right of action against the acceptor or the maker as well as any subsequent party in whose hands the paper may have come; in the second case, those only to whom the paper is transferred for value and in due course of law can exercise this right.

50. A bill may be accepted for honor for part only of the sum for which it is drawn.

An acceptance for honor *supra* protest, in order to be valid, must be written on the bill, and indicate that it is an acceptance for honor, and be signed by the acceptor for honor.

—Where an acceptance for honor does not ex-

pressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

51. The presentment for acceptance must be made by or on behalf of the holder to the drawee, or to some person authorized to accept or refuse acceptance in his behalf, at a reasonable hour on a business day and before the bill is overdue.

52. Where the bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only.

When the drawee is dead, presentment may be made to his personal representative.

—A bill not accepted on the day of presentment, or within two days thereafter, must be treated as dishonored for non-acceptance.

53. The noting and protest must be done by a Notary Public, and in case the services of none can be procured, any justice of the peace is empowered to do the same.

54. The only object of these formalities is to secure the holder's recourse against the drawer and indorsers.

PAYMENT.—55. Every bill of exchange not protested for non-acceptance, as already said, must be presented for payment by the holder, or in his behalf to the drawee or acceptor, on the third day of its maturity, at any reasonable hour whether in the forenoon or the afternoon, or after presentment for acceptance if drawn at sight.

56. Should this day happen to be a legal holiday, then on the next following juridical day.

57. This presentment must be made wherever the bill is made payable, either by indication therein or by qualified acceptance.—If it be payable generally, the presentment must be made to the drawee or acceptor, as the case may be, either personally or at his residence, office or usual place of business; in the case of absence, or of no such places being known, then the presentment can be made at any of such places where the drawee or acceptor was last known to reside, where the acceptance, or if there be none, where the bill bears date.

A bill must be duly presented for payment. If it is not so presented, the drawer and indorsers shall be discharged.

Where the bill is not payable on demand, presentment must be made on the day it falls due.

Where the bill is payable on demand, then presentment must be made within a reasonable time after its issue, in order to render the drawer liable.

Should the maker in the case of a note, or acceptor in that of a bill, be a firm, the demand of payment is made of one of the members. In case of death, the demand is made of their heirs or legal representatives.

58. Payment of a lost bill of exchange may be recovered upon satisfactory proof of the loss being made by the holder, and by giving security to the parties if the bill be negotiable. The law now provides that

where a bill has been lost before it is overdue, the person who was holder may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again. If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

The party paying the bill should be careful to have it delivered up to him, or have his payment indorsed upon it, so as to avoid the risk of paying a second time, to someone who was a holder before maturity.

59. Payment of a bill may be enforced by action against the drawee, if he have accepted; against the drawer and indorsers in the event of dishonor, by refusal to accept or pay.

All these parties being jointly and severally liable, they may be included in one suit.

60. PROTEST FOR NON-PAYMENT.—If not paid when presented for payment, the bill must be protested for non-payment after three o'clock in the afternoon of the last day of grace, which is, as has been already said, the third after maturity, and notice thereof be given to any party on the bill whose liability the holder wishes to keep alive; and as in the case of non-acceptance, should this formality be omitted, the parties liable other than the acceptor will be discharged. Still, the drawer can only avail himself of the want of protest and notice if he can establish that

he had duly provided for the payment of the bill.

61. Protest and notice thereof is rigorously required by the law, and nothing but impossibility by inevitable accident or irresistible force will excuse it. It can of course be waived by any party to the bill in so far as his rights are concerned.

Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof.

62. The object of the performance of these formalities is to secure full and perfect remedy against drawer and indorsers, who are only secondarily liable, their obligation being contingent upon the principal debtor's default to pay. By his action the holder can recover the amount mentioned in the paper with interest and all expenses occasioned by non-acceptance and non-payment.

Where the acceptor of a bill becomes bankrupt or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. This is a novelty in our law.

QUESTIONS ON NEGOTIABLE PAPER.

