

BUSINESS LAW | CAF3

“MERCANTILE LAW”

CHAPTER 01 TO 10

Topic Wise Past Papers with Solutions

UPDATED UPTO SPRING-2020 ATTEMPT

Updated as per Revised Syllabus & Book by ICAP

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Chapter 01 | Introduction to the legal System

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| 1 | (b) What is a delegated legislation? State one disadvantage of a delegated legislation. (02) | Q.1(b)
(S-20) |
| 2 | Specify Pakistan's system of government and identify Senate's role in the legislation process. (05) | Q.1
(A-18) |
| 3 | (a) Briefly describe how delegated legislation takes place and also describe how control is exercised over delegated legislation. (04)
(b) (b) What is the process of legislation in case of a money bill when National Assembly is in session? (02) | Q.1
(S-18) |
| 4 | Briefly describe the process of legislation in case of a money bill when:
(a) National assembly is in session
(b) National assembly is not in session (5) | Q.1
A.(16) |
| 5 | Identify the basis of legal system and explain the main sources of law in Pakistan. (5) | Q.1
S.(16) |
| 6 | What do you understand by delegated legislation? Give two advantages and disadvantages of such legislation. (5) | Q.1
S.(15) |
| 7 | Briefly differentiate between 'Statute' and an 'Ordinance'. List down any four purposes of an 'Act of Parliament'. (6) | Q.2
S.(14) |
| 8 | Distinguish between civil law and criminal law giving two examples of each (6) | Q.2(a)
A.(12) |
| 9 | How is a law promulgated when national assembly is not in session? Is such law in any way different from an act of parliament? What is its tenure? (5) | Q.2
A.(11) |

Chapter 02 | Introduction to the law of contract

- 1** Respond to the following independent scenarios, under the provisions of the Contract Act, 1872: Q.3(c)
(S-20)
 Batool offered to sell her flat to Saqib for Rs. 4,200,000. Saqib accepted the offer and sent a cheque of Rs. 1,500,000 with a stipulation to pay the balance in 24 equal monthly instalments of Rs. 112,500 each. Explain whether it is a valid contract. (03)
- 2** Respond to the following scenarios, under the provisions of Contract Act, 1872: Q.1(b)(ii)
(S-19)
 Ahmed being interested in purchasing Adil's DHA property sent him this letter on 01 March 2019, "I have heard that you are selling your DHA property. I am very much interested in purchasing it. Will you please consider selling the same to me? What is the highest price you have been offered so far?" Adil replied, "The highest quote for the property till now is Rs. 35 million." Ahmed replied, "I agree to buy your DHA property for Rs. 36 million." Subsequently, Adil received an offer from Hamid quoting Rs. 38 million for the said property. What will be Adil's liability towards Ahmed if he wishes to make the sale to Hamid?
- 3** On 3 September 2018 Saleem offered, by a letter, to sell his laptop to Ghazi for Rs. 50,000. Ghazi received the letter on 5 September 2018. Q.4(b)(i)(ii)
(A-18)
 On 6 September 2018 Ghazi posted the letter of acceptance to Saleem. The letter reached Saleem on 8 September 2018.
 Saleem wrote a letter of revocation of his offer and posted it to Ghazi on 5 September 2018. The letter reached Ghazi on 7 September 2018.
 Required:
 Under the provisions of the Contract Act, 1872 briefly describe:
 (i) When the communication of the offer and acceptance and the revocation of the offer was completed as against Saleem and Ghazi under the above circumstances. (2.5)
 (ii) Whether a binding contract was created between Saleem and Ghazi. (2.5)
- 4** Under the provisions of the Contract Act, 1872: Q.3(b)
A.(17)
 (i) List the essentials of a valid acceptance. (04)
- 5** Bader, who is the owner of Mashoor Associates, sent one of his employees Aftab in search of his pet horse which had been missing for 5 days. Bader advertised a reward of Rs. 20,000 in a newspaper for anyone who finds his missing horse. Aftab, unaware of the newspaper advertisement, traced the horse. Subsequently, on knowing about the reward Aftab claimed it from Bader Q.3(b)
S.(16)
 Under the provisions of the Contract Act, 1872 identify the type of offer which was made by Bader. Also state whether Aftab would be able to claim the amount of reward under the circumstances. (4)
- 6** Murad offered his car to Sanum for Rs. 400,000. Sanum accepted the offer and enclosed a pay order of Rs. 150,000 with a promise to pay the balance in monthly installments of Rs. 62,500 each. Q.3(b)
A.(15)

Under the provisions of the Contract Act, 1872 explain whether it is a valid contract.
(3)

- 7** In accordance with the contract entered into by Masoom and Mubarak, Masoom has offered to deliver 300 Rolex watches to Mubarak on 1 March 2015. Under the provisions of the Contract Act, 1872 advise Masoom about the conditions which must be satisfied for constituting a valid offer of performance. (3) Q.2(b)
S.(15)
- 8** How and on what grounds a proposal stands revoked? (4) Q.2(a)
S.(12)
- 9** What is the time limit after which a proposal cannot be revoked? (3) Q.2(b)
S.(12)
- 10** Define acceptance. When an acceptance is considered valid, under the Contract Act, 1872? (7) Q.7(a)
A.(11)

Chapter 03 | Lawful consideration, object and capacity of parties

- 1** Respond to the following independent scenarios, under the provisions of the Contract Act, 1872: Q.3(b)
S.(20)
 Muneer wanted to complete his bachelor's degree from Europe. His paternal uncle Furqan Butt had promised him to pay Rs. 2 million by way of a gift, at the time of his admission to a college in Europe. After getting admission to one of the renowned colleges in Europe, Muneer asked Furqan Butt to pay him Rs. 2 million as promised. However, Furqan Butt refused to pay the amount and Muneer filed a suit against Furqan Butt for the enforcement of his promise. Discuss the circumstances in which Muneer may be able to recover the amount from Furqan Butt. (04)
- 2** Mrs. Ikram was searching for a house for her family in city's posh locality. Her grandfather Nadeem had promised to pay her Rs. 1.0 million by way of a gift for the purchase of the house. After finalizing the deal with one of the estate brokers, Mrs. Ikram asked Nadeem to pay her Rs. 1.0 million as promised. Nadeem, however, refused to pay the amount. Mrs. Ikram filed a suit against her grandfather Nadeem for the enforcement of the promise made by him. Q.3(b)
A.(16)
 Under the provisions of the Contract Act, 1872 advise under what circumstances Mrs. Ikram would be able to recover the amount from Nadeem. (4)
- 3** In case of each of the following situations, state the conditions, as specified under the Contract Act, 1872 which must be fulfilled to make a binding contract. Q.3(a)
S.(14)
 (i) In February 2014, Raheel promised to pay Rs. 300,000 to Sameer against a debt of Rs. 500,000 which was due for payment in March 2010. (03)
 (ii) Shazia promised to pay Rs. 100,000 to her brother Rauf on account of his University fees for three years. (03)
- 4** Tariq promised to pay Tahir for his services whatever amount Tariq might think reasonable. Tahir is now dissatisfied with the amount paid by Tariq. Explain whether Tahir can sue Tariq. (4) Q.3(b)
A.(12)
- 5** A was badly in need of money and offered to sell his motorcycle worth Rs. 50,000 to B for Rs. 10,000. B accepted the offer but before the motorcycle could be delivered, A received another offer for Rs. 35,000 and sold the motorcycle. A refused to carry out the contract with B on the ground of inadequacy of consideration. Is A liable to B for damages? (3) Q.3(c)
A.(11)
- 6** Describe the circumstances under which an agreement made without consideration is considered valid and binding under the Contract Act, 1872. (7) Q.2
A.(09)

- 7 Naeem was a treasury manager in Raheel Associates (RA). Naeem robbed Rs. 100,000 cash from the business. Raheel, the owner of the business, instituted legal proceedings against Naeem. Naeem agreed to return the cash and Raheel agreed to withdraw the proceedings against him. Naeem fulfilled his part of the promise. Under the provisions of the Contract Act, 1872 explain whether Raheel is bound to withdraw the proceedings against Naeem. (02) Q.2(b)
S.(20)
- 8 What is an agreement? When is an agreement considered to be void? State the circumstances under which the object of an agreement under which the object of an agreement will be considered illegal. (5) Q.2(a)
S.(10)
- 9 Respond to the following scenarios, under the provisions of the Contract Act, 1872: Shoab, aged 15, is the son of a billionaire businessman, Ijaz Munsif. Last month Shoab drove his father's 2018 Model BMW to a vintage car exhibition arranged by Volkswagen Club of Pakistan. At the exhibition he saw a vintage Mercedes-Benz and entered into a contract with the seller for the purchase of the car. The seller, knowing Ijaz Munsif's status, delivered the car to Shoab at his house. The seller requested for payment for the car but Shoab refused to pay. The seller is now requesting for full payment by Ijaz Munsif. Discuss whether the seller would succeed in recovering the payment from Shoab or Ijaz Munsif. (05) Q.3(a)
A.(19)
- 10 Under the provisions of the Contract Act, 1872 'Every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind.' Describe the circumstances in which a person may not be able to enter into a contract, despite meeting the above conditions. (04) Q.2(a)
S.(17)

Chapter 04 | Free Consent and void agreements

- 1** Respond to the following scenarios, under the provisions of the Contract Act, 1872: Q.3(b,c)
 (b) A.(19)
 Haroon was engaged to be married to Ghazala. Haroon wanted to establish his own business and therefore he entered into a contract with Ghazala for providing him all her jewellery and apartment by way of a gift and in return Haroon agreed to give her a small share in business profit. After some time, Ghazala filed a suit against Haroon, requesting for setting aside the gift deed as it was not made with her free will. Discuss whether Ghazala would succeed in her contention. (04)
- (c)
 Sultan bought electronic appliances worth Rs. 700,000 from Zameer on thirty days' credit. At the time of purchase, Sultan knew that he was in insolvent circumstances. Discuss the validity of the contract. (03)
- 2** Mughal and Dawood are trading in rice. Dawood entered into a contract with Mughal for the purchase of 50 tons of rice. Dawood had private information of change in prices which would have affected Mughal's willingness to enter into the contract. When Mughal, through his own resources, came to know about the prices, he accused Dawood of fraud and repudiated the contract. Q.2(a)
A.(18)
 Under the provisions of the Contract Act, 1872 explain whether Mughal is justified in repudiating the contract.
- 3** Ghaffar purchased a piece of land from Sharif who is an engineer by profession. During the discussion prior to the purchase, Sharif had told Ghaffar that in his opinion, the land would be able to support 2,500 mango trees. However, only 2300 trees could eventually be planted on the land. Q.3(a)
A.(17)
 Under the provisions of the Contract Act, 1872 discuss whether Ghaffar can claim damages on the grounds of fraud. (03)
- 4** Jamal threatened Rafia to murder her son Atif if she did not sell her house to Mujahid. Rafia did as she was told. Under the provisions of the Contract Act, 1872 comment on the validity of the above contract. (02) Q.2(b)
S.(17)
- 5** Shafiq bought Abad's motorcycle factory in Faisalabad on Abad's representation that fifty thousand motorcycles are assembled at his factory annually. Shafiq later found that the factory has a capacity to manufacture thirty five thousand motorcycles only per annum. Shafiq now wants to rescind the contract on the ground that his consent was obtained by misrepresentation. Q.2(a)
S.(16)
 Under the provisions of the Contract Act, 1872 list the circumstances under which Shafiq may not be able to rescind the contract. (5)
- 6** Under the provisions of the Contract Act, 1872 describe the following: Q.2
 (i) Undue influence (06) A.(14)
 (ii) Fraud (6)
- 7** In the light of Contract Act, 1872, explain the difference between coercion and undue Q.2

- influence. (6) S.(13)
- 8** Karim bought a textile mill from Laeeq on his assurance and a certificate from Registrar that the mill and its assets were free from any encumbrance. Later, Karim received a notice for payment of mortgage dues and found that the certificate of Registrar was forged by Laeeq. What rights are available to Karim under the Contract Act, 1872? (4) Q.3(a)
A.(12)
- 9** Distinguish between fraud and misrepresentation. (5) Q.4(a)
A.(11)
- 10** Zaheer, an accountant in Abid's company, embezzled and absconded with Rs. 5 million. Abid obtained a promissory note from his wife, Bint-e-Aslam, for the said amount when he informed her that her husband would be arrested against the charge and his name would appear in the newspapers. Can Bint-e-Aslam avoid the contract? Discuss in the light of the Contract Act, 1872. (3) Q.3(a)
S.(11)
- 11** Explain the following as described under the Contract Act, 1872.
Undue influence (4) Q.5(a)
A.(10)
- 12** What constitutes fraud under the provisions of Contract Act 1872? (4) Q.3(b)
S.(10)
- 13** Identify the situations in which the consent is said to be free. List the various modes in which a contract may be discharged under the provisions of Contract Act, 1872 (5) Q.5(b)
S.(10)
- 14** On 1 July 2018 Basit agreed to buy 500 grams of silver from Taimure after two months at a price of Rs. 65 per gram. On the due date the price of silver was Rs. 62 per gram. Under the provisions of the Contract Act, 1872 discuss the validity of the above contract if both Basit and Taimure had an intention to settle the transaction by paying the difference between the contract price and the market price without making any delivery. Q.4(c)
A.(18)
- 15** Until recently Mansoor and Arif were independently engaged in the business of selling sweets at Multan railway station. Mansoor incurred a loss due to competition. Arif, in view of his friendship with Mansoor, agreed to move his business to the old city area. They reached an agreement that Arif would not engage in any competing business with Mansoor. It was also agreed that in case of a breach, none of them would have recourse to a court of law for the enforcement of their rights. Subsequently, due to economic downturn, Arif in addition to the old city area has also started to sell sweets at Multan railway station. Mansoor, in order to restrain Arif from selling sweets has filed a suit against him. Under the provisions of the Contract Act, 1872 analyze the above situation and explain the following:
 (i) Whether Arif is justified in starting sweets business at Multan railway station. (02)
 (ii) What would be your answer in (i) above, if Mansoor had bought the goodwill of Arif's business. (03)
 (iii) Whether Mansoor is justified in filing a suit in the court of law. (02)
 (iv) What would be your answer in (iii) above, if both Arif and Mansoor had agreed to refer their disputes to arbitration and not to the court of law. (02)

- 16** In view of the provisions of Contract Act, 1872 explain the general rule “Agreement in restraint of legal proceedings is void”. State the exceptions to the above rule. (8) Q.8(a)
A.(13)
- 17** Bari, a cashier in a departmental store, embezzled cash from the store. Mohsin, the owner of the store, instituted proceedings against Bari. Bari agreed to return the cash and Mohsin agreed to drop the proceedings against him. Bari fulfilled his part of the promise. Explain whether Mohsin is bound under the provisions of Contract Act, 1872 to withdraw the case against Bari. (2) Q.8(b)
A.(13)

Chapter 05 | Performance of a contract

- 1 What is meant by 'Assignment of contracts' under the Contract Act, 1872? State any four rules subject to which a contract may be assigned by act of parties. (05) Q.2(c) S.(20)
- 2 Briefly explain five rules regarding performance of reciprocal promises under the provisions of Contract Act, 1872. Q.1(a) S.(19)
- 3 Following is the statement of sums payable by Nisar to Mairaj on 4 March 2017:
Date of invoice Rupees Remarks Q.3(c) A.(17)
- | Date of invoice | Rupees | Remarks |
|-----------------|---------|----------------------|
| 01/01/2016 | 200,000 | Guaranteed by Imran. |
| 08/06/2016 | 150,000 | |
| | 350,000 | |
- Nisar sent a cheque for Rs. 100,000 on 5 March 2017. As there were no instructions from Nisar, Mairaj adjusted the payment against the amount of Rs. 150,000. The guarantor (Imran) objected to such appropriation and claimed that adjustment should be made in the order of the date of invoices.
Under the provisions of the Contract Act, 1872 discuss whether the objection of Imran is justified. (03)
- 4 Faheem, Saleem and Jameel jointly borrowed Rs. 50 million for a business project from a common friend Kamal. They jointly promised to repay the borrowed amount. Under the provisions of the Contract Act, 1872 comment on the following: Q.3 S.(17)
- (a) In the absence of express agreement, what would be the rights and liabilities of joint promisors? Also explain their rights and liabilities if Kamal releases Jameel from the joint liability. (06)
- (b) How the liability would devolve in case of death of one or more of the joint promisors. (02)
- 5 Baqir and Qurban jointly borrowed a sum of Rs. 600,000 from Atif and Saleem. In the light of the provisions of the Contract Act, 1872 briefly explain the following: Q.10(b) S.(14)
- (i) On the date of payment, Baqir paid Rs. 600,000 to Atif which he accepted. Are Baqir and Qurban discharged from their liability?
- (ii) On due date, Baqir and Qurban defaulted in making the payment. Saleem, without informing Atif, filed a suit against Baqir and Qurban for the recovery of the amount due. Will Saleem succeed in his case? (05)
- 6 What do you understand by the term "reciprocal promises"? Q.4(a) S.(13)
Discuss the rule related to the order of performance of the reciprocal promises in accordance with Contract Act 1872 (03)
- 7 Saima and Nishat jointly own many exotic sets of bridal jewellery. Nageen borrowed a set from them for her wedding and agreed to return it after the wedding. In the absence of any Q.4(c) A.(11)

- agreement between them, to whom should Nageen return the jewellery? (3)
- 8** Discuss how should the above payment of Rs. 70,000 be applied under each of following independent circumstances, according to the provisions of the Contract Act, 1872: Q.3(b)
A.(11)
- (i) The following words were written on the back of the cheque: (20,000 + 50,000 = 70,000) (02)
- (ii) No instructions about appropriation of payment were given by Ubaid. Bilal did not make any appropriation either. (02)
- 9** Binyamin borrowed Rs. 1 million from Hatim and Tahir jointly and promised to repay the amount on March 1, 2011. With reference to the Contract Act, 1872, state who can claim performance in the following situations. Q.3(b)
S.(11)
- (i) Both Hatim and Tahir are alive on due date
- (ii) Hatim dies before due date
- (iii) Both Hatim and Tahir die before the due date (2)
- 10** Mujahid agreed to accept Rs. 300,000 from Adnan against a debt of Rs. 400,000 if Adnan pays within a week. Adnan did not tender the required amount within this period. Q.3(c)
S.(11)
- (i) What rights are available to Mujahid under the Contract Act, 1872?
- (ii) If Adnan tenders the said amount on the fifteenth day and Mujahid accepts it, what rights are available to Mujahid under the Contract Act, 1872? (5)
- 11** Briefly describe the rules specified in the Contract Act, 1872 in respect of the following. Q.5(a)
- (i) Time and place for performance where these have not been specified in the contract; (3) S.(11)
- (ii) Order of performance of reciprocal promises; and (2)
- (iii) Effect of release by promisee of one of the joint promisors. (2)
- 12** Maimar promised to manufacture and deliver to Nasir, remote-controlled toy helicopters of agreed specifications in first week of March 2011. Nasir in turn promised to pay for them by second week of March 2011. Maimar did not deliver the toys according to his promise. Should Nasir keep his promise and what remedy, if any, is available to him? (2) Q.5(b)
S.(11)
- 13** Sohail and Afaq lent Rs 2.0 million to Mohsin, Laila and Faizan jointly. On due date Laila became insolvent. Without informing Sohail, Afaq wants Mohsin to repay the full amount to him. Under the provisions of Contract Act 1872 explain: Q.3(a)
S.(10)
- (i) Whether Mohsin can be compelled to pay the full amount to Afaq.
- (ii) What rights are available to Mohsin, if he repays the full amount. (5)
- 14** Mehboob, a promisor and Saulat, a promisee, entered into a valid contract. However, when Mehboob made an offer of performance, Saulat refused to accept the same. Q.5(a)
A.(09)
- Briefly state the rights and responsibility of Mehboob against such refusal. Also state the essentials of a valid offer of performance under the provisions of Contract Act, 1872. (5)
- 15** What are the essential requisites of a valid offer of performance? What is the effect of refusal by the promisee to accept tender of goods and money, from the promisor? (7) Q.7(a)
A.(12)

Chapter 06 | Discharge of a contract and remedies for breach of contract

- 1** Respond to the following independent scenarios, under the provisions of the Contract Act, 1872 Q.3(d)
S.(20)

Imran Traders entered into a one-year contract with Minhas Oils Limited for the supply of gravels for their extraction project in Badin at a fixed price of Rs. 30,000 per dumper. Six months after the contract, the diesel prices increased sharply, making it non-profitable for Imran Traders to continue the supply at the agreed price. Therefore, they terminated the contract on the ground of impossibility of performance. Describe whether the contract is discharged in the above situation. (04)
- 2** (b) Respond to the following scenarios, under the provisions of Contract Act, 1872: Q.1(b)(i)
S.(19)

(i) On 11 February 2019, Isfandyar agreed to sell his house to Javed for Rs. 15 million. On 19 February 2019, Javed came to know that Isfandyar has finalized a deal for the same house with Jenny. Discuss the option(s), if any, available to Javed.
- 3** Under the provisions of the Contract Act, 1872: Q.2(b)(i)
A.(18)