1. What is negotiable paper?
2. What means the word negotiable?
3. How many kinds of negotiable paper are there?
4. Of what utility are they in Commerce?
5. What is the bill of exchange?
6. Must the bill of exchange be in writing?
7. What must it contain?
8. Who is the drawee?
9. Who is the payee?
10. Can new parties be subsequently added to the bill?
11. What is meant by warrantor *par aval?*
12. Who are acceptors *au besoin?*
13. Who are acceptors *supra protest?*
14. To whom can the bill be made payable?
15. If the name of the payee should happen to be omitted, what could done?
16. If neither time nor place is specified, how is the bill held?
17. How many kinds of bills of exchange are there?
18. What is meant by foreign?
19. How are they drawn?

20. What is the inland bill?

21. How is a bill negotiated?

22. How is the transfer of a bill made?

23. How many indorsements are there?

24. When is the indorsement in "blank"?

25. When does the indorsement "in full" occur?

26. What is the effect of indorsement on a bill of exchange or negotiable paper?

27. How is any person in possession of the instrument presumed to be?

28. Should the indorsement be of the entire bill?

29. If the bill is payable to the order of two or more payees, what should be done?

30. If the name of the payee was misspelt, what could be done?

31. When is a bill payable deemed overdue?

32. Can the indorsement be restrictive?

33. Can the indorser avoid responsibility?

34. Should bills of exchange be presented for acceptance?

35. How is the presentment made?

36. Where must presentment be made?

37. Within what delay must the presentment be made?

38. How is the acceptance made?

39. What is the effect of acceptance?

40. In case of refusal to accept by the drawee, what can be done?

41. What is meant by "acceptance for honor?"

42. Whom does this acceptance benefit?

43. What is a conditional or qualified acceptance?

44. What is a general acceptance?

45. What is a qualified acceptance?

46. What is this acceptor for honor bound to do?

47. What is meant by "acceptance supra protest"?

48. What is to be done if the drawee refuses to accept?

49. What is the effect of protest for non-acceptance?

50. Can a bill be accepted for part only?

51. By whom should the presentment be made?

52. What must be done when the bill is addressed to two or more drawees?

53. By whom must noting and protest be done?

54. What is the object of these formalities?

55. When must the bill be presented for payment?

56. If the day is a legal holiday, when should it be presented?

57. Where must the presentment be made?

58. Can the payment of a lost bill be recovered?

59. Against whom can payment of the bill be enforced?

60. When should the protest of a note for non-payment take place?

61. Is protest rigorously required by law?

62. What is the object of these formalities?

CHAPTER VIII.

PROMISSORY NOTES.

1. A promissory note is a written promise to pay to a certain person, his order or bearer, at a specified time, a given sum of money.

2. To render it negotiable, that is, so that it may be transferred by indorsement or delivery, it must be payable to "order" or "bearer."

3. The promise must be absolute and uncoupled with any condition, and the time of payment must be certain and not dependent upon any contingency. The promise must be for a definite sum, and must be payable in money.

4. It must be signed by the party who promises, who is called the maker.

5. His obligations are similar to those of the acceptor of a bill of exchange.

6. The party to whom the promise is made, in whose favor the note is made, is called the *payee*.

—The promissory note, unlike the bill of exchange, is a promise and not an order. Yet, although they differ in form, still, in the hands of the payee and

every subsequent holder, they are precisely alike, and are consequently governed by the same principles of law.

7. When indorsed, the note becomes an order by the indorser upon the maker to pay the indorsee.

—The indorser is, as it were, the drawer, the maker the acceptor, and the indorsee the payee.

—Most of the rules applicable to bills of exchange equally affect promissory notes.

8. The same as those concerning bills of exchange when they relate:

(1) To the indication of the payee;

(2) The time and place of payment;

(3) The expression of value;

(4) The liability of the parties;

(5) Negotiation by indorsement or delivery;

(6) Presentment and payment;

(7) Protest for non-payment and notice, etc., which provisions carry the note through most all it phases.

— Promissory notes perform as great a part in the business world as bills of exchange, and perhaps a greater; for of the two forms of negotiable paper, they are the most in use.

— A promissory note differs from a mere acknowledgment of a debt without any promise to pay, as when the debtor gives his creditor an I. O. U.

—A note by two or more makers may be either joint, or joint and several.

9. A note signed by more than one person, and beginning "we promise," etc., is a joint note only.

10. A joint and several note usually expresses that the makers jointly and severally promise. But a note signed by more than one person, and beginning "I promise," etc., is several as well as joint.

11. No precise words of contract are essential in a promissory note, provided they amount in a legal effect to a promise to pay.

12. A promissory note may be written upon any kind of paper, and with any substance that will leave a permanent mark; hence, a note written in pencil is just as good and valid as one written with ink.

13. No, they are not necessary, for a negotiable note imports a consideration.—The better practice, however, is to write them as expressing consideration. Upon action brought for the recovery of the amount of a promissory note made for value received, the holder of such a note need not prove value given.

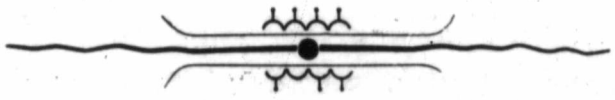
—Although it has already been explained when speaking of bills of exchange, yet I think it desirable to repeat here, that one who places his name on the back of a note as an indorser thereby enters into an undertaking with his assignee, that is, the party to whom he transfers the note, as well as other parties into whose hands the note may come, that he will pay it if the maker does not, unless he protects himself by making his indorsement "without recourse."

14. A party simply receiving and passing a note while under a blank indorsement, and without putting his name to it, assumes no responsibility in relation to it.

15. The holder or indorsee of a note has a right of action against every one whose name appears on the same, whether as maker or indorser.

16. He must present the note promptly at maturity, and demand payment.

17. If payment is refused, he should protest and give notice of protest to the indorsers, and a failure to do so will discharge the indorsers from liability.



QUESTIONS.

1. What is a promissory note?
2. What is necessary to render it negotiable?
3. Can the promise be conditional?
4. By whom must it be signed?
5. What are the maker's obligations?
6. How is the party to whom the promise is made?
7. What is the effect of indorsement upon the note?
8. What rules govern promissory notes?
9. What is a joint note?
10. What is a joint and several note?
11. Are there precise words for a note?
12. Must the note be written in ink?
13. Are the words "value received" necessary?
14. What responsibility does the indorser assume?
15. Against whom has the holder a right of action?
16. When must he present the note for payment?
17. In default of payment, what should the indorser do?

CHAPTER IX.

CHEQUES.

1. A cheque is a bill of exchange drawn on a bank, payable on demand—or, a cheque is a written order upon a bank or banker for the payment of money.

2. It may be made payable to a particular person, or to order, or to bearer.

3. It is negotiable in the same manner as bills of exchange and promissory notes.

4. They are payable on presentment.

5. No, they need not be presented for acceptance apart from payment, for the bank or banker is bound to pay at any time if they have funds of the drawer on deposit.

6. If accepted, the holder acquires a direct action against the bank or banker, without prejudice to his claim against the drawer, either upon the cheque in case of refusal to pay by the bank or banker and without protest, or for the debt it represents.

—In the latter case, after returning it to the drawer with reasonable diligence.

7. No, a cheque is not a payment until it has been cashed. If the cheque be received from any other party than the drawer, the holder may in like manner return it to such party, or he may recover from the parties whose names it bears.

8. Cheques should be drawn to order to guard against loss and theft, and at the same time it acts as a receipt of the payee.

9. In paying a forged cheque the loss falls on the bank, which is bound to know the signature of its own depositors, provided the drawer gives notice in writing of such forgery within one year after he has acquired notice of the same.

10. The differences between them are: 1. That cheques are always drawn upon a bank or banker; 2. that they are payable on presentment, without days of grace; 3. that they are not required to be presented for acceptance, but only for payment.

—The drawer and indorser, if a dishonored cheque, are entitled to notice of dishonor, as in the case of our inland bill of exchange.

11. Cheques are not due until presented for payment, and can be negotiated at any time previous to that.

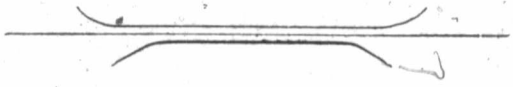
12. They should be presented as soon as possible.

13. If the cheque be not presented for payment within a reasonable time, and the bank should fail between the delivery of the cheque and such presentment, the drawer or indorser will be discharged to the extent of the loss he suffers thereby.

—The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by :—

1st. Countermand of payment ;

2nd. Notice of the customer's death.



QUESTIONS.