(i) List any five circumstances in which the parties to the contract are not absolved from the performance of their contractual obligations on the ground of supervening impossibility.
- 4** (a) Golden Foods (GF) agreed to supply 2,500 cans to Riaz Grocery Stores (RGS). According to the agreement, the date of delivery was 31 August 2017. However, on the due date GF refused to supply the cans. Q.1
A.(17)

Under the provisions of the Contract Act, 1872 discuss the rights of RGS in the above situation assuming that time was the essence of the contract. (03)

(b) What would be your answer to (a) above, if GF supplied the cans on 12 September 2017 and RGS accepted the performance; but suffered a loss on account of delayed supply? (02)
- 5** What is meant by discharge of a contract? Briefly describe the modes of discharging a contract by mutual agreement under the provisions of the Contract Act, 1872. (8) Q.3(a)
A.(15)
- 6** Lalchi Traders agreed to supply cotton yarn to Farzi Textile Limited at a fixed price for one year. Three months after the formation of the contract the price of yarn increased sharply, making it commercially unviable for Lalchi Traders to continue the supply at the agreed price. Therefore, they terminated the contract on the ground of difficulty/impossibility of performance. Q.2(a)
S.(15)

Under the provisions of the Contract Act, 1872 briefly describe:

 - i) Whether the contract would be discharged under the above circumstances. (05)
 - ii) What would be your decision if Lalchi Traders were importing yarn and Government has imposed a ban on its import. (02)
- 7** Under the provision of Contract Act, 1872, list the various ways in which a contract may be discharged. Briefly describe the different situations whereby a contract is discharged by mutual agreement. (10) Q.8
S.(13)

- 8** In the light of the contract act, 1872 explain the term " Novation " . Also narrate the difference between novation and alteration. (3) Q.5(a)
S.(10)
- 9** Saleem entered into a contract for the purchase of 5 vehicles from Phony (Pvt.) Limited (PL) which were to be delivered in the month of February. Saleem also entered into another contract for onward sale of these vehicles to Jabbar Limited (JL). However, PL refused to deliver the vehicles as contracted. Saleem had to buy the vehicles from another supplier at an extra cost of Rs. 2 million for supplying these to JL. Saleem also had to pay compensation of Rs. 0.6 million to JL due to delay in supply. Under the provisions of the Contract Act, 1872 analyse the above situation and comment whether Saleem is entitled to receive any compensation from PL. (04) Q.2(a)
S.(18)
- 10** What do you understand by the terms 'Ordinary damages', 'Special damages' and 'Exemplary damages'? Briefly describe the rules relating to the award of each of the above types of damages under the Contract Act, 1872 (8) Q.2(b)
S.(16)
- 11** Describe the provisions of Contract Act, 1872 related to the following: Assessment of compensation for loss or damage caused by breach of contract. (5) Q.9(a)
S.(12)
- 12** Ramla borrowed Rs. 100,000 from Ovais for a period of three months and kept her jewellery with Ovais as a security. On due date, Ramla defaulted in repayment. In view of the provisions of Contract Act, 1872 describe the remedies available to Ovais under the circumstances. (4) Q.6(a)
A.(10)

Chapter 07 | Specific types of contracts

- 1** Mohsin acquired a piece of agricultural land in Moro, Sindh from a local landlord, Qasim Soomro, on a lease term of twenty years. The revenue payable by Qasim Soomro on his land to the Provincial Government was in arrears. As a result, the land was advertised for sale by the Provincial Government. Mohsin, in order to prevent the sale of land, paid the sum due by Qasim Soomro to the Provincial Government. Under the provisions of Contract Act, 1872 explain whether Mohsin can recover such amount from Qasim Soomro. (02)

Q.1(a)
S.(20)
- 2** Yasmin stayed at Hotel Fragrance, during the exhibition of her famous jewellery brand. After she left, the house-keeping staff found a precious branded ring from a drawer which was handed over to the hotel manager. Meanwhile, Ahmed who was staying at the hotel, stole the ring and escaped. Hotel manager tried to contact Yasmin but she had already proceeded on a year long tour at an unknown destination. Under the provisions of Contract Act, 1872 discuss what action(s) can be taken by the hotel management in this scenario and what would be their rights when the ring is recovered.

Q.3(a)
S.(19)
- 3** Under the provisions of the Contract Act, 1872:
(ii) Briefly describe various types of quasi-contracts. (05)

Q.2(b)
S.(18)
- 4** Under certain special conditions, obligations resembling those created by a contract are imposed by law although the parties have never entered into a contract. In view of the provisions of the Contract Act, 1872 describe the conditions which must be fulfilled for claiming the amount in each of the following cases:

(i) Baqir supplied a jacket to Sultan in order to save him from cold weather. Sultan who was a minor agreed to pay Rs. 2,000 for the jacket although its market price was Rs. 1,500. (03)

(ii) Rohi, who paid the electricity bill of Saulat without being asked, is now demanding payment from Saulat. (01)

(iii) (iii) Sami, a coolie picked up goods purchased by Nadia from supermarket and took them to her car. Nadia did not object to it. Sami demanded service charges from Nadia. (02)

Q.2(b)
A.(15)
- 5** Maya paid the electricity bill of her neighbor Wasi to avoid disconnection. Later, she claimed the amount of bill from Wasi. Explain whether Maya is entitled for the claim. (4)

Q.3(b)
S.(14)
- 6** Imran contracted with Yousuf for taking bricks to the second floor of Yousuf's under construction house. However, stairs to the second floor were blocked as Yousuf had dumped some construction materials on the stairs. Discuss the rights of Imran. (3)

Q.4(b)
S.(13)
- 7** Obligations of persons enjoying benefit under the quasi contracts. (5)

Q.9(b)
S.(12)
- 8** Omair did not pay rent of his shop for 3 months. Qasim, a mutual friend, with the good intention of mending the relationship between Omair and the landlord, paid the rent. After a year, Omair promised to repay Qasim. With reference to the relevant provisions of the

Q.7(b)
A.(11)

Contract Act, 1872 explain whether Qasim can enforce this promise. (3)

- 9** Explain the term “Quasi contract”. Briefly describe different types of relationships commonly referred to as quasi contracts under the Contract Act, 1872. (10) Q.2
A.(10)
- 10** Sami rented his house to Qurban for a period of one year at an agreed sum of Rs. 10,000 per month. After the first two months, Qurban defaulted in making payment of the rent. Baqir, a neighbor, being concerned with the strained relationship between Sami and Qurban, paid the rent with good intention. Subsequently, on Qurban’s refusal to reimburse the amount, Baqir filed a suit against him on the grounds that he made the payment to Sami which Qurban was legally bound to make and being a quasi contract Baqir is entitled to the reimbursement. Explain whether Baqir is justified in his suit. (4) Q.4(c)
A.(09)
- 11** Zubair agrees to construct a bungalow for Ubaid for Rs. 20 million on the condition that payment will only be made after Muneer, an architect, certifies that the bungalow has been constructed in accordance with the layout plan. Under the provisions of the Contract Act, 1872 describe the nature and validity of the above contract. Q.2(c)
A.(18)
- 12** Vazir said to Saulat, “I will buy speed boats worth Rs. 10,000,000 from you, if you obtain the licence for me to operate the boats at Clifton beach”. Saulat agreed and applied for the licence and deposited Rs. 100,000 as processing fee. However, before the issuance of licence, the city government imposed ban on the issuance of new licences. Saulat wants Vazir to buy the speed boats as he had made necessary efforts to arrange for the licence. However, Vazir refuses to buy the speed boats from Saulat. Under the Contract Act, 1872 identify the type of contract between Vazir and Saulat. Q.2(c)
S.(17)
- 13** Two wrestlers Goga and Sheeda agreed to play a wrestling match on the condition that if any of them would fail to appear for the match, he would have to pay Rs. 5,000 to the other party. The winner was to receive Rs. 20,000 out of the sale proceeds of the tickets. Goga failed to appear in the match and Sheeda sued him for Rs. 5,000. Goga however, refused to pay claiming that being wagering in nature, the contract is not enforceable by law. Under the provisions of the Contract Act, 1872 describe whether Sheeda can recover the amount from Goga. (3) Q.3(a)
A.(14)
- 14** Under the provisions of the Contract Act, 1872 what do you understand by the term ‘Contingent Contract’? (5) Q.10(a)
S.(14)
- 15** Asim agreed to construct a bungalow for Ali at a cost of Rs. 50 million. However, it was agreed that payment would only be made on completion of the project. Is this a contingent contract under the Contract Act, 1872? Give reasons. Also list the requisite characteristics of a contingent contract. Asim agreed to construct a bungalow for Ali at a cost of Rs. 50 million. Q.5(b)
A.(09)
However, it was agreed that payment would only be made on completion of the project. Is this a contingent contract under the Contract Act, 1872? Give reasons. Also list the

requisite characteristics of a contingent contract. (3)

- 16** Respond to the following scenarios, under the provisions of the Contract Act, 1872: Q.3(d)
 Majid and Soomro went to a money lender. Majid said to the money lender, 'Let Soomro A.(19)
 have a loan of Rs. 50,000, I ensure that you will be paid'. Identify and describe the type of
 contract and state Majid's responsibility in the contract. (03)
- 17** Salim gave a loan of Rs. 100,000 to Ahmed carrying a mark-up of 10% per annum. Amir and Q.3(b)
 Rehan agreed to act as Ahmed's sureties. In the light of Contract Act, 1872 determine, S.(19)
 along with reasons, how much each surety would be liable (in Rupees) in the following
 independent scenarios:
 (i) Ahmed defaulted and Salim being aware of weak financial position of Rehan, asked
 Amir and Rehan to pay 75% and 25% of the default respectively. (02)
 (ii) Salim without discussing with Rehan released Amir from the suretyship. Ahmed
 defaulted and Salim asked Rehan to pay the entire amount.
- 18** Mujeeb obtained a generator on lease for a period of six years from Munaf at an annual Q.4(a)
 rent of Rs. 120,000. Fareed executed a contract of guarantee in favour of Munaf A.(18)
 guaranteeing due payment of rent by Mujeeb. In the third year, Mujeeb defaulted in
 payment. Munaf sued Fareed and got a decree. Fareed, thereafter, gave a notice to Munaf
 revoking his guarantee for the remaining period of lease.
 Under the provisions of the Contract Act, 1872 identify the nature of Fareed's guarantee
 and explain whether Fareed would be discharged under the above circumstances.
- 19** Under the provisions of the Contract Act, 1872 analyse and comment on the following Q.3
 situations: S.(18)
 a) Abid has obtained a loan of Rs. 800,000 from Saqib. Loan was given on the surety of
 Munib, Hamid and Suleman with maximum limits of Rs. 150,000, Rs. 250,000 and Rs.
 400,000 respectively. Abid repaid Rs. 200,000 and defaulted. Comment and compute
 the amount payable by each surety. (03)
 b) (b) Shafiq obtained a loan from Qasim on the surety of Anwar. Qasim also obtained a
 charge over Shafiq's car at the time of disbursement of loan. However, Anwar was
 unaware of this security. Qasim gave up the charge over the car and Shafiq defaulted.
 Comment on the position of Anwar. (03)
- 20** Under the provisions of the Contract Act, 1872: Q.3(b)
 (iii) explain the term 'right of subrogation'. (03) A.(17)
- 21** Bunny extended a credit of Rs. 500,000 to Sohail on the surety of Majid and Rahat. On the Q.3(a)
 date of payment, Sohail defaulted and Majid settled the debt. S.(16)
 Under the provisions of the Contract Act, 1872 briefly describe the rights available to Majid
 and Rahat against Sohail and Bunny and also between themselves. (8)
- 22** Basit and Rahim go into a shop. Basit says to the shopkeeper, 'Let him (Rahim) have the Q.3(b)

- goods and if he does not pay you, I will'. S.(15)
 Under the provisions of the Contract Act, 1872 identify and describe:
- (i) The type of the above contract and whether Basit would be liable in case of Rahim's default. (04)
- (ii) What would be your answer, if Basit said to the shopkeeper, 'Let him (Rahim) have the goods, I will see you are paid'. (03)
- 23** What is a contract of guarantee as described in the Contract Act, 1872? What may be regarded as a sufficient consideration for surety under such a contract? (5) Q.3(a)
A.(13)
- 24** In view of the Contract Act, 1872, explain what a contract of indemnity is. When does the liability of the promisor under such contract commence? What damages/costs/sums is a promisee entitled to recover from the promisor under such contract? (7) Q.7(b)
S.(13)
- 25** Faiz had sold goods on credit to Gulzar for Rs. 5 million on guarantee of Haseeb. Gulzar has also mortgaged his shop as a security against the above amount. Haseeb was unaware of this mortgage and honored his guarantee when Gulzar failed to make the payment. What rights are available to Haseeb under the Contract Act, 1872? (4) Q.8(a)
S.(12)
- 26** When and how a continuing guarantee is revoked? (6) Q.8(b)
S.(12)
- 27** Following is the statement on August 4, 2011 of sums payable by Ubaid on account of cloth supplied by Bilal:
- | Date of Transaction | Rupees | Remarks |
|---------------------|----------------|----------------------------------|
| 01/01/2008 | 37,000 | Time barred under Limitation Act |
| 02/03/2009 | 20,000 | |
| 30/08/2010 | 50,000 | Guaranteed by Waseem |
| 28/04/2011 | 63,000 | |
| | 170,000 | |
- Ubaid sent a cheque for Rs. 70,000 on August 5, 2011. There being no instructions from Ubaid Bilal adjusted the payment against the following:
- | Date of Transaction | Rupees |
|---------------------|--------|
| 01.01.2008 | 37,000 |
| 02.03.2009 | 20,000 |
| 28.04.2011 | 13,000 |
| | 70,000 |
- The guarantor (Wasim) objected to such appropriation and claimed that since the amount of Rs. 37,000 was time barred, it should not be adjusted and the full amount guaranteed by him should be fully adjusted. Is the objection of Wasim valid?
- 28** X appointed Y as his agent to collect rent and asked him to execute a fidelity bond in which Z was the surety. Some time after execution of bond, Z died. Y committed various acts of dishonesty after Z's death. Is Z's estate liable for loss caused to X? Explain. (3) Q.4(b)
A.(11)
- 29** Amin, Imran and Shahid agreed to act as sureties for Emmad to Saleem and agreed to pay Rs.20,000, Rs.30,000 and Rs.40,000 respectively in case of default by Emmad. On such Q.4(a)
S.(11)

surety Saleem lent Rs. 90,000 to Emmad. Emmad repaid Rs.6,000 only . Saleem called upon the sureties to pay the balance of Rs.84,000. Discuss keeping in view the Contract Act, 1872 how much should each surety pay. (3)

- 30** Explain the following as described under the Contract Act, 1872. Q.5(a)
 ii) Contract of guarantee (4) A.(10)
- 31** Raheel leased a building from Atif, on five years term, for a rent of Rs. 200,000 per annum and the payment was guaranteed by Kamal. Raheel defaulted in payment of the rent in the third year. Atif sued Kamal and recovered the rent from him. Later , Kamal gave a notice to Atif for revoking his guarantee for the remaining period of lease. Q.6(b)
 Under the Contract Act, 1872 discuss whether Kamal is justified in doing so. (4) A.(10)
- 32** Talat supplied computers to bilal on credit. He agreed not to sue bilal for a year at the request of Rafiq who agreed to indemnify that Talat. Bilal failed to make payment. Talat initiated legal proceedings for the recovery of the amount against Rafiq and Bilal. Rafiq pleaded that Talat was not entitled to sue before the year expires. In the light of the provisions of Contract Act 1872, state whether Rafiq justified in his contention. Also state if there are any exceptions to the general rule (3) Q.2(b)
S.(10)
- 33** Under the provisions of the Contract Act, 1872 define pledge. Also describe the conditions in which a pledge made by a non-owner is considered to be a valid pledge. (05) Q.2(b)
A.(19)
- 34** Under the provisions of the Contract Act, 1872: Q.2(b)(ii)
 (ii) Briefly describe the conditions in which a pledge made by a mercantile agent is considered to be a valid pledge. A.(18)
- 35** Danish while buying a smart phone from one of the retailers, found a satellite phone on the market floor. Danish in spite of considerable search could not find the owner of the phone. Q.1(b)
 He gave the phone to the retailer for safe custody till the real owner is found. Under the provisions of the Contract Act, 1872 explain the following: S.(17)
 (i) The type(s) of contractual relationships, if any, between Danish, the retailer and the real owner of the phone. (03)
- 36** Sobia borrowed Rs. 300,000 from Meher against a gold necklace as security. She agreed to return the amount to Meher after one month. However, on due date Sobia defaulted in payment. In view of the provisions of the Contract Act, 1872 identify and describe the type of contract Sobia and Meher entered into. Also enumerate the rights available to Sobia and Meher in the above circumstances. (8) Q.2(a)
A.(15)
- 37** Define a pledge, a pawnor and a pawnee. For what purposes can the pledged goods be retained? (5) Q.3(a)
S.(12)

- 38** Mash Bank granted a loan of Rs. 10 million to Tahir Limited against the pledge of shares of a listed company. Tahir Limited defaulted on repayment of the loan. The market value of the shares at the time of default was Rs. 9 million. What remedies are available to Mash Bank in the above situation? (4) Q.3(b)
S.(12)
- 39** Describe the following as defined under the Contract Act, 1872.
General lien of a banker (4) Q.3(b)
A.(09)

Chapter 08 | Agency

- 1** Respond to the following independent scenarios, under the provisions of the Contract Act, 1872: Q.3(a)
S.(20)
 Four Wheels Limited (FWL), misrepresenting themselves to be the agents of Big Motors (BM), persuaded Motor Manufacturers (MM) to sell them 10 luxury Jeeps customised for BM. Discuss FWL's liability under the above situation. (05)
- 2** Fauzia is working as a sales girl for a pottery store, owned by Mirza Baig, in a famous mall. Fauzia, in the absence of Mirza Baig, often displays her own pottery items on the shelves and uses her employer's time, resources and facilities to sell her own items. Recently, on a surprise visit to the store, Mirza Baig caught Fauzia selling her own items in the store. Upon investigation, it was also revealed that on certain instances Fauzia had sold Mirza Baig's pottery wares at a higher rate than recommended and pocketed the difference. Q.2(a)
A.(19)
 Under the provisions of the Contract Act, 1872 identify the nature of contractual relationship between Fauzia and Mirza Baig. Discuss the duties breached by Fauzia and the rights available to Mirza Baig under the above circumstances. (05)
- 3** (b) Respond to the following scenarios, under the provisions of Contract Act, 1872: Q.1(b)(iii)(iv)
S.(19)
 (i) Noman rented his house to Ahsan under a contract terminable on three months' notice. Noman's wife without discussing with Noman, sent a termination notice to Ahsan. When Noman came to know of the situation, he ratified the act of sending of notice to Ahsan. Discuss whether the notice given by Noman's wife is valid. (02)
 (ii) While attending a seminar, Khizar told a group of people on his table that he is the agent of Lucky. Lucky smiled considering it a joke. Later, Moiz who was sitting on the table sold security cameras and surveillance system to Khizar on credit believing him to be agent of Lucky. Comment on whether a contract of agency is established between Khizar and Lucky. (02)
- 4** Under the Contract Act, 1872 state an agent's responsibility in case he appoints a sub-agent without having the principal's authority. (02) Q.3(C)
S.(19)
- 5** Under the provisions of the Contract Act, 1872: Q.2(b)
S.(18)
 (i) Describe co-agent (02)
- 6** Under the provisions of the Contract Act, 1872 analyse the following situations and comment on the type and validity of the contracts: Q.1(c)
S.(18)
 (i) Arif is the sole proprietor and deals in sale of product X. On 1 January 2018, Arif entered into two months' contract with Abbas for the promotion and sale of product X on commission basis. On 4 February 2018, Arif died in a car accident. Abbas came to know about it on 15 February 2018. However, Abbas continued selling the product as per the contract. (03)
- 7** Kalim Real Estate (KRL) by misrepresenting themselves as an agent of Goofy Builders (GB), negotiated and entered into a contract with Tameer Associates for acquisition of Q.5(b)
A.(17)

- a piece of land for GB. Under the provisions of the Contract Act, 1872 explain the liability of KRL in the above situation. (05)
- 8** Zeshan is engaged in the business of buying and selling town houses in Lahore for the past many years and Inam is his agent. Due to the recent growth in construction business, Zeshan has decided to buy a small cement factory in the outskirts of Lahore and has asked Inam to negotiate the deal with the seller. Inam who has no technical knowledge of the cement industry has employed Saqib for his assistance. Under the provisions of the Contract Act, 1872 briefly describe:
 (i) the status of Saqib and whether Inam is justified in employing Saqib to perform his work. (03)
 (ii) Saqib's responsibility towards Inam and Zeshan. (02)
 (iii) Inam's responsibility for Saqib's acts, if employed without Zeshan's authority. (02) Q.3(a)
A.(16)
- 9** Under the provisions of the Contract Act, 1872 describe the circumstances in which an agent is presumed to be personally liable on the contract to third parties. (8) Q.3(a)
S.(15)
- 10** Arif was running a meat shop in Islamabad. He wanted to attend the wedding of his sister in Peshawar so he asked his friend, Moiz, to look after his shop during his absence. While managing the shop, Moiz noticed that the deep-freezer in the shop was not working properly. In order to save the meat from being spoiled, he sold it at a discount of 5% and had the freezer repaired the next morning. Looking at customers' positive response, Moiz continued to offer the meat at 5% discount. Upon his return from Peshawar, Arif, being unhappy with the situation, immediately discontinued the discount and now wants to recover the loss from Moiz. In view of the provisions of the Contract Act, 1872, analyze the above situation and explain the rights and liabilities of Arif against Moiz. (10) Q.3(b)
A.(14)
- 11** List how and by whom may an agency be terminated. Also describe the circumstances in which an agency cannot be terminated by the principal under the Contract Act, 1872. (10) Q.11
A.(13)
- 12** State the circumstances under which an agent is personally bound by the contract entered into by him on behalf of his principal. (10) Q.8
A.(12)
- 13** Briefly explain the term 'substituted agent' in the light of Contract Act, 1872. Is the (original) agent responsible to the principal for the acts of a substituted agent? (5) Q.7(b)
S.(12)
- 14** Narrate the duties of an agent towards his principal as specified in the Contract Act, 1872. (10) Q.8
A.(11)
- 15** Behram employed Thaseen to sell his car to Asad for Rs. 500,000 and invest the proceeds in Government Bonds. Thaseen invested Rs. 400,000 in Government Bonds and Rs. 100,000 in a blue chip company expecting a high return on such investment. Consequently, Behram lost Rs. 50,000 on the blue chip investment. With reference to the provisions of Contract Act, 1872 describe the rights and obligations, if any, of Thaseen under the circumstances. (4) Q.5(b)
A.(10)

- 16** Explain the following as described under Contract Act 1872. Q.4(a)
S.(10)
- (i) Agent's authority in an emergency.
 - (ii) Agent's right of retainer.
 - (iii) Agent's right of lien. (7)
- 17** Rais is employed by Sami, who has authorized Rais to purchase a generator from Atif who is apparent owner of the generator. Previously Rais was employed by Atif and was aware that the generator actually belonged to Atif and was aware that the generator actually belonged to Atif's brother. Sami is ignorant of that fact. Rais purchased the generator and Sami adjusted the price of the generator against debt owned by Atif. Under the provisions of Contract Act 1872 explain whether Sami can adjust the debt, as described above. (3) Q.4(b)
S.(10)
- 18** Explain the term ratification in relation to the contract of agency under the Contract Act, 1872. What is the effect of a valid ratification? (4) Q.4(a)
A.(09)
- 19** List down the conditions necessary for a valid ratification. (4) Q.4(b)
A.(09)

Chapter 09 | Partnership Act

- 1** (a) Respond to the following independent scenarios, under the provisions of the Partnership Act, 1932: Q.4
S.(20)
- (i) Moiz, Adeeb and Mumtaz were partners in a firm. Adeeb died. Moiz and Mumtaz continued the business and agreed to give 10% share of profits of business to the widow of Adeeb as annuity. Discuss whether Adeeb's widow would be deemed to be a partner in the firm. (02)
- (ii) Saima, Ahsan and Bari are partners in a law firm. Bari received an advance of Rs. 150,000 from one of firm's clients for defending a law suit. Bari, without proceeding on client's request and informing other partners about the receipt of the amount, utilised the money for personal use. Discuss the rights and liabilities of partners and that of the firm with regard to Bari's act. (06)
- (b) Under the provisions of the Partnership Act, 1932 list down any four restrictions imposed on the implied authority of a partner. (02)
- 2** (a) Q.4
A.(19)
Under the provisions of the Partnership Act, 1932 state the mandatory duties of partners which cannot be modified by an agreement amongst them. (03)
- (b)
Masoom, Rahul and Naila are partners in a trading firm. In 2016, they borrowed Rs. 500,000 from Ishtiaq for purchasing a shop in Multan. The loan was agreed to be repaid in two years' time. However, due to financial crises the loan could not be re-paid in time. For the purpose of settling the loan, Ishtiaq has offered Naila to admit his seventeen-year-old son Muneer to the partnership business.
Under the provisions of the Partnership Act, 1932 discuss whether Muneer can be admitted to the partnership business. State Muneer's rights and liabilities if he is so admitted. (04)
- (c)
Aftab, Rehan and Bali were partners in a law firm. The partnership deed, among other things, provided that the profits or losses of the firm would be shared equally among the partners. The firm continued its business for many years with Aftab receiving fifty percent share in the net profit and Rehan and Bali each sharing twenty-five percent of the net profit. Rehan and Bali never objected to this arrangement. Later on, partners developed some differences and Rehan and Bali filed a suit against Aftab for the recovery of their share in profits on the basis of partnership deed. Under the provisions of the Partnership Act, 1932 discuss whether Aftab would succeed in defending the suit filed against him by Rehan and Bali. (03)
- 3** (a) Respond to the following scenarios, under the provisions of Partnership Act, 1932: Q.4
S.(19)
- (i) Tehram, Rahil and Zain are partners in TRZ Associates. Zain, after obtaining mutual consent of all the partners, transferred his share of interest to Hatim. Hatim now wants to discuss the future business strategy of the firm with Tehram and Rahil. In this regard, he has asked the partners to provide him the firm's cash flow forecast so that he can determine firm's growth potential for the next five years. Comment on Hatim's entitlement to do the same. (03)
- (ii) Sahir and Sarim are lawyers who have entered into a partnership namely SS

Associates. Noreen approached SS Associates for a property dispute case. However, after seeing Sarim's capabilities, Noreen gave Rs. 250,000 to Sarim for investment in stocks and bonds at his discretion on her behalf. Sarim hid the said fact from Sahir and used the money to meet his personal needs. Subsequently, Noreen filed a suit on the firm for the recovery of Rs. 250,000. Reason out the validity of suit filed by Noreen. (02)

(iii) Faizan and Mehran are partners in a trading firm and have decided that no partner shall have the right to buy or sell goods beyond the value of Rs. 100,000 without consent of the other partner. Due to a sudden crisis in the market, prices of a product started falling sharply. Faizan without consulting Mehran sold all the perishable stock worth Rs. 950,000 in order to restrict the firm's loss. Can Mehran hold Faizan responsible for misconduct? (02)

(b) Define principle of 'holding out' under the Partnership Act, 1932 and state its exception, if any. (03)

- 4 a) Taqi, Saqib and Abrar are partners in a trading firm. By an agreement among themselves they decided that no partner shall have the authority to buy or sell goods beyond the limit of Rs. 20,000 without the consent of other partners. Ignorant of this restriction, Wajid sold goods worth Rs. 45,000 to Saqib who did not consult with the other partners. Q.5
A.(18)
- In view of the provisions of the Partnership Act, 1932 explain whether the firm and its partners are liable to Wajid under the above circumstances. (04)
- b) Bader and Yaseen established a distribution agency for supplying low cost medicines to hospitals. Yaseen, by way of a verbal agreement, allowed the agency to use his ancestral land for the business of the agency. Bader purchased a delivery van in his own name with partnership money. Bader wants to repay the amount to the partnership and therefore a receivable has been recorded in the partnership books. Under the provisions of the Partnership Act, 1932 describe whether the above assets would be considered to be the partnership property. (04)
- c) The sharing of profit is a prima facie evidence of partnership. Under the provisions of the Partnership Act, 1932 list any four circumstances in which a non-partner could benefit from the profits of a partnership.
- 5 a) Gul, Raza and Sami are partners in GRS Garments. Raza discovered that a supplier MP offers reasonable rates for consumables stores and put forth a resolution that MP should be included in the firm's list of suppliers. MP is owned by Gul and managed by his brother but Gul did not disclose this fact. When Raza and Sami became aware of the fact, they asked Gul to share with them the profits earned by MP on transactions with GRS. Q.4
S.(18)
- Under the provisions of the Partnership Act, 1932 discuss whether Gul is bound to share the profits as demanded by Raza and Sami. (2.5)
- b) In 2014, Majid and Ebad started a business of sale and repair of vehicles under the name of ME Motors (MEM). Majid sold one of the vehicles which came for repair to Zahid for Rs.10 million. Zahid on finding out that Majid did not have the legal title of the car sued MEM. Under the provisions of the Partnership Act, 1932 discuss who would be liable for damages in the above situation. (2.5)

- c) X has been carrying on textile business for the past few years. He has recently met Y who is an expert in textile designing. X and Y have agreed that Y would advise X on various technical issues and use his contacts for the benefit of the business. Y would be entitled to 35% of the profits of the business. However, Y will not be required to bring any capital and will not take part in the day to day affairs of the business. Under the provisions of the Partnership Act, 1932 analyse the above situation and advise whether partnership exists between X and Y. (05)
- 6 a) 'The sharing of profit is a prima facie evidence but not a conclusive test of partnership'. Under the provisions of the Partnership Act, 1932 list the circumstances in which receipt by a person of a share of profits of a business does not of itself make him a partner with the persons carrying on the business. (03) Q.4
A.(17)
- b) On 1 July 2016 Abid, Rizwan and Salman started a partnership business and contributed Rs. 200,000 each towards the firm's capital. They also agreed to share profits in equal proportion. Abid, in addition to his capital contribution, paid Rs.100,000 to one of the suppliers as a security deposit. All the partners are entitled to interest at the rate of 8% on their capital. However, during the year, the firm incurred a loss of Rs. 80,000. Under the provisions of the Partnership Act, 1932 state the amount of interest, if any, payable to each partner. (04)
- c) Wasim, Ahmed and Salman are partners in a firm. Salman died in a plane crash. Wasim and Ahmed agreed to admit Salman's minor son, Noman, to the benefits of the Partnership. Noman attained majority on 6 June 2016. He became aware of the fact that he had been admitted to the benefits of the Partnership on 16 July 2016. Being undecided about joining the firm as a partner, he preferred to wait for some time. On 10 January 2017, the firm suffered heavy losses due to a fire in one of its factories. Wasim and Ahmed informed Noman that on account of losses, his entire capital has been wiped off and he is required to contribute Rs. 100,000 to enable the firm to settle its liabilities. Under the provisions of the Partnership Act, 1932 analyse the above situation and advise whether Noman would be regarded as a partner in the firm. Also state his liabilities towards the losses, if any. (05)
- 7 a) Amjad enjoys a very good credit standing in the market. Kashif, owner of Kashif Electronics, represents Amjad as his partner. Kalim on the faith of such representation supplied laptops to Kashif Electronics on credit. Kashif defaulted and Kalim filed a suit for the recovery of the amount against both Amjad and Kashif. Under the provisions of the Partnership Act, 1932 analyse the above situation and explain whether Amjad would be liable to pay the outstanding amount to Kalim. (04) Q.4
S.(17)
- b) Asghar, Babar and Careem are carrying on agricultural business in partnership. They have agreed to share the profits in the ratio of 4:3:2 respectively. Careem is not liable for the losses of the firm. Under the provisions of the Partnership Act, 1932 analyse and comment on each of the following independent situations:
- (i) Asghar, who is responsible for procurement, has suggested to buy seeds and pesticides from Zubair Enterprises, a supplier of crop products, as the seeds and pesticides offered by him are of good quality and at a very reasonable price. However, Babar is not in agreement with Asghar. (03)
- (ii) In February 2017, the partnership incurred substantial losses due to heavy floods in

the area and the partnership assets are not sufficient to meet the firm's liabilities. A number of creditors have filed a suit for recovery of the amount from Careem. (03)

- 8** Raheel, Samina and Umair have agreed to constitute a partnership for carrying on a business of printing study text for CA students in Peshawar. Raheel wants to specify the rights and duties of partners in the partnership agreement so that these can be changed with mutual consent of all the partners whereas Samina and Umair do not consider it necessary and believe that the implied authority may be extended to bind the firm whenever required. Q.4(a)
A.(16)
- Under the provisions of the Partnership Act, 1932 list:
- (i) The general duties of partners which cannot be modified by an agreement amongst them. (03)
- (ii) The restrictions imposed on the implied authority of a partner in the absence of any usage or custom of trade. (04)
- 9** In the above partnership business, assume Umair is a minor who has been admitted to the benefits of the partnership with the consent of Raheel and Samina. Q.4(b)
A.(16)
- Under the provisions of the Partnership Act, 1932 list the rights and disabilities of Umair before attaining majority. (3)
- 10** Maqbool, Rofi and Sham are the partners in Zeeshan Builders (ZB), a firm engaged in the business of constructing industrial and residential projects in Balochistan. Sham is also the owner of a cottage industry in Quetta. Sham has obtained a long-term loan for his cottage industry from Dostana Bank Limited by transferring his interest in ZB to the bank by way of a mortgage. Under the provisions of the Partnership Act, 1932 describe the rights and disabilities, if any, of Dostana Bank Limited in the above circumstances. (6) Q.4(a)
S.(16)
- 11** In the above partnership business, Rofi intends to acquire a plot of land for the firm with his own money. However, he is not certain whether the plot would be considered as partnership property. Under the provisions of Partnership Act, 1932 advise Rofi as what is considered to be included in the partnership property and how it is to be applied. (4) Q.4(b)
S.(16)
- 12** Munaf, a sole proprietor, engaged in the business of selling cooking oil to wholesalers agreed to admit Lari in his business on the following terms: That Lari shall not bring any capital and shall not be liable for any losses of the firm. However, he shall be entitled to receive Rs. 150,000 on introducing any new client to the business, share 40% of the profits and have the right to exercise all the powers of a partner in the firm. Q.4(a)
A.(15)
- Analyze the above situation and advise whether a partnership is constituted between Munaf and Lari under the provisions of the Partnership Act, 1932. (5)
- 13** Meher, Abid, Rani and Azra were partners in Abid Associates, a firm of town planners and consultants. Bari Builders supply goods to Abid Associates on credit. Q.4(b)
A.(15)
- Abid died on 5 January 2015. Meher, Rani and Azra decided to continue the business in the old firm's name. However, neither the surviving partners nor the representative of Abid gave public notice to this effect. Due to insolvency of a major client, Abid Associates was facing difficulty in making payment to Bari Builders. When Bari Builders investigated the matter, they came to know about the death of Abid. They have now filed suits for the recovery of outstanding balance, severally against Abid's estate and Meher, as the credit

was extended on the faith of Abid and Meher.

In view of the provisions of the Partnership Act, 1932 explain whether Bari Builders are justified in filing the above suits and would they succeed in recovering the outstanding amount under the above circumstances. (5)

- 14** Nomi, Sultan and Behram have decided to establish a partnership business to run a departmental store. Under the provisions of the Partnership Act, 1932 advise them about their mutual rights and liabilities towards each other. (5) Q.4(a)
S.(15)
- 15** The above partnership business was started in January 2015. In March 2015 Behram received an overdraft of Rs. 100,000 from the partnership's bank. He informed the bank that the money would be used to construct a new cash counter in the departmental store. However, he used the money to pay for his wife's Dubai trip. Advise Nomi, Sultan and Behram about their rights and liabilities and that of the firm in relation to the above transaction. (5) Q.4(b)
S.(15)
- 16** Rustum, Mahmood and Wali are partners in a firm. Wali wants to admit his sixteen year old son Raghieb as a new partner. Under the provisions of the Partnership Act, 1932 can Raghieb be admitted to the partnership business? State the rights, liabilities and limitations of Raghieb, if he is admitted to the partnership business. (5) Q.4(a)
A.(14)
- 17** Sharing net profits usually creates a very strong inference that the parties have formed a partnership. But in certain situations, the fact that the profits are shared or the parties have agreed to share the profits will not by itself create a presumption that a partnership as intended. List such situations as given in the Partnership Act, 1932. (5) Q.4(b)
A.(14)
- 18** Under the provisions of the Partnership Act, 1932 briefly state what may be regarded as the property of the firm. (5) Q.4(a)
S.(14)
- 19** Patel, Bari and Sultan were partners in a firm of interior design. On 1 February 2014 Patel was adjudicated an insolvent by the Court. Under the provisions of Partnership Act, 1932 briefly describe whether or not Patel may be treated as a partner in the firm after adjudication. Also state the effects of such adjudication on Patel. (5) Q.4(b)
S.(14)
- 20** In view of the provisions of the Partnership Act, 1932 list down the restrictions imposed on the implied authority of a partner. (5) Q.4(c)
S.(14)
- 21** Aslam, Uzair and Imran are equal partners in a firm which is engaged in the business of supplying petroleum products in the local market. Uzair is not happy with the performance of Aslam and Imran and has reasons to believe that they are engaged in malpractices. Uzair wants to dissolve the firm while Aslam and Imran want to continue the business. Under the provisions of the Partnership Act, 1932 advise Uzair about various grounds on which a petition may be made to the Court for the dissolution of the firm. (10) Q.7
S.(14)
- 22** What is meant by 'Ratification' and 'Agency by Ratification'? List down any of the eight conditions which are required to be fulfilled for a valid ratification of an agency as described under the Contract Act, 1872. (10) Q.8
S.(14)

- 23** No suit can be instituted in any Court on behalf of a firm unless the firm is registered. In the light of the provisions of Partnership Act, 1932 narrate the procedure the partners of a firm should follow for its registration. (10) Q.4(a)
A.(13)
- 24** Atif, Raja and Nazir are partners in Buland Associates. Atif without informing Raja and Nazir sold one of Buland Associates prime property to his friend Tariq and embezzled the money received in consideration. In the light of the provisions of Partnership Act, 1932 advise the rights available to Raja and Nazir under the circumstances. (6) Q.4(b)
A.(13)
- 25** Marvi, Zahid and Ahmed were partners in a firm of Consultants. Marvi, without informing Zahid and Ahmed started her own business of fashion garments. Zahid and Ahmed on knowing the fact expelled Marvi from the partnership. Under the provisions of Partnership Act, 1932 briefly describe whether Zahid and Ahmed were justified in their act. Would Marvi be liable for the acts of partners or the firm after her expulsion from the partnership? (10) Q.7
A.(13)
- 26** What are the rights of a partner as regards the conduct of business? (6) Q.5(a)
S.(13)
- 27** Waseem and Xavier are partners in a trading business. Yaseen was admitted in the partnership firm for five years on payment of a premium. After two years of successful operations, the firm was dissolved. Yaseen claimed refund of premium paid by him on his admission as a partner. Is Yaseen entitled to such refund? If so, to what extent and if not, then under what circumstances? Answer in the context of the Partnership Act, 1932. (6) Q.5(b)
S.(13)
- 28** "An agreement in restraint of trade is void". State the exceptions to this rule as given in the Partnership Act, 1932. (6) Q.9(a)
S.(13)
- 29** A, B and C are partners in a firm sharing profits in the ratio of 4:3:2. They admitted D to the partnership on 1 January 2013. In the absence of any agreement, state how they will share future profits. (2) Q.9(b)
S.(13)
- 30** In view of the Partnership Act, 1932, briefly explain the meaning of 'Partnership at Will' and 'Particular Partnership'. (2) Q.9(c)
S.(13)
- 31** What is implied authority of a partner? What conditions should be met for the act of a partner to become binding on the firm? (4) Q.4(a)
A.(12)
- 32** Vaqas, Waqar and Yaseen are partners in a registered firm which is not at will. Yaseen wants to retire from the partnership. Advise him about his rights and liabilities in the event of his retirement and restrictions, if any imposed on him under the Partnership Act, 1932. (10) Q.9
A.(12)

- 33** A and B are partners in a barbeque business. They decided to sell their business along with its goodwill to Lahori Maza which is owned by C. Describe the rights of above parties under the Partnership Act, 1932 if A and B decide to carry on similar business and nothing is mentioned in this regard under the agreement. (5) Q.4(a)
S.(12)
- 34** Describe the liabilities of:
 (i) A partner for the acts of the firm. Q.10(a)
 (ii) The firm for wrongful acts of a partner. S.(12)
 (iii) The firm for misapplication of money or property by a partner. (8)
- 35** A and B were partners in an unregistered firm carrying on business of printing and stationery. The firm advanced Rs. 50,000 to C for supply of printing paper. Soon afterwards, the firm was dissolved. On division of assets of the partnership, this debt of Rs. 50,000 was allotted to A. Can A sue C to recover the amount? (2) Q.10(b)
S.(12)
- 36** Faiz, Ghani and Habib are partners in a trading business. They have incurred losses in the last two years of business and have agreed to dissolve the partnership. Habib is heavily indebted in his individual capacity and his personal assets are not enough to meet his obligation. Q.5
A.(11)
 State how the accounts of the firm and the private debts of Habib be settled, if the partnership agreement does not prescribe any mode of settlement of accounts upon dissolution. (7)
- 37** Uzair, Vaqar and Waheed are partners in a firm. Waheed wants to make his nephew Yawar who is 17 years old, a partner. Explain whether and under what conditions Yawar can join the partnership. What will be Yawar's rights and liabilities under the Partnership Act, 1932? (7) Q.6(a)
S.(11)
- 38** Kashif, Irfan and Shujaat are partners in a firm. Irfan bought a shop in his own name. He issued a cheque from the partnership account and debited his account with the purchase price. He rented out the shop and credited the receipts of rent in his capital account. Kashif has objected to this practice and asked Irfan to register the shop in the firm's name contending that the shop is partnership's property. Irfan disagrees. Q.6(b)
S.(11)
 Explain what constitutes partnership property under the Partnership Act, 1932 and whether the shop is partnership property or not. (7)
- 39** Aziz, Zohair and Ikram are partners in Moon Enterprises, an unregistered firm, engaged in trading business. Ikram contracted on behalf of the firm to supply two tons of sugar to Mohsin in special bags of eight kg each. However, Ikram packed the sugar in bags of ten kg each. Consequently, Mohsin accepted the sugar but refused to pay the full amount resulting in a loss of Rs. 52,000 to the firm. Q.7(a)
A.(10)
 In the light of the provisions of Partnership Act, 1932 explain the following:
 (i) Can Zohair file a suit against Ikram for the recovery of the loss as it was caused due to Ikram's mistake? (3)
 (ii) Can Moon Enterprises file a suit against Mohsin for the recovery of the full amount?(3)
- 40** Advice Aziz, Zohair and Ikram about the procedure they should follow for the registration of Moon Enterprises, as enumerated under the Partnership Act, 1932. (8) Q.7(b)
A.(10)