1. What is a cheque?
2. To whom is it made payable?
3. Is it negotiable?
4. When are cheques payable?
5. Must they be presented for acceptance?
6. What rights does acceptance confer?
7. Will a cheque amount to payment?
8. Should cheques, be drawn to order?
9. In paying a forged cheque, on whom does the loss fall?
10. What are the differences between cheques and bills of exchange?
11. When are cheques due?
12. When should cheques be presented for payment?
13. What will be the result of neglect to present within reasonable time?

N.B.—Paragraphs commencing with a DASH should not be committed to memory.

FORMS

PROMISSORY NOTES.

GENERAL FORM.

$..... Place,...Date.

.....Days (or months) after date, I promise to pay A. B. (or bearer or order) the sum of.....Dollars (with interest at the rate of..... per cent. per annum, from date or maturity) for value received.

C. D.

ANOTHER FORM.

$..... Place,...Date.

.....Days (or months) after date, I promise to pay to A. B. or bearer (or order) the sum of.....Dollars, for value received.

A. D.

PROMISSORY NOTES.

ANOTHER FORM.

$\$$_____ *Place,...Date.*

On the _____ day of _____ next, I promise to pay to A. B. (or order) the sum of _____ for value received.

C. D.

ON DEMAND.

$\$$_____ *Place,...Date.*

On demand, I promise to pay to A. B. (or bearer or order) the sum of _____ Dollars, for value received.

C. D.

JOINT
PROMISSORY NOTE.

*$*_____ *Place,··· Date.*

_____ *days (or months) after date, we promise to pay A. B. (or order) the sum of* _____ *Dollars, for value received.*

C. Dunn,
F. Jones.

JOINT AND SEVERAL
PROMISSORY NOTE.

*$*_____ *Place,··· Date.*

_____ *days (or months) after date, we jointly and severally promise to pay to the order of* _____ *the sum of* _____ *Dollars, for value received.*

C. Dunn,
F. Jones.

PROMISSORY NOTE.

PAYABLE AT A PARTICULAR PLACE.

Place,...Date.

.....*days (or months) after date,. I (or we, or we jointly and severally) promise to pay to the order of A. B., at the*.....*Bank in*.....*(or at his office),*

.....*Dollars, with interest, etc., for value received.*

CHECK FORMS.

$\$$..... *Place,···Date.*

A. B. pay to P. E., or bearer. (or order)

.....*Dollars.*

D R.

$\$$..... *Place,···Date.*

Bank, pay to P. E. or order

.....*Dollars.*

D. R.

BILL OF EXCHANGE.

GENERAL FORM.

$\$$..... *Place,···Date.*

.....*days (or month) after sight (or date), pay to C., or order* .....*Dollars, value received (on account of* .....*or, and charge to the account of).*

To B., at.....

A.

BILL OF EXCHANGE.

ANOTHER FORM.

$500.00 *Place,··· Date.*

Sixty days after date (or sight) pay to P. E., or order, Five Hundred Dollars, and charge the same to the account of .....

To D. E., (at) .....

D. R.

ANOTHER FORM.

$ ..... *Place,··· Date.*

..... *after* ..... *for value received, pay to the order of the* ..... *Bank the sum of* ..... *Dollars,* $\frac{}{100}$

To .....

FOREIGN BILL OF EXCHANGE.

FIRST OF EXCHANGE

No. .....

Exchange for

£ ..... **Stg.** ..... 18 .

..... *days after sight of this* **FIRST** *of Exchange (second and third of same tenor and date unpaid), pay to the order of* .....

.....

Sterling Value received, and charge the same with or without further advice to account of

To .....

.....

SECOND OF EXCHANGE

No. .....

Exchange for

£ ..... **Stg.** 18

..... *days after sight of this* **SECOND** *of Exchange (first and third of same tenor and date unpaid), pay to the order of* .....

.....

Sterling Value received, and charge the same with or without further advice to account of

To .....

.....

FORMS OF INDORSEMENT.

BLANK:

George Smith.

IN FULL:

Pay to W. Fuller or order.

Henry Burns.

QUALIFIED—1st FORM:

Pay to George Main or order, without recourse.

.....

QUALIFIED—2nd FORM:

Pay to John Briggs or order.

M. Pierce, Agent.

RESTRICTIVE:

Pay to F. Sells only.

P. McDonald.

CONTENTS.

INDEX.