- 41** Rafiq, Bari and Furqan have decided to establish a partnership business for trading in medical equipments. In the absence of any express contracts, advise them of their mutual rights and liabilities under the provisions of the Partnership Act , 1932 (9) Q.7(a) S.(10)
- 42** Sameer, Fauzia and Sualat are partners in a firm. Fauzia transferred her interest in the firm absolutely to her son Adil. In the lights of the provisions of Partnership Act, 1932 would Adil be considered a new partner in the firm. Also describe the rights and restrictions of Adil in view of such transfer. (6) Q.7(b) S.(10)
- 43** Danish, a practicing lawyer, admitted Basit into partnership by persuading him that his practice earns R.s 20.0 million annually. Later however, it was revealed that the firm is not earning not more than R.s 8.0 million per annum. Under the provisions of Partnership Act, 1932 describe the rights available to Basit under the circumstances. (5) Q.7(c) S.(10)
- 44** The authority of a partner to bind the firm is called “Implied Authority.” List the acts which cannot be exercised by a partner as his implied authority. (4) Q.6(a) A.(09)
- 45** Karim, Luqman and Noman were partners in a firm. They admitted Moeen as a partner on the payment of a premium, for a fixed term of five years. However, the firm was dissolved after three years. Consequently, Moeen claimed repayment of the proportionate part of his premium. The other partners refused to return the premium. You are required to explain whether Moeen is entitled to claim the refund under the provisions of Partnership Act, 1932. (3)
- 46** Obaid, Raheel and Pervez were partners in a firm. On September 1, 2009 Pervez retired from the partnership. The remaining partners continued the business, with the property of the firm, without final settlement of accounts as between them and Pervez. In the light of the Partnership Act, 1932, describe the rights of Pervez, in the above circumstances. (4) Q.6(c) A.(09)
- 47** Sohail, Talha, Umair & Co., a partnership concern is engaged in trading of cloth. The firm bought a plot of land from Shining Star Limited. After some time Talha and Umair on their own account bought three more plots of land in the same locality and made good profits. Sohail on becoming aware of such profits sued Talha and Umair for his share. Under the provisions of Partnership Act 1932, explain whether Talha and Umair are liable to share such profits with Sohail. (4) Q.6(d) A.(09)

Chapter 10 | Negotiable instruments Act

- 1 (a)** List any five situations in which an alteration made to the negotiable instrument does not render the instrument void. (05) Q.5
S.(20)
- (b)** Rahat received a cheque of Rs. 75,000 from one of his customers, Jahanara. Rahat however, failed to present the cheque for payment within a reasonable time of its issue and the bank failed in the meanwhile. Jahanara suffered a damage of Rs. 40,000 through the delay in presenting the cheque. In view of the provisions of the Negotiable Instruments Act, 1881 discuss whether Rahat can recover the money in the above situation. (03)
- (c)** Sultan drew a bill of exchange on Amjad and made it payable to Bukhari or order. On maturity another person of the same name wrongfully acquired possession of the bill and presented it to Amjad for payment. Amjad after making due inquiries and being satisfied that the presenter is Bukhari, made payment on the bill. Under the provisions of the Negotiable Instruments Act, 1881 discuss whether Amjad is discharged from his liability. (02)
- 2** Q.5
A.(19)
- (a)** Respond to the following independent situations, under the provisions of the Negotiable Instruments Act, 1881:
- (ii) Samad drew a cheque which was payable to 'Munaf or order'. Saleem after forging Munaf's endorsement on the cheque received payment from the banker. Discuss whether the banker would be liable on the cheque to Samad. (02)
- (b)** Under the provisions of the Negotiable Instruments Act, 1881 briefly describe:
- (i) When an acceptance is said to be qualified (03)
- (ii) Payment in due course (02)
- 3 (a)** Under the provisions of Negotiable Instruments Act, 1881 define 'Holder in due course' and 'Acceptor for honour'. (05) Q.2
S.(19)
- 4 (a)** In view of the provisions of the Negotiable Instruments Act, 1881 comment on the type and validity of each of the following instruments signed by Rahul: Q.3
A.(18)
- (i) Nauman please pay to Mahreen Rs. 100,000.
- (ii) Nauman, I shall be highly obliged if you make it convenient to pay Rs. 100,000 to Mahreen.
- (iii) I acknowledge myself to be indebted to Nauman in Rs. 100,000 to be paid on demand, for value received.
- (iv) I promise to pay Mahreen or order Rs. 100,000 six days after Nauman's death. (04)
- (b)** Under the provisions of the Negotiable Instruments Act, 1881 discuss the effect(s) of

- the words 'Not negotiable' on a cheque crossed specially. (03)
- 5** Under the provisions of the Negotiable Instruments Act, 1881 briefly explain: Q.5
 (a) The term endorsement. (03) S.(18)
- 6** a) 'Any material alteration to a negotiable instrument renders the instrument void'. List the Q.2
 exceptions to this rule. (06) A.(17)
 b) 'The holder of a cheque has no right of action against the banker for refusing to pay the
 cheque because there is no privity of contract between the holder and the banker.'
 Under the provisions of Negotiable Instruments Act, 1881 discuss the exceptions under
 which holder becomes entitled to enforce payment from the banker. (04)
- 7** a) What do you understand by the term 'Drawee in case of need' under the provisions of Q.5
 the Negotiable Instruments Act, 1881? (02) S.(17)
 b) Aamna has received a bearer cheque from her uncle Shoaib as a gift. Shoaib's title to the
 cheque was defective and Aamna after receiving the cheque indorsed it to her landlord
 on account of rent. Under the Negotiable Instruments Act, 1881 explain whether the
 landlord would be able to recover the amount of the cheque. (03)
 c) Under the Negotiable Instruments Act, 1881 briefly describe the circumstances in which
 acceptance of a bill of exchange would be regarded as a 'qualified acceptance'. Also state
 the liability, if any, of the prior parties to the instrument in case of qualified acceptance.
 (05)
- 8** Under the provisions of the Negotiable Instruments Act, 1881 describe the following: Q.5(a)
 (i) Acceptor for honor A.(16)
 (ii) Material alteration (5)
- 9** Under the provisions of the Negotiable Instruments Act, 1881 briefly describe the terms Q.5(a)
 'Negotiation' and 'Endorsement'. (4) S.(16)
- 10** Sarwat owes Rs. 500,000 to Zain. The amount is payable on 11 August 2016. Sarwat Q.5(b)
 intends to issue a negotiable instrument to Zain in satisfaction of her debt. S.(16)
 Under the provisions of the Negotiable Instruments Act, 1881 advise Sarwat about the type
 of negotiable instrument which may be issued to Zain, assuming that Sarwat does not want
 to involve a third party in making the payment. Also prepare a draft of the said instrument.
 (You may make assumptions wherever you consider necessary) (4)
- 11** Under the provisions of Negotiable Instruments Act, 1881 describe the purpose of crossing Q.5(c)
 a cheque. Also state whether a cheque can be crossed specially more than once. S.(16)
- 12** Q.5(a)
 A.(15)
- (b) Identify the type of above negotiable instrument and briefly describe its essential
 characteristics under the provisions of the Negotiable Instruments Act, 1881.

Specimen of a Negotiable Instrument

Rs. 100,000/- only Please pay on demand to Tauseef or to his order the sum of Rupees One Hundred Thousand only, for value received. Accepted Laila To Laila Busy Road Karachi	Date: September 12, 2015 Sd/- _____ Laeeq Saddar Karachi
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- 13** Salma drew a cheque for Rs.50,000 in favour of her landlord Zoab. The cheque was not presented for payment by Zoab within a reasonable time of its issue. Salma suffered damage of Rs. 30,000 through the delay because the bank failed. Under the provisions of the Negotiable Instruments Act, 1881 describe whether Zoab can recover the money in the above circumstances. (03) Q.5(b)
A.(15)
- 14** Under the provisions of the Negotiable Instruments Act, 1881 identify the person(s) who may cross the cheque after its issue and the manner in which it may be crossed. (5) Q.5(a)
S.(15)
- 15** What do you understand by the terms 'Holder', 'Holder in due course' and 'Payment in due course' under the Negotiable Instruments Act, 1881? (8) Q.5(a)
A.(14)
- 16** Samina sold her car to Faiz for Rs. 800,000. Faiz draws a bill of exchange stating "Pay to Samina or her order a sum of eight hundred thousand rupees". In figures the amount is stated as Rs. 80,000. Under the Negotiable Instruments Act, 1881 explain whether it is a valid bill. (2) Q.5(b)
A.(14)
- 17** Saqi draws a bill payable to Zubair or order. Zubair indorses it to Habib without adding the word 'or order' or any equivalent words thereof. Advise whether Habib may further negotiate the instrument. (2) Q.9(b)
S.(14)
- 18** What do you understand by the term "Cheque" as specified in the Negotiable Instruments Act, 1881? When is a cheque deemed to be crossed generally? (6) Q.9(a)
A.(13)
- 19** State the conditions when a cheque crossed generally is considered to be paid by a banker in due course or out of due course. Describe the rights of the banker when payment of a cheque crossed generally is made in due course and the consequences of payment out of due course under the Negotiable Instruments Act, 1881. (4) Q.9(b)
A.(13)
- 20** Explain the term "promissory note" in accordance with Negotiable Instruments Act, 1881. Also state the liabilities of its maker. (6) Q.4(b)
A.(12)
- 21** Any material alteration to a negotiable instrument renders the instrument void. What are the exceptions to this rule? (7) Q.10(a)
A.(12)
- 22** A drew a bill payable by B which is due after three months. It passed through several hands before X became its holder. On presentation by X, B refused to pay the bill. Discuss the Q.10b
A.(12)

rights of X. (3)

- 23** Explain the following terms as given in the Negotiable Instrument Act, 1881: Q.4(b)
 (i) payment in due course S.(12)
 (ii) holder
 (iii) holder in due course (8)
- 24** State the presumptions that are applicable to all negotiable instruments unless the contrary is proved. (7) Q.11(a)
 S.(12)
- 25** A draws a bill on B who accepts it without consideration. A indorses the bill to C for valuable consideration. On due date C presents the bill to B for payment but B contends absence of consideration and refuses to pay. Is B's contention justified? (3) Q.11(b)
 S.(12)
- 26** Can an overdue instrument be negotiated? Explain. (5) Q.6(a)
 A.(11)
- 27** What liabilities does the drawer of a bill of exchange incur under the Negotiable Instruments Act, 1881? (3) Q.11(a)
 A.(11)
- 28** When must a bank refuse payment against a cheque? (7) Q.11(b)
 A.(11)
- 29** Salman is an agent of Malik and has an authority to draw bills of exchange on Malik's behalf. Ghani who had supplied goods to Malik on credit approached Salman to accept a bill of exchange for the amount due. Salman signed the bill of exchange. On due date, Malik did not honor the bill. Discuss the rights and liabilities of Salman under the Negotiable Instruments Act, 1881. (3) Q.7(a)
 S.(11)
- 30** Based on the provisions of Negotiable Instruments Act, 1881 briefly explain whether the following are promissory notes or not. Q.9(a)
 A.(10)
 (i) I promise to pay Rahat on demand Rs. 5,000 at my convenience.
 (ii) On demand, I promise to pay Sonu or order Rs. 5,000, for value received.
 (iii) I promise to pay Adil or order Rs. 5,000 and 500 shares of Sigma Limited.
 (iv) I promise to pay Mahi or order Rs. 5,000 with interest calculated at quarterly rests.
 (v) I promise to pay you or your successors on demand Rs. 10,000.
 (vi) I promise to pay Rafi or order Rs. 10,000 seven days after Salik's death.
 (vii) I am liable to pay Ahmad Rs. 5,000. (7)
- 31** Haris drew a bill of exchange on Idress which was payable three months after sight. The bill passed several hands before Ali became its holder. Ali presented the bill to Idress for payment who dishonored the bill by non-payment. Fouad, in turn, paid the bill to Ali without any consideration. Q.9(b)
 A.(10)
 Under the Negotiable Instruments Act, 1881 enumerate the rights available to Fouad on the bill and the conditions he must fulfill to enforce such rights. Haris drew a bill of exchange on Idress which was payable three months after sight. The bill passed several hands before Ali became its holder. Ali presented the bill to Idress for payment who dishonored the bill by non-payment. Fouad, in turn, paid the bill to Ali without any consideration.
 Under the Negotiable Instruments Act, 1881 enumerate the rights available to Fouad on

the bill and the conditions he must fulfill to enforce such rights. (5)

- 32** Explain the term “Cheque” as defined in the Negotiable Instruments Act, 1881 and list down the essential elements of a valid cheque. (7) Q.7(a)
A.(09)
- 33** Who can cross the cheque after its issue? Also describe the manner in which it can be crossed. (4) Q.7(b)
A.(09)
- 34** Wali made a promissory note in favor of Yaseen for an amount of Rs. 50,000. Wali died and the note was found by Wali’s brother among his papers which he delivered to Yaseen. Yaseen sued Wali’s legal representative. In light of provisions of Negotiable Instruments Act, 1881 you are required to explain whether Yaseen can recover amount. (2) Q.7(c)
A.(09)

Suggested Answers

(Source: ICAP Website)

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Chapter 01 | Introduction to the legal System

1 Delegated Legislation:

In Delegated Legislation power is given to an Executive (a minister or public body to make subordinate or delegated legislation for specified purposes only).

Disadvantages of delegated legislation:

The main criticism of delegated legislation is that it takes law making away from the democratically elected members. Power to make law is given to unelected civil

2 System of government:

Pakistan has a Federal Parliamentary System of government, with the President as the Head of State and Prime Minister as Head of Government. The Federal Legislature is a bicameral Majlis-e-Shoora (Parliament), composed of the President, National Assembly (Lower House) and Senate (Upper House).

Role of Senate:

The role of the Senate is to approve all statutes passed by the National Assembly with the exception of money bills.

3 (a) In delegated legislation power is given to an executive (a minister or public body to make subordinate or delegated legislation) for specified purpose only. For example, local authorities are given statutory powers to make bye-laws which apply within a specific locality.

Control over delegated legislation is exercised in following ways:

- (i) Parliament exercises control over delegated legislation by restricting or defining power to make rules
- (ii) Rules made under delegated power to move legislation may be challenged in the courts on the grounds of being ultra vires.

(b) Legislation in case of a money bill when National assembly is in session:

A money bill shall originate in the National Assembly and after it has been passed by the Assembly it shall, without being transmitted to the Senate, be presented to the President for assent.

4 (i) Legislation in case of a money bill when National assembly is in session:

A money bill shall originate in the National Assembly and after it has been passed by the Assembly it shall, without being transmitted to the Senate, be presented to the President for assent.

(ii) Legislation in case of a money bill when National assembly is not in session:

- When National assembly is not in session and President deems necessary to take immediate action, he has the power to issue an Ordinance.
- Such Ordinance promulgated thus, shall have the same force and effect as an Act of the parliament.
- However, the Ordinance shall stand repealed after 120 days if it is not presented or passed by the National assembly.

5 Basis of legal system in Pakistan:

The legal system in Pakistan is based on the Constitution of Pakistan 1973 as well as Islamic law (Sharia).

Main sources of law in Pakistan:

Following are the main sources of law in Pakistan:

(i) Legislation:

It is the law created by the Parliament of the country and other bodies to whom it has delegated authority.

(ii) Precedent:

Precedent is a judgment or decision of a superior Court which are binding on the subordinate Courts.

(iii) Custom:

Certain customs practices and beliefs are so vital and intrinsic part of a social and economic system that they are treated as if they were laws.

(iv) Agreement:

Parties in their agreement stipulate terms for themselves which constitute law for the contracting parties.

6 Delegated Legislation:

In Delegated Legislation power is given to an Executive (a minister or public body to make subordinate or delegated legislation for specified purposes only).

Advantages of delegated legislation:

- Time
Parliament does not have time to examine matters in detail
- Expert opinion
Much of the content of delegated legislation is technical and is better worked out in consultation with professional, commercial or industrial groups outside Parliament.
- Flexible
Delegated legislation is more flexible than an Act of Parliament. It is far simpler to amend a piece of delegated legislation than to amend an Act of Parliament.

Disadvantages of delegated legislation:

- The main criticism of delegated legislation is that it takes law making away from the democratically elected members. Power to make law is given to unelected civil servants and experts working under the supervision of a government minister.
- Because delegated legislation can be produced in large amounts the volume of such law making becomes unmanageable and it is impossible to keep up-to-date.

7 Statute:

The Act of Parliament is also termed as 'Statute'. It is the primary source of law and is made by the Parliament itself. Act begins as a bill and after passing through the National Assembly and Senate becomes law on the granting of assent of the President. Act is binding on everyone.

Ordinance:

When the National Assembly is not in session and the President deems necessity of an immediate law, he can promulgate Ordinance. The Ordinance has the same force and effect as an Act of Parliament. The Ordinance, if not presented or passed by the National Assembly within 4 months, stands repealed.

Purposes of Act of Parliament:

Following are the purposes of the Act of Parliament:

- (i) Create new law when none exists before.

- (ii) Consolidate existing law.
- (iii) Amend existing law.
- (iv) Cancel existing law.
- (v) Authorize taxation.
- (vi) Codify and clarify existing law

8 Civil law regulates the disputes in respect of rights and obligations between persons dealing with each other. The court does not punish the wrong doers but imposes a settlement, either by awarding damages or granting injunctions or other orders.

Examples of civil laws are:

- (i) company law
- (ii) revenue law
- (iii) commercial law
- (iv) constitutional law
- (v) family laws
- (vi) employment law

Criminal law is a body of law:

- defining offenses against the community at large;
- regulating how suspects are investigated, charged and tried and;
- Establishing punishments for convicted offenders. Criminal law deals with crimes such as murder, violence, terrorism, theft, robbery etc.

9 If the President deems necessary to take an immediate action, he has the power to promulgate an ordinance if the Senate or National Assembly is not in session. Such ordinances have the same force and effect as an act of the Parliament. The ordinance stands repealed after one hundred twenty days if it is not passed by the National Assembly or by National Assembly and Senate both as the case may be. However, National Assembly may extend it for another period of one hundred twenty days. Thereafter it will stand repealed.

Chapter 02 | Introduction to the law of contract

1 Acceptance must be absolute:

An acceptance should be unconditional assent by the offeree to all the terms of the offer. In this case, since the offer has been accepted with a variation it would be regarded as a qualified acceptance. Therefore, a contract between Batool and Saqib has not been formed.

However, if Batool accepts the counter offer made by Saqib then it would be a binding contract.

- 2 The first letter from Ahmed and Adil's response on it were merely 'asking for information' and 'providing information' respectively and not offer and acceptance. The second letter from Ahmed sent as a reply to Adil was itself an offer and not the acceptance of an offer. Since this offer had not been accepted by Adil, there is no binding contract between the parties. Accordingly, there is no liability if Adil sells his bungalow to Hamid.

3 Communication of offer, acceptance and revocation:

(i) Communication of offer was completed on 5 September 2018 i.e. when it came to the knowledge of Ghazi.

Communication of acceptance was completed as against Saleem when the letter was posted i.e. on 6 September 2018 and as against Ghazi it was completed when the letter of acceptance reached Saleem i.e. on 8 September 2018.

The communication of revocation of offer was completed as against Saleem on 5 September 2018 i.e. when the letter of revocation was posted, and as against Ghazi on 7 September 2018, when the letter of revocation was received by him.

(ii) Since Ghazi had posted his letter of acceptance on 6 September 2018 and revocation of offer was communicated to him on 7 September 2018, his acceptance was valid Saleem cannot revoke his offer after 6 September 2018, when the communication of acceptance was completed as against him. Therefore, a binding contract had been created between Saleem and Ghazi.

4 Essentials of Valid Offer

- acceptance must be absolute and unqualified;
- it must be communicated in writing or by word of mouth or by performance of some act;
- acceptance must be in the prescribed mode/reasonable mode;
- acceptance must be given within the time specified or within a reasonable time when no time is specified;
- Mere silence is not acceptance.
- It cannot be in the form of a negative confirmation.
- The acceptor should expressly accept the offer;
- acceptance must be given only by that person to whom the offer has been made;
- the acceptor must be aware of the proposal at the time of acceptance of the proposal;
- The acceptance must be given before the offer lapses or is withdrawn.

5 Offer and acceptance:

It is the case of a general offer as it was made to the public. A contract is made with the person who having the knowledge of the offer comes forward and acts according to the conditions of the offer.

However, under the given circumstances, Aftab cannot claim the amount of reward from Bader as there was lack of communication of the offer and Aftab did not know about the reward when he

found the missing horse. Aftab could have accepted the offer only when he knew about it because an offer accepted without its knowledge does not confer any legal rights on the acceptor.

6 Acceptance must be absolute:

An acceptance should be unconditional assent by the offeree to all the terms of the offer. In this case, since the offer has been accepted with a variation it would be regarded as a qualified acceptance.

Therefore, a contract between Murad and Sanum has not been formed.

However, if Murad accepts the counter offer made by Sanum then it would be a binding contract.

7 Condition of Valid Offer

In order to constitute a valid offer, Masoom must fulfill the following conditions:

- The offer must be unconditional;
- It must be made at a proper time and place, and under such circumstance that Mubarak may have a reasonable opportunity of ascertaining that Masoom is able and willing there and then to deliver 300

Rolex watches;

- Mubarak (the promisee) must have a reasonable opportunity of satisfying himself that the watches offered are the Rolex watches and are 300 in numbers which Masoom (the promisor) was bound by his promise to deliver.

8 Every offer/tender of valid performance must fulfill the following conditions:

(i) It must be unconditional.

(ii) It must be made:

- At a proper time.
- At a proper place.
- Under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(i) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of ascertaining that the thing being offered is the one which the promisor is bound to deliver. Effect of refusal to accept offer of performance: Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

9 A proposal is revoked –

- (i) by the communication of notice of revocation by the proposer to the other party
- (ii) by the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;
- (iii) by the failure of the acceptor to fulfill a condition precedent to acceptance; or
- (iv) by the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

10 A proposal cannot be revoked after the communication of its acceptance is complete as against the proposer i.e. when the acceptance is put in a course of transmission to the proposer so as to be out of the power of the acceptor.

- 11** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.
- (i) Acceptance must be absolute and unqualified.
 - (ii) It must be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner and not otherwise, but if he fails to do so he accepts the acceptance.
 - (iii) Acceptance must be made by the offeree i.e. by the person(s) to whom offer was made and only such person or a person with his authority must communicate the acceptance to the offeror.
 - (iv) Acceptance must be given within a reasonable time and before the offer lapses and/or is revoked.
 - (v) Acceptance must succeed the offer.

Chapter 03 | Lawful consideration, objects and capacity of parties

1 Completed gift/love and affection:

An agreement made without consideration is void. However, Muneer may claim the amount of Rs. 2 million from his uncle Furqan Butt, by proving either of the following two conditions.

- (i) gift
- (ii) love and affection

Completed gift:

In case of a gift it needs to be completed. The rule 'No consideration no contract' does not apply to completed gifts.

Love and affection:

An agreement made on account of natural love and affection without consideration will be valid if it is:

- expressed in writing,
- registered under the law,
- made on account of natural love and affection, and
- between parties standing in a near relation to each other.

However, in the given scenario, Furqan Butt only made a promise to pay Rs. 2 million by way of a gift and did not actually pay the amount. Similarly, the promise was not made in writing and was not registered, therefore, the promise cannot be enforced in both of the above circumstances and Muneer cannot recover anything from his uncle Furqan Butt.

2 Completed gift/love and affection:

An agreement made without consideration is void. However, Mrs. Ikram may claim the amount of Rs. 1.0 million from her grandfather Nadeem, by proving either of the following two conditions.

- (i) Gift
- (ii) love and affection

Completed gift:

In case of a gift it needs to be completed. The rule 'No consideration no contract' does not apply to completed gifts.

Love and affection:

An agreement made on account of natural love and affection without consideration will be valid if it is:

- Expressed in writing,
- Registered under the law,
- Made on account of natural love and affection, and
- Between parties standing in a near relation to each other.

However, in the given scenario, Nadeem only made a promise to pay Rs. 1.0 million by way of a gift and did not actually pay the amount. Similarly, the promise was not made in writing and was not registered, therefore, the promise cannot be enforced in both of the above circumstances and Mrs. Ikram cannot recover anything from her grandfather Nadeem.

3 (i) Agreement without consideration void:

In order to make it a binding contract, Raheel needs to make his promise in writing and sign it either by himself or by his agent generally or specially authorized in that behalf. In this case, Raheel must be the person against whom the liability might have been enforced by Sameer but for the law for the limitation of suits.

(ii) Agreement without consideration void:

To make it a binding contract, Shazia needs to express it in writing and get it registered under the law for the time being in force for the registration of documents. This agreement must be made on account of natural love and affection between the parties standing in near relation to each other.

4 Tahir's suit will not be admitted by the Court because if the performance of a promise is contingent upon the mere will and pleasure of the promisor, there is no contract. The rule of law is that "agreements, the meaning of which is not certain, or capable of being made certain, are void."

5 A is liable to B for damages as A had agreed to sell the motorcycle willingly; hence the contract is not void merely because the consideration is inadequate.

6 Validity of an agreement made without consideration

An agreement without consideration is considered valid in any of the following circumstances:

- (i) It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other.
- (ii) It is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do.
- (iii) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt which is barred by the law for the limitation of suits.
- (iv) Any gift which is actually made as between the donor and the donee.
- (v) No consideration is necessary to create an agency.
- (vi) Remission by the promisee of the performance of the promise. A creditor can agree to give up either the whole or part of his claim or may agree to extend time for the performance of the promise and no consideration is required for such an agreement.
- (vii) A promise to contribute to charity, though gratuitous, would be enforceable, provided the promisee on the faith of such promise undertakes a liability not exceeding the amount so promised.

7 The agreement between Naeem and Raheel is void as its object is unlawful. Raheel, therefore, is not bound to fulfil his part of the promise.

8 Agreement

Every promise and every set of promises, forming the consideration for each other, is an agreement.

An agreement not enforceable by law is said to be void.

Circumstances in which an object of an agreement is considered unlawful: The object of an agreement is unlawful when:

- (i) it is forbidden by law; or
- (ii) is of such a nature that, if permitted, it would defeat the provisions of any law; or
- (iii) is fraudulent; or
- (iv) involves or implies injury to the person or property of another; or
- (v) the court regards it as immoral, or opposed to public policy.

9 Contract with minor:

Shoaib, being a minor, lacks the capacity to enter into a legally binding contract with the seller. Therefore, Shoaib is not bound by the contract and the contract is void ab-initio.

A minor can only be bound by a contract, if he has been supplied with necessities suited to his condition in life. His liability in such a case would be limited to the extent of his property, if any.

In this case, the vintage car cannot be regarded as a necessary good. Therefore, the seller cannot enforce payment for the vintage car against Shoaib.

The seller can only claim for the return of his car through an order of restitution.

Similarly, Ijaz Munsif cannot be held liable for the price of the car which his son Shoaib bought. He would have been held liable if his son had either entered into a contract jointly with him or the contract was for the supply of necessities to Shoaib.

10 Disqualified Persons

Following persons are disqualified from entering into the contract though they are major and of sound mind:

(i) Alien enemies

If a war is declared with the enemy country then alien enemy of Pakistan can neither enter into a contract or be sued during the period of war.

(ii) Foreign sovereigns and ambassadors

As such persons have immunity. They have a right to enter into a contract but can claim the privilege of not being sued.

(iii) Convicts

A convict while under imprisonment is incapable of contracting.

(iv) Insolvent

A person declared as insolvent cannot enter into contract as his property is dealt with by official assignee or official receiver.

(v) Companies

A company is an artificial person and a contract entered into by a company is invalid if it is not within the powers granted by the Memorandum of Association.

Chapter 04 | Free Consent and void agreements

1 (b) Undue influence:

Ghazala may succeed to recover her jewellery and apartment from Haroon on the presumption of undue influence.

A contract is said to be induced by undue influence where the relation subsisting between the parties is such that one of the parties is in a position to dominate the will of the other and uses that position to obtain unfair advantage over the other.

Haroon in this case is a fiancé of Ghazala and is in a position to dominate her will.

When the consent to an agreement is caused by undue influence, the agreement is voidable at the option of the party whose consent is so caused. Therefore, the contract is voidable at the option of Ghazala.

The Court may set aside the contract either absolutely or, in case if Ghazala has received any benefit under the contract, upon such terms and conditions as the Court may seem just. The burden of prove that the above contract, which on the face of it appears to be unconscionable, was not induced by undue influence lies on Haroon, as he is the one who is in a position to dominate Ghazala's will.

(c) Fraud:

A promise made without any intention of performing it tantamount to fraud.

Therefore, in this case since Sultan had no intention of performing the contract, he committed a fraud and the contract is voidable at the option of Zameer.

2 Fraud:

No, Mughal is not justified in repudiating the contract. Dawood is not bound to disclose the information to Mughal as the relationship existing between them is not that of 'utmost good faith' (i.e. fiduciary relationship). Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless there is a duty to disclose such fact or where silence is equivalent to speech.

3 Fraud:

Sharif's statement that in his opinion the land could support 2,500 mango trees clearly indicated that he was not sure about it and was just giving an opinion.

Therefore, unless Ghaffar can show that the statement was made with the intention to deceive him, he cannot claim damages on the grounds of fraud.

4 The contract in the above situation is voidable at the option of Rafia as her consent is not free and has been obtained by coercion.

5 Shafiq may not be able to rescind the contract under the following circumstances:

- If Shafiq had the means of discovering the truth with ordinary diligence; or
- Abad's misrepresentation was not the basis for Shafiq's consent; or
- After becoming aware of the misrepresentation Shafiq may have taken benefit under the contract; or
- If an innocent third party had acquired for consideration and in good faith some interest in the property; or
- Shafiq and Abad cannot be restored to their original positions.

6 Undue Influence:

- (i) A contract is said to be induced by “undue influence” where the relation subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain unfair advantage over the other.
- (ii) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another.
 - Where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or
 - Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental distress or bodily distress.

Fraud:

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent with intent to deceive another party thereto or his agent, or to induce to enter into the contract.

- (i) The suggestion, as a fact of that which is not true, by one who does not believe it to be true;
- (ii) The active concealment of a fact by one having knowledge or belief of the fact;
- (iii) A promise made without any intention of performing it;
- (iv) Any other act fitted to deceive;
- (v) Any such act or omission as the law specially declares to be fraudulent.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is duty of the person keeping silence to speak, or unless his silence is in itself, equivalent to speech.

- 7
 - (i) The consent of the aggrieved party is obtained by committing or threatening to commit an act forbidden by (Pakistan Penal Code) PPC or detaining or threatening to detain some property unlawfully.
 - (ii) The consent of aggrieved party is affected from domination of the will of one person over another.
 - (iii) It involves the use of physical or violent force.
 - (iv) In undue influence, mental or moral influence is used to dominate the will of other.
 - (v) There is no presumption of coercion by law under any circumstances. The burden of proof rests on the aggrieved party. There is presumption of undue influence in the case of certain relationships. The burden of proof rests on the defendant.
 - (vi) In case of rescission, any benefit received by the aggrieved party has to be restored to the other party. The Court has discretion to direct the aggrieved party to restore the benefit whether in whole or in part or set aside the contract without any direction for refund of benefit.
 - (vii) The offending party exposes itself to criminal liability under PPC and also an action under Contract Act, 1872

8 The following are the rights of Karim:

- (i) When consent to an agreement is caused by fraud, the agreement is a contract voidable at the option of the party whose consent was so caused. Karim could therefore rescind contract. However, if Karim could have discovered the truth with ordinary diligence, then the contract is not voidable.
- (ii) If Karim thinks fit he can insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true.

9 The following are the points of distinction between the two:

- (i) Fraud implies an intention to deceive; it is deliberate or willful; whereas misrepresentation is innocent without any intention to deceive.
- (ii) Fraud is a civil wrong which entitles a party to claim damages in addition to the right of rescinding the contract. Misrepresentation gives the right to avoid the contract but damages cannot be claimed.
- (iii) (iii) In misrepresentation, if the aggrieved party had the means to discover the truth with ordinary diligence, it cannot avoid the contract. But in fraud, the contract is voidable even though the party defrauded had the means of discovering the truth with ordinary diligence.

10 No, Bint-e-Aslam cannot avoid the promissory note. It is not coercion as there was a proper basis for prosecution and such act is not forbidden by Pakistan Penal Code.

11 A contract is said to be induced by “undue influence” where the relation subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain unfair advantage over the other.

In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another ---

- where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or
- where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

12 Fraud

Fraud means acts committed by a party to a contract, or with his connivance, or by his agent with intent to deceive another party thereto or his agent, or to induce to enter into the contract and includes any of the following –

- (i) the suggestion, as a fact of that which is not true by one who does not believe it to be true;
- (ii) the active concealment of a fact by one having knowledge or belief of the fact;
- (iii) a promise made without any intention of performing it;
- (iv) any other act fitted to deceive;
- (v) any such act or omission as the law specially declares to be fraudulent.

13 Free Consent

Consent is said to be free when it is not caused by:

- (i) coercion, or
- (ii) undue influence, or
- (iii) fraud, or
- (iv) misrepresentation, or
- (v) mistake.

Various modes of discharge of contract:

Following are the various modes in which a contract may be discharged.

- (i) Discharge by agreement

- (ii) Discharge by operation of law
- (iii) Discharge by breach of contract
- (iv) Discharge by performance
- (v) Discharge by subsequent impossibility
- (vi) (vi) Discharge by lapse of time

14 The contract being wagering in nature, is not a valid contract. As both Basit and Taimure had no intention of giving or taking delivery of goods and were only interested in earning profit by way of fluctuations in silver prices.

15 (i) Agreement in restraint of trade:

Yes, Arif is justified in starting a sweets business at Multan railway station. As any agreement by which anyone is restricted from exercising a lawful profession, trade or business of any kind, is void to that extent.

(ii) Exception:

Arif in this case would not be justified to start similar business at Multan railway station.

An agreement which restrains the seller of a goodwill from carrying on a business is valid if all the following conditions are fulfilled:

- Such restriction must relate to a similar business.
- Such restriction must be within specified local limits.
- Such restriction must be for the time so long as the buyer or any person deriving title to the goodwill from him carries on a like business in the specified local limits.
- Such specified local limits must be reasonable to the Court having regard to the nature of the business.

(iii) Agreement in restraint of legal proceedings:

Yes, Mansoor is justified in filing a suit against Arif.

Every agreement, by which any party is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, is void to that extent. (iv) Exception: [S.28 of the Contract Act, 1872]

An agreement between Arif and Mansoor to refer to arbitration any dispute which may arise between them is not void. However, if Mansoor or Arif are not satisfied with the arbitration award, they cannot be restricted to go to the court of law. This right cannot be excluded by the agreement.

16 Agreement in restraint of legal proceedings is void:

Every agreement, by which any party thereto is restricted absolutely from enforcing his right under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1: Saving of contract to refer to arbitration dispute that may arise A contract shall not be rendered illegal by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2: Savings of contract to refer questions that have already arisen Similarly any contract in writing, shall not be rendered illegal, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for

the time being as to references to arbitration.

- 17** The agreement between Mohsin and Bari is void as its object is unlawful. Mohsin, therefore, is not bound to fulfill his part of the promise.

BLAW | RANA NAVEED

Chapter 05 | Performance of a contract

1 **Assignment of contracts:**

Assignment of contracts means transfer of contractual rights and liabilities to a third party.

Assignment by act of parties

Assignment by act of parties takes place when the parties to a contract themselves make the assignment. Such an assignment is subject to the following rules:

- (i) If it is a contractual obligation/right involving personal skill or ability than it cannot be assigned.
- (ii) If the contract expressly or impliedly provides that the contract shall be performed by the promisor only then such obligation cannot be assigned.
- (iii) (iii) If the contract does not expressly or impliedly provides that the contract shall be performed by the promisor only then the promisor or his representative may employ a competent person to perform such obligation but even than the promisor remains liable to the promisee for proper performance.
- (iv) By Novation the promisor may transfer his liability to a third party with the consent of the promisee and the transferee

2 Rules regarding performance of reciprocal promises under the Contract Act, 1872

(i) Simultaneous performance

When a contract consists of reciprocal promises to be simultaneously performed, the promisor need not perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

(ii) Order of performance

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they must be performed in that order, and where the order is not expressly fixed by the contract, they must be performed in that order which the nature of the transaction requires.

(iii) Preventing the performance

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

(iv) Mutual and dependent reciprocal promises

Where the performance of one party depends on the prior performance of the other party and party who is liable to perform first, fails to perform it, then such party cannot claim the performance from the other party and must make compensation to the other party for any loss which the other party may sustain by non-performance of the contract.

(v) Promise to do legal & illegal things

Where persons reciprocally promise, firstly, to do certain things which are legal, and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

3 Imran's objection is not valid. In the absence of any intimation from the debtor or circumstances indicating to which debt payment is to be applied, the creditor is free to use his discretion and apply it to any lawful debt actually due and payable to him from the debtor.

4 (a) Any one of Joint promisors may be compelled to perform In absence of express agreement to the contrary, Faheem, Saleem and Jameel are jointly liable to fulfil the promise.

However, Kamal, may compel anyone (Faheem/Saleem/Jameel) or more of them to perform whole of the promise.

Each joint promisor (Faheem/Saleem/Jameel) may compel every other joint promisor to contribute equally with himself to the performance of the promise.

If anyone of joint promisor (Faheem/Saleem/Jameel) or more of them makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal share.

Effect of release of one joint promisor

If Kamal releases Jameel, it will not discharge the other joint promisors Faheem and Saleem; neither would it free Jameel from responsibility

- b) In case of death of one or more of joint promisors, the liability would devolve as follows:
- to representatives of the deceased promisor jointly with the surviving promisor(s) in case of death of any of the joint promisors; and
 - To representatives of all of them jointly in case of death of all joint promisors.

5 (i) Discharge of Baqir and Qurban from their liability.

No, they are not discharged as Saleem and Atif are joint promisees and jointly have the right to receive payment. Thus payment to anyone of them does not operate as a complete discharge of debt.

(ii) Will Saleem succeed in his case?

No, Saleem will not succeed in his case. He must be joined by Atif as the right to claim performance rests with all the promisees jointly and a single promisee cannot claim performance.

6 Reciprocal promises

Promises which form the consideration or part of the consideration (between the parties) for each other are called reciprocal promises. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and Where the order is not expressly fixed by the contract, they shall be performed in the order which the nature of transaction requires.

7 In the absence of a contrary agreement, Nageen can return the jewellery set either to Saima or Nishat as the bailee is required to deliver the bailed goods to or according to direction of one joint owner without the consent of others.

8 (i) The payment should be applied in discharging the following debts:

Debt of	Rupees
March 2, 2009	20,000
August 30, 2010	50,000
	70,000

As Ubaid has written the break-up of payment at the back of the cheque, it implies that payment should be applied to discharge those particular debts.

(ii) The payment should be applied in discharging the debts in the order in which they became due. It is irrelevant whether the debts are or are not barred by the law in force for the time

being as to limitation of suits.

- 9 Unless a contrary intention appears from the contract, the right to claim performance rests:
- (i) with Hatim and Tahir jointly
 - (ii) after the death of Hatim, with the representative(s) of Hatim jointly with Tahir
 - (iii) after the death of both Hatim and Tahir, with the representative(s) of both, jointly.
- 10 (i) The contract becomes voidable at the option of Mujahid and now Mujahid may claim Rs, 400,000 if the intention of the parties was that time was of the essence of the contract. If time was not of essence to the contract, Mujahid is entitled to compensation for any damage/loss which he has sustained through the non-fulfillment of the contract.
- (ii) If Mujahid accepts the amount even after the delay he can claim compensation provided at the time of acceptance of performance, he had given notice to Adnan of his intention to do so.

11 Time and place of performance not specified in contract:

If according to the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the promise must be performed within a reasonable time. When a promise is to be performed without application by the promisee, and no place is fixed for the performance, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place. The question “what is reasonable time and place” is, in each particular case, a question of fact.

Order of performance of reciprocal promises

The promises must be performed in the order expressly fixed by the contract, and where the order is not expressly fixed, they must be performed in the order which nature of transaction requires.

Effect of release of one joint promisor

Where two or more persons have made a joint promise, release of one such promisor by the promisee does not discharge the other joint promisor(s); neither does it free the joint promisors so released from responsibility to the promisor who was not released.

- 12 No, Nasir need not perform his promise to pay and Maimar must compensate Nasir for any loss which Nasir may sustain due to Maimar’s non-performance.
- 13 (i) Afaq alone cannot compel Mohsin to make payment unless a contrary intention appears from the contract. The right to claim performance rests with all the promisees jointly and a single promisee cannot demand performance.
- (ii) Mohsin may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract. Therefore, Faizan must share the loss arising from default of Laila equally with Mohsin.
- 14 Rights and responsibilities of Mehboob**
- Mehboob would not be responsible for non-performance;
 - he will not lose his rights under the contract, for instance he will be entitled to compensation and contract will become voidable at his option;
 - in case of performance by Saulat on Mehboob’s demand, Mehboob will be responsible to perform his promise.

Essentials of a valid offer of performance:

- (i) it must be unconditional;
- (ii) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;
- (iii) if the offer is an offer to deliver anything to the promisee, the promisee must have reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

15 Every offer/tender of valid performance must fulfill the following conditions:

(iii) It must be unconditional.

(iv) It must be made:

- At a proper time.
- At a proper place.
- Under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(ii) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of ascertaining that the thing being offered is the one which the promisor is bound to deliver. Effect of refusal to accept offer of performance: Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Chapter 06 | Discharge of a contract and remedies for breach of contract

1 Contract to do act afterwards becoming impossible or unlawful:

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible, or unlawful.

However, events that make the contract extremely difficult, costly or less beneficial or commercially unviable or non-profitable than that agreed at the time of its formation, but not impossible, are not accepted as an excuse for non-performance.

Therefore, in the given scenario, Imran Traders excuses shall not be acceptable and in the event of non-performance they will be held liable for the breach of contract and the consequential damages.

2 Isfandyar has committed anticipatory breach of contract so Javed has following options:

- He may either treat the contract as rescinded and claim damages from Isfandyar for breach of contract immediately without waiting until the due date of performance, or
- He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold Isfandyar responsible for the consequences of non performance.

3 Supervening impossibility:

Following are the circumstances under which the parties to the contract are not absolved from the performance of their contractual obligations on the ground of supervening impossibility:

- Difficulty of performance due to some unanticipated events or delays.
- Commercial impossibility like non-realisation of higher profits, increase in prices of raw material or other inputs due to any reason, or a sudden depreciation of currency.
- Default by a third person on whose work the promisor relied.
- Strikes, lock-outs and civil disturbances unless the parties have specifically agreed in this regard at the time of the contract.
- Failure of one of the objects in a contract with several objects.
- Self-induced impossibility.

4 (a) Time being essence of the contract, following would be the rights of Riaz Grocery Stores (RGS) under the circumstances:

- Contract would be voidable at the option of RGS (promisee);
- RGS may insist that Golden Foods (GF) should deliver the product and to claim compensation on account of the delayed supply;
- RGS may decide not to accept performance beyond the stipulated time and claim compensation for any damages which it may have sustained due to non-fulfillment of the contract by GF.

(b) Effect of acceptance of performance at a time other than that agreed upon:

Riaz Grocery Stores (RGS) is not entitled to claim compensation for any damages which it may have sustained through the non-fulfillment of the contract where performance beyond the stipulated time is accepted, unless at the time of acceptance RGS gives notice to GF of its intention to claim damages.

5 Discharge of a contract:

A contract is said to be discharged when contractual relations between the parties to a contract are terminated or come to an end.

Discharge by agreement:

A contract can be discharged by mutual agreement in any of the following ways:

(i) Novation:

- Novation means the substitution of a new contract for an existing one.
- This new contract may be between the same parties with new terms, or
- between new parties with old or new terms.

(ii) Rescission:

Rescission is the cancellation of a contract by mutual agreement.

(iii) Alteration:

Alteration means a variation made in the language or terms of a contract with mutual agreement. When this occurs the original contract is discharged and a new contract is created. The parties in alteration remain same.

(iv) Remission:

Remission means acceptance of a lesser amount or lesser degree of performance than what was contracted for in full discharge of the contract. 0

(v) Waiver:

Waiver is a unilateral act of one person that results in the surrender of a legal right. Thus, it amounts to releasing a person of certain legal obligation under a contract.

(vi) Promisee's refusal/neglects:

If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

6 (i) Contract to do act afterwards becoming impossible or unlawful:

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible, or unlawful.

However, events that make the contract extremely more difficult, costly or less beneficial or commercially unviable or non-profitable than that agreed at the time of its formation, but not impossible, are not accepted as an excuse for non-performance.

Therefore, in the given scenario, Lalchi Traders pleas shall not be acceptable and in the event of nonperformance they will be held liable for the breach of contract and the consequential damages.

(ii) A contract is discharged, if after its formation, a law or regulation is adopted that makes performance impossible/ illegal. Therefore, due to the imposition of ban on the import of yarn by the Government, Lalchi Traders would be discharged from their liability to perform the contract.

7 A contract may be discharged in any of the following ways:

- (i) by performance - actual or attempted.
- (ii) by mutual consent or agreement.
- (iii) by subsequent or supervening impossibility or illegality.
- (iv) by lapse of time.
- (v) by operation of law.
- (vi) by breach of contract.

Following are the different situations in which a contract is discharged by mutual agreement:

Novation

Novation takes place when a new contract is substituted for an existing one.

Alteration

Alteration means change in one or more of the terms of a contract.

Rescission

Rescission means cancellation of the contract. A contract may be rescinded by agreement between the parties at any time before it is discharged by performance or some other way.

Waiver

Waiver takes place where the promisee gives up his rights to claim performance of the contract.

Remission

Remission means acceptance of lesser amount or lesser degree of performance than what was contracted for, in full discharge of the contract.

- 8 When the parties to a contract mutually agree to substitute a new contract for an existing contract, it is called novation of a contract. Novation takes place when:

- (i) A new contract is substituted for an existing one between the same parties; or
- (ii) Parties to the contract are substituted by the new contracting parties while the terms of the contract remain the same.

Difference between novation and alteration

In case of novation there may be a change of parties also while in case of alteration parties remain the same, only the terms of a contract are altered.

- 9 Compensation for loss or damage caused by breach of contract:

Saleem is entitled to receive from Phony (Pvt.) Limited (PL), compensation for any loss or damage caused to him which naturally arose in the usual course of things from such breach i.e. Rs. 2 million.

However, such compensation cannot be claimed for any remote and indirect loss or damage sustained by reason of the breach unless the parties knew about such consequences when they made the contract. Hence, PL would only be liable to pay the amount of Rs. 0.6 million claimed by JL if PL knew about this arrangement at the time of entering into the contract.

- 10 **Ordinary damages:**

Ordinary damages are those which arise naturally in the usual course of things from the breach itself.

Special damages

Special damages are due to special losses which are in the reasonable contemplation of the parties at the time of formation of contract.

Exemplary damages

Exemplary (vindictive) damages are those which are awarded with a view to punish the wrong doer and not primarily with an idea of awarding compensation to the injured party.

Rules relating to award of above damages:

Ordinary Damages

These damages can be awarded if the following two conditions are fulfilled:

- The aggrieved party must suffer by breach of contract, and
- The damage must be a direct consequence of the breach of contract

Special damages

Special damages can be awarded for the special loss which the parties:

- Knew about
- At the time they made the contract
- As likely to result from such breach of contract

Exemplary damages

The court may award these damages in cases such as:

- A breach of promise to marry, where damages shall be calculated on the basis of mental injury sustained by the aggrieved party.
- Wrongful dishonor of a cheque by a banker. In case of wrongful dishonor of a cheque, the smaller the amount of the cheque, larger will be the amount of damages awarded. A trader may recover such damages as wrongful dishonor of cheque shall adversely affect his goodwill but a non-trader whose cheque is wrongfully dishonored will have to prove the loss of goodwill before claiming such damages.

11 Assessment of compensation on account of breach of contract:

- (i) The aggrieved party is entitled to receive compensation for such loss or damage as is caused to him by breach of contract:
 - Which naturally arose in the normal course of things from such breach; or
 - Which the parties knew, when they made the contract to be likely to result from the breach of it.
- (ii) Compensation will not be given for any remote or indirect loss or damage sustained by reason of the breach.
- (iii) In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.
- (iv) If a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the Court will allow a reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.
- (v) The injured party is to be placed in the same position, so far as money can do as if the contract has been performed.

12 Pawnee's right where pawnor makes default:

On default in payment of debt by Ramla, Ovais may:

- (i) Bring a suit against Ramla upon the debt and retain the goods pledged as a collateral security; or
- (ii) He may sell the jewellery pledged on giving Ramla reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt, Ramla would still be liable to pay the balance.

If the proceeds of the sale are greater than the amount so due, Ovais shall pay over the surplus to Ramla.

Chapter 07 | Specific types of contracts

1 Payment by interested person:

To constitute a quasi-contract and be entitled for reimbursement, following conditions must be satisfied:

- (i) the person who made the payment must have his own interest in the payment; and
- (ii) the other person must be bound by law to pay.

In the given scenario, Qasim Soomro was legally bound to pay the land revenue to the Provincial Government and Mohsin, being interested in such payment, as his lease would have been annulled upon sale of land by the provincial government, is entitled to recover the amount from Qasim Soomro

2 Responsibility of Hotel Management as finder of goods

The contract which exists between Yasmin and the Hotel Management is a bailment contract. Yasmin in this case is the bailor while the Hotel Management is the bailee, being finder of lost goods.

Ahmed has wrongfully deprived the Hotel Staff of the possession of the goods bailed. Now, the Hotel Management may use such remedies as the owner, might have used as if no bailment had been made and may bring a suit against Ahmed.

Rights of Hotel Management in case ring is recovered

(i) Repayment by Yasmin of necessary expenses

Under the conditions of bailment, where the goods are to be kept or carried, and the Hotel Management is to receive no remuneration, Yasmin shall repay to the Hotel Management the necessary expenses incurred by them for the purpose of the bailment.

(ii) Right to lien

The Hotel Management has no right to sue Yasmin for compensation for the trouble and expense voluntarily incurred by them to preserve the ring, but they may retain the ring against Yasmin until they receive such compensation.

(iii) Right of sale

If Yasmin after returning from the tour refuses to pay the lawful charges to the Hotel Management in respect of the ring; Hotel Management may sell the ring, being commonly a subject of sale, if the lawful charges in this respect amount to two third of the ring's value.

3 Different types of quasi contract

▪ Supply of necessities:

If a person incapable to enter into contract or his dependent is supplied by another person necessities suited to his conditions in life, the person supplying such necessities is entitled to be reimbursed the price from the property of such incompetent person.

▪ Payment by interested person:

A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

▪ Person enjoying benefit of non-gratuitous act/goods:

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

- **Finder of goods:**
A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.
 - **Payment by mistake or under coercion:**
A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.
- 4** (i) Claim for necessities supplied to person incapable of contracting, or on his account:
Baqir can recover the amount from Sultan if following conditions were satisfied:
- the jacket supplied was the necessity suited to Sultan's condition in life.
 - Baqir can recover the reasonable market value of Rs. 1,500 only from Sultan's property. He cannot recover Rs. 2,000 which Sultan had agreed to pay to Baqir as Sultan, being an incompetent person was not in the capacity to contract.
- (ii) Reimbursement of person paying money due by another in payment of which he is interested:
Rohi can recover the amount of electricity bill from Saulat only if the following two conditions were satisfied:
- Rohi who made the payment had interest in such payment.
 - the payment must be such which Saulat was bound by law to pay.
- (iii) Obligation of person enjoying benefit of non-gratuitous act:
Sami can recover the amount of service charges from Nadia if following conditions were satisfied:
- Sami had lawfully done the service for Nadia, i.e. Nadia had the option to accept or reject the services rendered by Sami.
 - Sami did not have an intention to act gratuitously and Nadia had enjoyed the benefits of the service so provided by Sami.
- 5** Reimbursement of person paying money due by another, in payment of which he is interested:
Apparently Maya acted voluntarily and had no interest of her own in the payment, she cannot recover the amount from Wasi. However, Maya can recover the payment if she can prove her interest in the payment which Wasi was bound by law to pay. Or Wasi promises to compensate Maya wholly or in part for the payment she made which Wasi was legally compelled to do.
- 6** In the given situation, the contract becomes voidable at the option of Imran; and he is entitled to compensation from Yousuf for any loss which he may sustain in consequence of the nonperformance of the contract.
- 7** **Obligations under Quasi Contracts**
If a person incapable of entering into a contract or any one whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.
A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

- 8 Yes, Qasim can enforce the promise though consideration is not present, it being a promise to compensate the voluntarily payment which Omair (the promisor) was legally compellable to make.

9 **Quasi contract:**

A quasi contract is a kind of contract by which one party is bound to pay money in consideration of something done or suffered by the other party, though; no contractual relation exists between the parties. As a result of the above, certain legal rights and obligations are created between the concerned parties. Such type of relations resembles those created by the contract and such a contract is called Quasi contract.

It is an obligation based on the principle of equity and justice, which the law creates in the absence of any formal agreement.

Different Types of relationships causing Quasi Contract:

There are five kinds of quasi contractual obligations. These are discussed below:

(a) Supply of necessaries: –

If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

(b) Payment of lawful dues by interested persons: –

A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

(a) Obligation of a person enjoying benefit of a non-gratuitous act: –

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

(b) Responsibility of finder of goods: –

A person, who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

(c) Liability of a recipient of goods delivered by mistake or under coercion: –

A person to whom money has been paid or anything delivered, by mistake or under coercion, must repay or return it.

- 10 Reimbursement of person paying money due by another, in payment of which he is interested

No, however, Baqar may recover the amount, if he has his interest in the payment.

To constitute a quasi contract and be entitled for reimbursement, following conditions must be satisfied:

- (i) the person who made the payment must have his own interest in the payment; and
- (ii) the other person must be bound by law to pay.

11 **Contingent contract:**

It is a contingent contract as the condition i.e. certification of the construction in accordance with the layout plan by a third party is collateral to the contract. Although it is a valid contract, the performance can only be enforced by Zubair after happening of the collateral event. i.e. certification

by Muneer.

- 12** The contract between Vazir and Saulat is a contingent contract whose performance is based on the happening of certain event collateral to the contract, i.e. arranging of license for Vazir.

13 Wagering Agreements:

All agreements knowingly made to further or assist the entering into, effecting or carrying out, or to secure or guarantee the performance, of any agreement void being in nature of wager, are void. But in this case, Goga and Sheeda were not going to win or lose in terms of money as a result of wrestling match (i.e. uncertain event). The winning amount had not to be given out of their pockets, but had to be paid from the gate money which was provided by the public. As for the condition of payment for non-appearance, no uncertain event provided the equal chances of winning or losing. Therefore, Sheeda is entitled to recover the amount from Goga as the agreement between Goga and heeda is not a wagering agreement and therefore, it is enforceable at law.

14 Contingent Contract:

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

15 Contingent Contract

No, this is not a contingent contract as the condition i.e. construction of a bungalow is not collateral to the contract; but in itself forms a consideration and is thus an integral part of the contract.

Essentials of a contingent contract

The following are the essential characteristics of a contingent contract:

- (i) The performance of such a contract depends upon the happening or non-happening of some future event;
- (ii) The event must be uncertain;
- (iii) The event must be collateral i.e. incidental to the contract.

16 Contract of indemnity:

This is the case of indemnity. A contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by conduct of any other person.

In this case, Majid is the indemnifier and money lender is the indemnity holder.

Majid is responsible to make good any loss which may have been caused to the money lender due to either his own default or the default of Soomro.

- 17** (i) When two or more persons are co-sureties for the same debt, either jointly or severally, in the absence of any contract to the contrary, they are liable, as between themselves, to pay an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor. Accordingly, the liability will be divided in ratio of 50:50 and not 75:25 and Amir and Rehan would be liable for Rs. 55,000 each.
- (ii) Where there are co-sureties, a release by the creditor of one of them does not discharge the other; neither does it free the surety so released from his responsibility to the other sureties. Accordingly, Amir and Rehan will still be liable for Rs. 55,000 each.

18 Revocation of a Continuing guarantee:

The guarantee provided by Fareed is in the nature of 'Specific guarantee' and not a 'Continuing guarantee' because "lease for six years" is an entire or indivisible consideration and not a fragmented one.

Fareed therefore is not competent to revoke his guarantee. His liability would come to an end with the duly discharge of guaranteed debt/performance of the promise.

19 (a) Liabilities of co-sureties bound in different sums:

Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit. Hence the remaining amount would be payable as follows:

Munib	Rs. 150,000/-
Hamid	Rs. 250,000/-
Suleman	Rs. 250,000/-
Total	Rs. 600,000/-

(b) Surety's right to benefit of creditor's securities

Anwar is entitled to the benefit of every security which Qasim has against Shafiq at the time when the contract of suretyship is entered into, whether Anwar knows of the existence of such security or not. However, if Qasim obtained charge over Shafiq's car after the contract of suretyship was entered into then giving up the charge will not discharge /reduce Anwar's liability.

20 Right of Subrogation:

When the surety pays off the debt on default of the principal debtor or performs a guaranteed duty, he is invested with all the rights and remedies which the creditor had against the principal debtor. This is called the right of subrogation.

21 Rights of surety (Majid and Rahat) against principal debtor (Sohail):**Right to indemnity:**

In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. Therefore, Majid and Rahat are entitled to recover from Sohail whatever amount they have rightfully paid including the amount of interest.

Right to subrogation:

After making payment and discharging the liability of Sohail, Majid and Rahat are invested with all the rights of creditor (Bunny), which he had against Sohail. Rights of surety (Majid and Rahat) against creditor (Bunny):

Rights to securities

Majid and Rahat are entitled to the benefit of every security which Bunny has against Sohail at the time when the contract of suretyship is entered into, whether Majid and Rahat are aware of the existence of such security or not and if Bunny loses, or, without the consent of Majid and Rahat, parts with such security, Majid and Rahat are discharged to the extent of the value of the security.

Right to claim set off

Majid and Rahat have a right to claim set off if any which Sohail had against Bunny.

Rights against co-sureties (Majid and Rahat):**Right to claim contribution**

Since Majid paid the full amount to Bunny in settlement of Sohail's debt, he has a right to claim contribution from other co-surety Rahat.

Following are the rules of contribution between Majid and Rahat:

- In absence of any contract, Majid and Rahat are liable to contribute equally for Sohail's default.
- If Majid and Rahat have agreed to guarantee different sums than they are liable to contribute equally, subject to the maximum amount guaranteed by each one of them.
- If Bunny releases one of the co-sureties, for instance Majid, it does not discharge Rahat, neither does it free Majid from his responsibility to Rahat

22 (i) Contract of guarantee:

The above contract is a contract of guarantee. Contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

In this case, Basit is the surety whereas Rahim and shopkeeper are respectively the 'principal debtor' and 'creditor'. Since a guarantee may either be oral or written, in case of Rahim's default, Basit would be liable to pay to the shopkeeper.

(ii) Contract of Indemnity:

This is the case of indemnity. A contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by conduct of any other person. In this case, Basit is the indemnifier and shopkeeper is the indemnity holder. Yes, Basit is liable to make good any loss which may have been caused to the shopkeeper due to either his own default or the default of Rahim.

- 23 A "contract of guarantee"** is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may either be oral or written.

Consideration of guarantee

Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

24 Contract of indemnity

A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a 'contract of indemnity'.

The liability of promisor (indemnifier) commences as soon as the liability of the indemnity holder to pay becomes absolute (clear and certain). The indemnity-holder has the following rights against the vendor i.e., the indemnifier:

- (i) He is entitled to recover all damages which he may be compelled to pay in respect of a suit to which the promise to indemnify applies.
- (ii) He is entitled to recover costs reasonably incurred, in bringing or defending such suit, provided he acted prudently or with the authority of the promisor (indemnifier).
- (iii) He is entitled to recover all sums which he may have paid under the terms of any compromise of such suit, provided the compromise was not contrary to the order of the indemnifier and was prudent or was authorized by the promisor (indemnifier).

- 25** Haseeb upon payment of guaranteed amount is invested with all rights which Faiz (the creditor) had against Gulzar (the principal debtor). Haseeb the surety is entitled to the benefit of every security which Faiz (the creditor) has against Gulzar (the principal debtor) at the time when the contract of suretyship is entered into whether Haseeb knows of the existence of such security or not. He is

entitled to recover from Gulzar (the principal debtor) whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

- 26** (i) A continuing guarantee may at any time be revoked by the surety, as to future transactions by notice to the creditor.
 (ii) In the absence of any contract to the contrary, the death of the surety results in the revocation of a continuing guarantee, as regards future transactions.
 (ii) Other modes of revocation of a continuing guarantee:
 (iii) If the terms of the contract are changed by the creditor and the principal debtor without the consent of the surety.
 (iv) When a creditor discharges principal debtor from the liability.
 (v) When the creditor makes a composition with, or promises to give time to, or not to sue the principal debtor, without the consent of the surety.
 (vi) When a creditor's act or omission impairs the eventual remedy of a surety.
 (vii) When a creditor loses security under the contract, the surety gets discharged to the extent of the value of the security.
- 27** The payment is correctly applied by Bilal and the objection of Wasim is not valid. In the absence of any intimation from debtor or circumstances indicating to which debt payment is to be applied, the creditor is free to use his discretion and apply it to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.
- 28** The death of the surety results in the revocation of a continuing guarantee, as regards future transactions, unless it has been expressly agreed otherwise. As Y committed various acts of dishonesty after Z's death, Z's estate will not be liable for any loss caused to X.
- 29** Co-sureties who are bound in different sums are liable to pay equally as far as limits of their respective obligations permit. Therefore, the co-sureties should pay:
- | | Rupees |
|--------|--------|
| Amin | 20,000 |
| Imran | 30,000 |
| Shahid | 34,000 |
| Total | 84,000 |

30 Contract of guarantee:

A "contract of guarantee" is a contract to perform the promise, or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

31 Revocation of a Continuing guarantee:

No, Kamal is not competent to revoke his guarantee. Where a guarantee is given for an entire consideration, the contract is not divisible and the guarantee is considered as a specific guarantee. In this case also, the contract is not one of a continuing guarantee because "lease for five years" is an entire or indivisible consideration and not a fragmented one.

32 Agreement in restraint of legal proceedings

No, Rafiq is not justified in his contention. As every agreement, by which any party thereto is restricted absolutely from enforcing his right under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception:

A contract however, shall not be rendered illegal, where there is a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration.

33 Pledge:

The bailment of goods as security for payment of a debt or performance of a promise is called "Pledge". The bailor in this case is called "Pawnor". The bailee is called the "Pawnee".

Following are the conditions in which a valid pledge can be made by non-owners:

(i) Pledge by a mercantile agent:

If the agent is in possession of the goods or documents of title to the goods with the consent of the owner, any pledge made by him while acting in the ordinary course of business of a mercantile agent shall be valid provided:

- the pawnee acts in good faith and
- the pawnee has not at the time of the pledge, notice that the agent has no authority to pledge.

(ii) Pledge by person in possession under voidable contract

When the pawnor has obtained possession of the goods pledged by him under a voidable contract but the contract has not been rescinded at the time of pledge, he can make a valid pledge provided the pledgee acts in good faith and without notice of the pawnor's defect of title.

(iii) Pledge where pawnor has only a limited interest

Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

34 Pledge by a mercantile agent (non-owners):

Under the following conditions a valid pledge may be created by the mercantile agent:

- The agent is in possession of the goods or documents of title to the goods with the consent of the owner
- The agent pledges the goods while acting in the ordinary course of business of a mercantile agent provided:
 - The pawnee acts in good faith and
 - The pawnee has not at the time of the pledge, notice that the agent has no authority to pledge.

35 (i) Bailment, Bailor and Bailee:

The contract which exists between Danish and the retailer is a bailment contract. Danish in this case is the bailor while the retailer is the bailee.

The contract which exists between Danish and the real owner is a Quasi Contract, an obligation imposed by law in absence of any agreement between the parties, and on taking the custody of

the satellite phone, as a finder of lost goods, Danish is subject to the same responsibility as those of a bailee while the real owner is the bailor.

36 Pledge:

The above contract is in the nature of pledge.

Pledge is the bailment of goods as a security for the payment of a debt or performance of a promise. Sobia in this case is the 'Pawnor' and Meher is the 'Pawnee'.

Rights of Meher (Pawnee):

- Meher may bring a suit against Sobia for recovery of the debt.
- She can retain the necklace pledged as a collateral security.
- She may sell the necklace on giving a reasonable notice of the sale.

If the proceeds of such sale are less than Rs. 300,000 (i.e. the amount due in respect of the debt), Sobia is still liable to pay the balance.

Rights of Sobia (Pawnor)

- Sobia was unable to pay in time but she may redeem the necklace pledged at any subsequent time before its actual sale.
- But in such a case Sobia must pay, in addition, any expenses which have arisen from her default.
- In case of sale of necklace by Meher, if the proceeds are greater than Rs. 300,000, Sobia is entitled to receive the excess amount from Meher.

37 The bailment of goods as security for payment of a debt or performance of a promise is called a "pledge". The bailor is called "pawnor". The bailee is called "pawnee". The pawnee may retain the goods pledged for:

- a. payment of the debt
- b. the performance of the promise,
- c. the interest of the debt, and
- d. all necessary expenses incurred by him in respect to/of the possession or for the preservation of the goods pledged.

38 When the Pawnee lends money to the same debtor after the date of the pledge without any further security, it shall be presumed that the right of retainer over the pledged goods extends even to subsequent advances.

Mash Bank can file a suit for the recovery of the defaulted amount and retain the pledged shares or after giving reasonable notice to Tahir Limited may sell the shares of the listed company to recover the defaulted amount. and sue Tahir Ltd. for the balance amount.

39 General lien of a banker

- In the absence of a contract to the contrary, a general lien is a right to retain the goods of another as a security for a general balance of account.
- A banker has a general lien on all goods, cash, cheques and securities deposited with him as banker by a customer, for any money due to him as a banker.
- However, where the valuables and securities are deposited for a specific purpose such as safe custody, the banker has no general lien on them.

Chapter 08 | Agency

- 1 Since Four Wheels Limited (FWL) acquired 10 luxury Jeeps, customised for BM, on behalf of Big Motors (BM), without their knowledge or authority, FWL's liability would be analysed under the following two circumstances:
 - (i) When BM elects to ratify FWL's acts:
 If BM ratifies FWL's act, the same effects will follow as if the act had been performed by BM's authority.
 Being agent, FWL is bound to conduct the business according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. If FWL acts otherwise, in case of any loss, FWL would be responsible to make good the loss to BM and if any profit accrues, account for such profit to BM. Similarly, FWL would be liable to compensate BM in respect of the direct consequences of their negligence, want of skill or misconduct.
 However, if FWL without the knowledge of BM deals in the business of agency on FWL's own account, BM is entitled to claim any benefit which may have resulted to FWL from the transaction.
 - (ii) When BM disown FWL's act: If BM does not ratify the agency, the contract would be between FWL and Motor Manufacturers (MM). If MM suffers a loss due to breach of contract, FWL would be responsible to make good the loss.

2 Agency:

The question deals with the law of agency and the relationship between Fauzia and Mirza Baig is that of agent and principal.

Duties breached by Fauzia (agent's duties towards principal)

In the given scenario, Fauzia breached following duties:

- (i) Duty to follow principal's directions or customs:
 Fauzia's first duty was to act within the scope of her authority and perform the agency work according to the directions given by the principal. Fauzia's selling her principal's items at a higher rate than recommended rate without his consent amounts to acting beyond her authority.
- (ii) Duty to carry out work with reasonable diligence and in good faith:
 Fauzia's act of using her principal's time, resources and facilities to sell her own items in place of her principal's items tantamount to breach of application of reasonable diligence and good faith.
- (iii) Duty not to deal on her own account (conflict of interest):
 The action of Fauzia in placing her own items on the shelves indicates that her own personal interest was allowed to conflict with the interest of her principal.
- (iv) Duty not to make any secret profit out of agency:
 Fauzia's act of selling her principal's items at a higher rate and keeping the price difference into her own pocket amounts to making secret profit.

Rights of Mirza Baig:

Following are the rights available to Mirza Baig under the given circumstances:

- (i) **Right to proper account:**
 Mirza Baig is entitled to get proper accounts of his money from Fauzia.

- (ii) **Right to receive benefits gained by agent (secret profit):**
 Since Fauzia was dealing on her own account in the business of agency, Mirza Baig has the right to ask Fauzia for surrendering all the benefits which may have resulted from the transactions (secret profit) to him. He is also entitled for the compensation of any loss caused to him due to Fauzia's misconduct.
- (iii) **Right not to pay remuneration:**
 Since Fauzia is guilty of misconduct, Mirza Baig is not required to pay any remuneration to Fauzia for that part of the business which she has misconducted.
- (iv) **Terminate the agency:**
 Mirza Baig has a right to terminate the agency relationship with Fauzia
- 3 (i) An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of terminating any right or interest of a third person, cannot be ratified.
 Considering the above, notice served by Noman's wife is not valid. If Noman wants, he will have to give fresh notice.
- (ii) Khizar in this situation has become agent of Lucky by estoppel. Lucky is bound by this transaction and he is stopped from denying the existence of the agency since he gave out clear representation to others by smiling and keeping quiet.
 Moiz relied on representation of existence of agency. Thus, if he suffers a loss from the transaction, he may hold Lucky liable as principal.
- 4 Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for the acts of the sub-agent, both to the principal and to third persons.
- 5 (i) **Co-agent:**
 Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent but an agent of the principal for such part of the business of the agency as is entrusted to him.
- 6 (i) **Termination of agent's authority:**
 It's a contract of agency. The termination of the authority of Abbas as an agent takes effect when the death of Arif becomes known to Abbas i.e. 15 February 2018. Therefore, Arif's estate will be liable for any sale made and commission earned until 15 February 2018. For the sale made after 15 February 2018 Abbas will be personally liable.
- 7 Since Kalim Real Estate (KRL) acquired a piece of land on behalf of Goofy Builders (GB), without their knowledge or authority, KRL's liability would be analysed under the following two circumstances:
- (i) When GB elects to ratify KRL's acts:
 If GB ratifies KRL's acts, the same effects will follow as if the acts had been performed by GB's authority.
 Being agent, KRL is bound to conduct the business according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business.
 If KRL acts otherwise, in case of any loss, KRL would be responsible to make good the loss to GB and if any profit accrues, account for such profit to GB.

Similarly, KRL would be liable to compensate GB in respect of the direct consequences of their negligence, want of skill or misconduct.

However, if KRL without the knowledge of GB deals in the business of agency on KRL's own account, GB is entitled to claim any benefit which may have resulted to KRL from the transaction.

When GB disown KRL's acts:

If GB does not ratify the agency, the contract would be between KRL and Tameer Associates (TA). If TA suffers a loss due to breach of contract, KRL would be responsible to make good the loss.

- 8** (i) Sub-agent: Saqib may be regarded as a sub-agent as he is appointed by, and acting under the control of Inam (original agent) in the business of agency.
 When agent cannot delegate:
 Inam cannot lawfully employ Saqib to perform acts which he has expressly or impliedly undertaken to perform personally unless it is required by the ordinary custom of trade or the work undertaken by Inam is of such nature that it requires delegation.
 In the above circumstances the appointment of a professional was necessary; therefore, Inam is justified in Saqib's appointment.
- (ii) Sub-agents responsibility: Saqib is responsible for his acts to Inam, but not to Zeshan, except in case of fraud or willful wrong.
- (iii) Agent's responsibility for sub-agent appointed without authority: If Inam, without having authority to do so appoints Saqib to act as sub-agent, Then Inam stands towards Saqib in relation of a principal to an agent, and is responsible for Saqib's acts both to Zeshan and to third persons.
- 9** Following are the circumstances under which an agent is personally liable to third parties:
- (i) Foreign principal: When an agent contracts for a principal resident abroad he is presumed to be personally liable.
- (ii) Principal cannot be sued: An agent is also presumed to incur personal liability where he contracts on behalf of a principal who though disclosed cannot be sued. E.g. where promoters contract for a projected company, they are held liable personally as the company being nonexistent at the time of the contract cannot be sued.
- (iii) Undisclosed Principal: Where an agent acts for an undisclosed principal and contracts in his own name then he is personally liable to the third parties.
- (iv) Agency coupled with interest: In case of agency coupled with interest, since the agent has himself an interest in the property which forms the subject matter of the agency therefore the agent is personally liable to the extent of his interest.
- (v) Agent exceeding his authority: Where an agent while acting in the course of business of agency exceeds his authority, he is personally liable for the excess part if it is a separable transaction otherwise for entire transaction.
- (vi) Improperly appointed sub-agent: An agent is personally liable to third parties for the acts of an improperly appointed sub-agent.
- (vii) Agent incurring personal liability: Where an agent, while acting in the course of business of agency incurs personal liability he is personally liable on the contract.
- (viii) Pretended agent: A pretended agent, if the principal does not ratify his act, is personally liable to third parties for the loss or damage incurred by them because of dealing with him.
- (ix) Criminal act: Where an agent has been employed to do a criminal act, the agent is not entitled to indemnify himself against the consequences of that act and is personally liable for it.
- (x) Special contract: If an agent, while acting in agency enters into a special contract with the third party that he will be personally liable on the contract then the agent is personally liable.

- (xi) Unnamed principal: If an agent declines to disclose the identity of his principal then he is personally liable to the third party.
- (xii) Custom: An agent is personally liable on a contract if there is any usage or custom of a market or trade to that effect. e.g. stock brokerage business.

10 The relationship between Arif and Moiz, in the above situation, is that of an agency and presence of consideration is not necessary for creation of agency. Request by Arif to Moiz to look after his shop in his absence tantamount to an express authority which may be given by words spoken or written. Arif's liability against Moiz as a principal: Since Arif asked Moiz to look after his shop during his absence, he is bound to indemnify Moiz against all expenses incurred by Moiz on the repair of deepfreezer.

The repair of deep-freezer was a lawful act done by Moiz in exercise of the authority conferred on him. Further, Arif is also bound to bear the discount of 5% which Moiz offered to the customers on the first day, on the pretext that, an agent has the authority in an emergency to do all such acts as a man of ordinary prudence would, for protecting his principal from losses under similar circumstances.

Rights of Arif:

However, Moiz's action of continuing the discount of 5% on sale of meat, following the repair of deep-freezer, was beyond the authority bestowed upon him by Arif as Arif had simply asked him to look after his shop in his absence. Further, an agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss is sustained he must make it good to his principal and if any profit accrues he must account for it. In view of above, Moiz's act of offering 5% discount after the first day cannot be justified as a lawful act necessary for the purpose, or usually done in the course of conducting such business. Resultantly, Arif is entitled to recover the loss incurred as a result of this 5% discount on the price that had been originally fixed by Arif.

- 11**
- (i) agreement between the parties
 - (ii) the principal revoking his authority; or
 - (iii) the agent renouncing the business of the agency; or
 - (iv) the business of the agency being completed; or
 - (v) either the death of the principal or agent or them becoming of unsound mind; or
 - (vi) the efflux of time if created for a fixed time; or
 - (vii) The principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.
 - (viii) the destruction of the subject matter for which an agency was created.
 - (ix) the happening of a subsequent event rendering the agency unlawful; or
 - (x) Dissolution of a company.

Reasonable notice must be given of such termination by the person terminating the agency. It may be expressed or may be implied in the conduct of the principal or agent respectively.

Agency cannot be terminated:

An agency cannot be terminated by the principal under the following circumstances:

- (i) Where an agent has himself an interest in the property forming subject matter of the agency OR the agency is coupled with interest.
- (ii) Where the agent has partly exercised the authority so far as regards such acts and obligations as arise from acts already done in the agency.

- (iii) Where an agent has incurred a personal liability, the agency becomes irrevocable.
- 12** In the absence of any contract to that effect, an agent is not personally bound by a contract. Subject to the foregoing, the Agent becomes personally liable in the following cases:
- In Case of Foreign Principal: Where the contract is made by an agent for the sale or purchase of goods for a merchant residing abroad, it is presumed that the agent is personally liable for such contracts.
 - In Case of Undisclosed Principal: Where the contract is made by an agent for an undisclosed principal, it is presumed that the agent is personally liable.
 - In Case of Incompetent Principal: When a contract is made by an agent for a person who cannot be sued (e.g. minor, lunatic, foreign ambassador), it is presumed that the agent is personally liable.
 - In case of Custom or Usage of Trade: Where there is a custom or usage of trade making the agent personally liable.
 - In Case of Acts not Ratified: A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.
 - Unauthorized acts of agent: Where acts are done by the agent on behalf of the principal but without the knowledge or authority and such acts are not ratified by the principal, the agent is personally liable.
 - Sub-agent appointed without authority: Where an agent without having authority to do so has appointed a person to act a sub-agent, then the agent is personally responsible for the acts of the sub-agent.
 - In Case of Acts in his Own Name: Where a contract is made by an agent without disclosing that he is contracting as an agent, the agent is personally liable.
 - In Case of Express Agreement: Where a contract made by an agent specifically provides for the personal liability of the agent, the agent will be personally liable.
 - In Case of Principal not in Existence: Where a contract is made by the promoter for a company not yet incorporated, the promoters are personally liable.
- 13** Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is a substituted agent, and an agent of the principal for such part of the business of the agency as is entrusted to him. The original agent is not responsible to the principal for the acts or negligence of the substituted agent so selected if he has exercised in selecting such agent the same amount of discretion as a man of ordinary prudence would exercise in his own case.
- 14** The main duties of an agent towards his principal are:
- To conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business.
 - To conduct the business with as much skill as is generally possessed by persons engaged in similar business and to act with reasonable diligence. In the absence of any special skill, the agent should use such skill as he possesses.
 - To render proper accounts to his principal on demand.
 - In cases of difficulty, to use all reasonable diligence in communicating with his principal and in seeking to obtain his instructions.

- (v) An agent must not deal on his own account in the business of agency; i.e. he must not himself buy from or sell to his principal goods he is asked to sell or buy on behalf of his principal without obtaining the consent of his principal and after disclosing all material facts to him.
 - (vi) The agent is bound to pay his principal all sums received on his account subject to deductions such as all moneys due to him in respect of advances made or expenses properly incurred and his agreed remuneration. These sections also imply that the agent should not make secret profit.
 - (vii) When an agency is terminated by the principal dying or becoming of unsound mind, the agent must take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.
 - (viii) Subject to certain exceptions, an agent must not further delegate his authority to another person, but perform the work of agency himself.
- 15** In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act. Therefore, under the given situation, Thaseen is entitled to receive remuneration for selling the car and recovering Rs. 500,000 from Asad and for investing Rs. 400,000 on good security, according to the instructions given by Behram However, he is not entitled to receive any remuneration for investing Rs. 100,000 on volatile security. As he is guilty of misconduct relating to that part of investment. Thaseen is also liable to make good the loss of Rs. 50,000 to Behram as he acted otherwise than the directions given to him by Behram.
- 16 (i) Agent's authority in an emergency**
 An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.
- (ii) Agent's right of retainer**
 An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.
- (iii) Agent's right of lien**
 In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.
- 17** Since the knowledge regarding the ownership of the generator was not obtained by Rais in the course of the business transacted by him, Sami may set off the debt owed to him by Atif against the price of the generator. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal.
- 18 Ratification** means the subsequent adoption and acceptance of an act originally done without knowledge or authority.
 Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

19 A valid ratification must fulfill the following conditions:

- (i) The agent must purport to act as agent for a principal who is in contemplation and is identifiable at the time of contract.
 - (ii) The principal must be in existence at the time of contract.
 - (iii) The principal must be competent to contract both at the time of the contract and at the time of ratification.
 - (iv) The act to be ratified must not be void, or illegal.
 - (v) Ratification must be with full knowledge of all material facts.
 - (vi) The principal must signify his unconditional acceptance of the act.
 - (vii) Ratification must be made within a reasonable time.
 - (viii) Ratification must be of whole transaction.
 - (ix) Ratification must be communicated.
- Ratification must not injure a third person.

Chapter 09 | Partnership Act

1 (a)

(i) Existence of partnership:

No, Adeeb's widow is not a partner in the firm. The receipt by a person of a share of the profits of a business, is a prima facie evidence of the existence of partnership. However, the receipt by the widow of a deceased partner, as annuity, does not of itself make the receiver a partner with the persons carrying on the business. In determining whether Adeeb's widow is a partner in the firm regard shall be had to the presence of mutual agency relationship among Moiz, Mumtaz and Adeeb's widow, which is a conclusive evidence, of the presence of partnership, and which in this case does not exist.

(ii) Mutual rights and liabilities of partners and the firm:

Bari has clearly exceeded his authority. However, Saima and Ahsan cannot repudiate Bari's transaction with the client. Bari's act of receiving Rs. 150,000 from the client, for defending them against a law suit, was done to carry on, in the usual way, business of the kind carried on by the firm and such act binds the firm.

Further, where a partner acting within his apparent authority receives money from a third party and misapplies it, the firm is liable to make good the loss. As a result, each of the partners is jointly and severally liable to the client for all the acts of the firm done while they are the partners.

Similarly, where by the wrongful act or omission of Bari (not defending the client against the law suit), a loss or injury is caused to the client or any penalty is incurred, the firm is liable to the same extent as the partners are liable.

However, Bari would be personally liable to the other partners for Rs. 150,000 and shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

Further consequence of his breach of duty not to act in any way prejudicial to the partnership business; the partnership could be wound up.

(b) Restrictions imposed on the implied authority of a partner:

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:

- (i) submit a dispute relating to the business of the firm to arbitration,
- (ii) open a banking account on behalf of the firm in his own name,
- (iii) compromise or relinquish any claim or portion of a claim by the firm,
- (iv) withdraw a suit or proceeding filed on behalf of the firm,

2 (a) Mandatory duties of partners:

Following are the mandatory duties of a partner that cannot be changed by an agreement amongst the partners:

- Duty to be just and faithful.
- Duty to carry on business to the greatest common advantage.
- Duty to render true accounts.
- Duty to provide full information.
- Duty to indemnify for loss caused by fraud.
- Duty to be liable jointly and severally – unlimited liability.

- Duty to act within authority.
- Duty in case of emergency

(b) Minor's admission to the partnership:

Partnership is created by a valid contract. Since a minor is not capable of entering into a contract, a contract by or with a minor is void ab-initio. Accordingly, Muneer cannot be a partner in the firm. However, Muneer can be admitted to the benefits of partnership with the consent of all the partners and not only by Naila alone.

Rights and liabilities of Muneer (minor):

The rights and liabilities of Muneer, who has been admitted to the benefits of partnership are governed by the following rules:

Rights:

- (i) Right to share property and profits of the firm as agreed by the partners.
- (ii) Right of inspecting and taking copies of accounts of the firms ONLY.
- (iii) Right not to be adjudged insolvent.

Liabilities:

- (i) Personally not liable to third parties for the debts of the firm i.e. limited liability.
- (ii) His share is liable for the acts of the firm.

(c) Determination of rights and duties of partners by contract between them:

The contract between the partners may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

In view of above, the suit filed by Rehan and Bali against Aftab is not maintainable because by accepting profits for the past many years in a ratio different from the agreed ratio they have impliedly consented to the variation in the contract. i.e. partnership deed.

3 (a)

- (i) A transfer by a partner of his interest in the firm does not entitle Hatim to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles Hatim only to receive the share of profits of Zain, and Hatim shall accept the account of profits agreed to by the partners.
- (ii) The firm cannot be made liable since the receiving of money by Sarim for investment purposes is not in ordinary course of a lawyer's business and accordingly, is beyond the scope of his implied authority as a partner.
- (iii) A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm. Hence, Faizan cannot be held responsible for misconduct.

(b) Holding out

Anyone, who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

Exceptions of holding out partner

After a partner's death if the business of the firm is continued in the old firm's name, the continued

use of that name or of the deceased partner will not itself make legal representatives of the deceased partner liable for any act of the firm done after his death.

4 (a) Restriction of partner's implied authority:

Any act done by a partner on behalf of the firm which falls within his implied authority binds the firm unless, the person with whom he is dealing knows about the restriction.

Under the given scenario, the firm and all the partners are jointly and severally liable to pay the entire amount to Wajid as he was unaware of any such restriction on partners authority.

(b) Partnership property:

Land provided by Yaseen:

Subject to contract between the partners, the land would not be treated as the partnership property. It will become the partnership property only if the partners show an intention to make it so.

But since Yaseen, by way of an agreement, brought the property only for the use of the partnership, the mere use of such land by the partnership would not make the land part of the partnership property.

Delivery van:

In this case, van does not constitute partnership property because recording of receivable in partnership books shows that the van was not acquired for the partnership.

(c) Circumstances in which a non-partner could benefit from the profits of a partnership.

Following are the circumstances in which a non-partner could benefit from the profits of a partnership:

- (i) Lender of money to persons engaged or about to engage in any business
- (ii) Servant or agent as remuneration
- (iii) Widow or child of a deceased partner as annuity
- (iv) Transferee of a partner's interest
- (v) A minor who is admitted to the benefits of partnership
- (vi) Previous owner or part owner as consideration for the sale of goodwill or share thereof.

5 (a) Personal profits earned by partners

Gul has a duty to give full information to other partners, in relation to everything affecting the partnership. Subject to contract between the partners, if Gul had derived any profit for himself from any transactions with the firm then Gul shall account for that profit and pay it to the firm.

(b) The act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. Further, in case a loss is sustained by a third party ME Motors (MEM) would be liable even for the wrongful acts of Majid. Therefore, Zahid can recover the amount from MEM or any of the partners.

However, Majid shall indemnify MEM or Ebad for any loss caused to them by his fraud in the conduct of the firm's business.

(c) Mode of determining existence of partnership:

In determining whether X and Y are partners, regard shall be had to the real relationship between the partners, as shown by all the relevant facts taken together.

A partnership exists where following conditions are complied with:

- (i) There is an agreement between two or more persons;

- (ii) They run a business with the intention of sharing profits; and
- (iii) The business is run by all, or by any one of them acting for all.

The Partnership Act, does not require that a partner must contribute money or capital in the partnership.

Therefore, since both X and Y have a common interest in the same business in which they are sharing profit and have a mutual agency relationship between them, partnership does exist in above situation unless it can be proved that real relationship of being partners does not exist.

- 6 (a)** Under the following circumstances the receipt by a person of a share of profits of a business does not of itself make him a partner with the persons carrying on the business:

where profit or payment is received

- (i) by a lender of money from persons engaged or about to engage in any business
- (ii) by a servant or agent as a remuneration
- (iii) by the widow or child of a deceased partner, as annuity
- (iv) by the previous owner or part owner of the business, as consideration for the sale of
- (v) goodwill or share thereof
- (vi) by a transferee of a partner's interest
- (vii) by the persons holding a joint or a common interest in any property
- (viii) by the minor who is admitted to the benefits of existing partnership
- (ix) by a sub partner from a partner in the firm.

(b) Interest to be received by each partner:

Where a partner is entitled to interest on capital such interest is required to be paid only out of profits of the firm. During the year, since the firm has incurred a loss, all the partners are not entitled to receive any interest on their capital.

However, any partner making any payment, for the purpose of the business, beyond the amount of his capital contribution, is entitled to interest thereon at the rate of 6% per annum.

Therefore, Abid is entitled to receive Rs. 6,000 on the amount paid as a security deposit.

(c) Noman would only be considered a partner in the firm when either he gives public notice of becoming a partner, at any time within six months of the later of following dates:

- the date of his attaining majority; or
- the date of his obtaining knowledge that he had been admitted to the benefits of partnership;

or

If Noman fails to give such notice he shall become a partner on the expiry of the above six months. i.e. 15 January 2017 in the given case.

Since up to 10 January 2017, when the firm suffered heavy losses, Noman's status in the firm had not been determined, i.e. whether he is or is not a partner in the firm, Noman would not be liable to pay additional Rs. 100,000 and would only be liable up to the extent of his share in the firm.

- 7 (a) Partner by Estoppel or Holding out:**

Amjad would be regarded as partner by estoppel or holding out if:

- he knowingly permitted himself to be represented as a partner in the firm by Kashif.
- Kalim on the faith of such representation extended credit to the firm.

It does not matter whether Amjad does or does not know that the representation has reached Kalim. Therefore, in such case, Amjad would be liable for the outstanding amount to Kalim.

However, Amjad would not be considered as holding out partner if he has denied Kashif's

representation in public holding him as a partner in the firm or if he has no knowledge of Kashif's representation.

(b)

- (i)** Subject to contract between the partners, a partner can bind the firm by his actions. However, in case of differences, decision should be made by majority of the partners. Asghar cannot take decision without consultation with other partners. Every partner has a right to express his opinion before the matter is decided.
- (ii)** Every partner is liable jointly with all the other partners and also severally to third parties for all acts of the firm done while he is a partner. A partner may not share in the business losses, yet his liability towards outsiders shall be unlimited. If the partnership assets are insufficient to meet the firm's liabilities, Careem would have to repay the amount personally. However, Careem can recover the amount which he is called upon to pay to the creditors from Asghar and Babar.

8 (i) General duties of partners:

Following are the mandatory duties of a partner that cannot be changed by an agreement amongst the partners:

- Duty to be just and faithful.
- Duty to carry on business to the greatest common advantage.
- Duty to render true accounts.
- Duty to provide full information.
- Duty to indemnify for loss caused by fraud.
- Duty to be liable jointly and severally – unlimited liability.
- Duty to act within authority.
- Duty in case of emergency.

(ii) Restrictions on the implied authority:

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:-

- submit a dispute relating to the business of the firm to arbitration,
- open a bank account on behalf of the firm in his own name,
- compromise or relinquish any claim or portion of a claim by the firm,
- withdraw a suit or proceeding filed on behalf of the firm,
- admit any liability in a suit or proceeding against the firm,
- acquire immovable property on behalf of the firm,
- transfer immovable property belonging to the firm, or
- enter into partnership on behalf of the firm.

9 (i) Rights:

- Right to share property and profits of the firm as agreed by the partners.
- Right to have access to accounts of the firm and not to the secret books of the firm.
- Right not to be adjudged insolvent

(ii) Disabilities:

- He will not be considered as a partner.
- Cannot file suit against partners for profit and property except after disconnecting his relation with the firm.
- Not entitled to have access to books other than accounts.

10 Rights of Dostana Bank Limited:

Following rights are available to the bank:

- (i) Entitlement to receive the share of the profits of Sham (the transferring partner).
- (ii) On the dissolution of the firm or on retirement of Sham the bank is entitled to receive:
 - The share of the assets of the firm to which Sham is entitled.
 - An account from the date of the dissolution for the purpose of ascertaining the share.

Disabilities of Dostana Bank Limited:

The bank shall not be treated as a partner in the firm and during the continuance of the partnership, shall not be entitled, to:-

- Interfere in the conduct of the business of the firm.
- Require accounts.
- Inspect the books of the firm.
- Challenge the accounts of profits agreed to by the partners.
- Sue for dissolution of the firm.

11 Property of the firm:

Subject to contract between the partners, the property of the firm includes:

- All property originally brought into the common stock of the firm;
- All rights or interest in the property originally so brought;
- All property acquired, by purchase or otherwise, by the firm or for the firm and all rights and interest in any property so acquired; and
- Goodwill of the business of the firm;
- Unless, any contrary intention appears any property purchased with partnership money with or without other partners consent will be deemed to be partnership property.

Therefore, the plot of land which Rofi intends to acquire for the firm with his own money shall become firm's property only if partners intend to make it so.

Application of the property of the firm:

Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

12 Mode of determining existence of partnership:

In determining whether Munaf and Lari constitute a partnership, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

The essentials of a partnership are:

- (i) There should be a relationship by agreement between two or more persons;
- (ii) They should run a business with the intention of sharing profits; and
- (iii) The business should be run by all, or by any one of them acting for all.

The Partnership Act does not require that a partner must contribute money or capital.

Similarly the partners may also agree that any one of them shall not be liable for losses.

Thus, in the presence of the above essentials and the fact that Lari is entitled to exercise all the powers of a partner Munaf and Lari are said to have constituted a partnership.

13 Liability of a partner for acts of the firm:

Where after a partner's death, the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death. Bari

Builders cannot sue Abid's estate for the recovery of the outstanding amount of the credit which

was extended after Abid's death.

However, Bari Builders can recover the outstanding amount from Abid's estate only if the credit was extended to the firm before Abid's death.

Moreover, since every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner, Bari Builders may file a suit against Meher for the recovery of outstanding balance and succeed, provided Meher was a partner in the firm at the time when credit was extended to the firm.

14 Subject to contract between the partners, following are their mutual rights and liabilities:

- (i) Every partner has a right to take part in the conduct of the business;
- (ii) Every partner is bound to attend diligently to his duties in the conduct of the business;
- (iii) Every partner shall have the right to express his opinion in case of difference arising as to ordinary business matters;
- (iv) Every partner has a right to have access to and to inspect and copy any of the books of the firm;
- (v) A partner is not entitled to receive remuneration for taking part in the conduct of the business;
- (vi) The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;
- (vii) Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;
- (viii) A partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum;
- (ix) The firm shall indemnify a partner in respect of payments made and liabilities incurred by him: in the ordinary and proper conduct of the business, and in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- (x) A partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

15 Behram has clearly exceeded his authority. However, Nomi and Sultan cannot repudiate Behram's transaction with the bank. As a trading partnership, all the partners have the implied authority to borrow money on the credit of the firm and the bank is under no obligation to find out the purpose for which the loan has actually been used.

Further, where a partner acting within his apparent authority receives money from a third party and misapplies it, the firm is liable to make good the loss. As a result, each of the partners is jointly and severally liable to the bank for repayment.

However, Behram would be personally liable to the other partners for Rs. 100,000 and shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm. Further consequence of his breach of duty not to act in any way prejudicial to the partnership business; the partnership could be wound up.

16 Minor's admission to the partnership:

Partnership is created by a valid contract. Since a minor is not capable of entering into a contract, a contract by or with a minor is void ab-initio. Accordingly, a minor cannot be a partner in the firm. However, a minor can be admitted to the benefits of partnership with the consent of all the partners for the time being. i.e. before admission of a minor there must be an existence of partnership.

Rights, liabilities/limitations of Raghiv (minor):

The rights, liabilities and limitations of Raghiv who has been admitted to the benefits of partnership are governed by the following rules:

Rights:

- (i) Right to share property and profits of the firm as agreed by the partners.
- (ii) Right of inspecting and taking copies of accounts of the firms ONLY.
- (iii) Right not to be adjudged insolvent.

Liabilities:

- (i) Personally not liable to third parties for the debts of the firm i.e. limited liability.
- (ii) His share is liable for the acts of the firm.

Limitations:

- (i) No status of partner. The minor is not entitled to take part in the conduct of the business of firm.
- (ii) No suit against partners for profit and property except after disconnecting his relation with the firm.
- (iii) Not entitled to have access to books other than accounts.

17 Sharing profits is not a conclusive evidence of a partnership:

These situations are:

- The joint owners of a property who share profits or gross returns arising from the property are not partners.
- Where the profits are received by a creditor in payment of a debt or as interest on loan.
- Where the profits are received as wages by an employee.
- Where the profits are received as an annuity by a widow or child of a deceased partner.
- Where profits are received as consideration for the sale of property/goodwill or share thereof.
- A transferee of a partner's interest.
- A minor who is admitted to the benefits of an existing partnership.

18 Subject to contract between the partners, the property of the firm includes all property and rights and interests in property

- originally brought into the stock of the firm, or
- acquired by purchase or otherwise by or for the firm, or
- for the purposes and in the course of the business of the firm, and it also includes the goodwill of the business.

19 **Insolvency of a partner:**

No, Patel ceases to be a partner in the firm on the date on which the order of adjudication is made by the Court, whether or not the firm is thereby dissolved.

Effects of adjudication on Patel:

Subject to contract between the partners, if the firm is not dissolved by the adjudication of Patel as insolvent, the estate of Patel shall not be liable for any act of the firm and the firm will not be liable for any act of Patel, done after the date on which the order of adjudication was made.

20 **Restrictions imposed on the implied authority of a partner:**

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:

- (i) submit a dispute relating to the business of the firm to arbitration,
- (ii) open a banking account on behalf of the firm in his own name,
- (iii) compromise or relinquish any claim or portion of a claim by the firm,

- (iv) withdraw a suit or proceeding filed on behalf of the firm,
- (v) admit any liability in a suit or proceeding against the firm,
- (vi) acquire immovable property on behalf of the firm,
- (vii) transfer immovable property belonging to the firm, or
- (viii) enter into partnership on behalf of the firm.

21 Dissolution by the Court:

Uzair may file a petition for the dissolution of the firm and the Court may dissolve the firm on any of the following grounds, namely:

- a. That either Aslam or Imran or both has become of unsound mind;
- b. That either Aslam or Imran or both of them have become in any way permanently incapable of performing his/ their duties as partner;
- c. That either Aslam or Imran or both of them, is/are guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;
- d. That either Aslam or Imran or both of them, willfully or persistently commit breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself/themselves in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him/them;
- e. That either Aslam or Imran or both of them, had in any way transferred the whole of his/their interest in the firm to a third party, or has allowed his/their share to be charged under the provisions of rule 49 of Order XXI of the first Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;
- f. That the business of firm cannot be carried on otherwise than at a loss; or
- g. On any other ground which renders it just and equitable that the firm should be dissolved.

22 Ratification and Agency by Ratification:

Ratification means the subsequent adoption and acceptance of an act originally done without instruction or authority.

Agency by ratification comes into existence retrospectively, when a principal subsequently affirms or adopts the unauthorized act of his agent.

OR (Alternatively)

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Essentials of a valid ratification:

A valid ratification must fulfill the following conditions:

- (i) The agent must purport to act as agent for a principal who is in contemplation and is identifiable at the time of contract.
- (ii) The principal must be in existence at the time of contract.
- (iii) The principal must be competent to contract both at the time of the contract and at the time of ratification.
- (iv) The act to be ratified must not be void, or illegal.
- (v) Ratification must be with full knowledge of all material facts.
- (vi) The principal must signify his unconditional acceptance of the act.
- (vii) Ratification must be made within a reasonable time.
- (viii) Ratification must be of whole transaction.

- (ix) Ratification must be communicated to the other party.
- (x) Ratification must not injure a third person.

23 Procedure for registration of a firm:

The registration is obtained by filing an application on a prescribed form accompanied by the prescribed fee and filing the same with the Registrar of the Firms of the area in which any place of business of the firm is situated or proposed to be situated. This application can be sent by post also. The application for registration should contain the following particulars:

- (i) Name of the firm,
- (ii) Place or principal place of business of the firm,
- (iii) Names of any other places where the firm carries on business,
- (iv) Date when each partner joined the firm,
- (v) Names in full and permanent addresses of the partners, and
- (vi) Duration of the firm.

The statement should be signed and verified in the prescribed manner by all the partners, or by their agents specially authorized in this behalf.

24 Like any other contract a contract of partnership may be rescinded on the ground of fraud or misrepresentation. Therefore, Raja and Nazir who were defrauded by Atif have the right to rescind partnership contract and are entitled to the following rights, without prejudice to any other right:

- (i) To a lien on, or a right of retention of,
 - the surplus or
 - the assets of the firm remaining after the debts of the firm have been paid,
 - for any sum paid by them for the purchase of a share in the firm; and
 - for any capital contributed by them;
- (ii) To rank as a creditor of the firm in respect of any payment made by them towards the debts of the firm; and
- (iii) To be indemnified by Atif who is guilty of fraud or misrepresentation against all debts of firm.

25 Expulsion of a partner:

Marvi cannot be expelled from firm by Zahid and Ahmed except if following conditions are fulfilled:

- (i) The power of expulsion has been expressly provided in the partnership deed;
- (ii) Power has been exercised by all partners whose concurrence must be necessary in agreement;
- (iii) The power has been exercised in absolute good faith.

Liability of Marvi after expulsion from partnership: So far as the liability is concerned, Marvi would be treated as if she were a retired partner. Marvi may be discharged from any liability to any third party for the acts of the firm done before her retirement if,

- (i) Zahid and Ahmed agree with Marvi to release her from the existing debts and liabilities; and
- (ii) The third party is informed of Marvi's expulsion and the new arrangement and such third party has expressly or impliedly agreed to release Marvi and accept the reconstituted firm as their debtor. Marvi will not be liable for any act of the firm done after her expulsion if a public notice of expulsion is given either by Marvi herself or by Zahid or Ahmed of the reconstituted firm. If a public notice is not given Marvi and the partners will continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the expulsion.

26 Subject to contract between the partners,

- (i) every partner has a right to take part in the conduct of the business;
 - (ii) every partner is bound to attend diligently to his duties in the conduct of the business;
 - (iii) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided;
 - (iv) no change may be made in the nature of the business without the consent of all the partners;
 - (v) every partner has a right to have access to and to inspect and copy any of the books of the firm;
 - (vi) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him
 - In the ordinary and proper conduct of the business, and
 - In doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances.
- 27** Yaseen is entitled to the repayment of premium or of such part thereof as may be reasonable regard being had to the terms upon which he became a partner and to the length of time during which he was a partner. He will not be entitled to the repayment of premium if the dissolution of the firm was:
- (i) By the death of a partner.
 - (ii) Mainly due to his own misconduct.
 - (iii) In pursuance of an agreement containing no provision for the return of the premium or any part of it.
- 28 The following are the exceptions to the rule that agreement in restraint of trade are void:**
- (i) Restraint on Existing Partners
The Partnership agreement may provide that a partner shall not carry on any business other than that of the firm, while he is a partner.
 - (ii) Restraint on Outgoing Partners
A partner may make an agreement with his partners that on ceasing to be a partner on retirement or upon dissolution, he will not carry on any business similar to that of the firm within a specified period or within specified limits; and the agreement shall be valid if the restrictions are reasonable.
 - (iii) Restraint on Partner selling goodwill
A partner may, upon the sale of the goodwill of a firm make an agreement that such partner will not carry on any business similar to that of the firm within specified period or specified local limits; and such agreement shall be valid if restrictions imposed are reasonable.
- 29** In the absence of any agreement, D will be entitled to 1/4th of the profits and A, B and C will share the balance of the profits in the ratio of 4:3:2.
- 30** Partnership at will: where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is “partnership at will”. Particular Partnership: A person may become a partner with another person in particular adventures or undertakings. The partnership so formed will be called particular partnership.
- 31** The authority of a partner to bind the firm with his acts is referred to as the implied authority of a partner. Accordingly, for an act to be covered within the implied authority, it is necessary that:
- (i) The act should be for the kind of business carried on by the firm;
 - (ii) The act should be done in the usual way of such business; and
 - (iii) The act must be done in the name of the firm or in any other manner expressing or implying an

intention to bind the firm.

32 Rights of retiring partner

- (i) Yaseen may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.
- (ii) Subject to any contract to the contrary, he may carry on a business competing with that of the firm and he may advertise such business.
- (iii) If other partners carry on the business of the firm without any final settlement of accounts as between them and Yaseen then in the absence of any contract to the contrary, Yaseen is entitled at his option, to such share of profits made since he ceased to be a partner as may be attributable to the use of his share of the property of firm or to interest at the rate of six percent per annum on the amount of his share in the property of the firm.

Liabilities

Yaseen or the continuing partners must give public notice of his retirement. Otherwise Yaseen and the continuing partners will continue to be liable as partner to third parties for any act done by any of them which would have been an act of the firm if done before the retirement. Subject to the contract to the contrary, Yaseen may not:

- (i) use the firm's name
- (ii) represent himself as carrying on the business of the firm, or
- (iii) Solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

33 A and B may carry on a business competing with that of Lahori Maza and they may advertise such business. However, it is the right of C that A and B do not:

- (i) use the firm name
- (ii) represent themselves as carrying on the business of the firm, or
- (iii) Solicit the persons who were dealing with the firm before its sale.

34 (i) Liability of a partner for acts of the firm

Every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner.

(ii) Liability of the firm for wrongful acts of a partner

Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable to the same extent as the partner. Although the firm is liable to the third party for the loss caused to him (third party) by fraud committed by a partner, but, as between the partners, the same must be borne by the partner committing the fraud and cannot be shared among all the partners.

(iii) Liability of firm for misapplication of money or property by a partner

The firm is liable to make good the loss where:

- A partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- A firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm.

35 Yes, A can sue C to recover the amount of Rs. 50,000 because the unregistered firm or its partners

are allowed to file a suit for the realization of the assets upon the dissolution of the firm.

36 The partners must proceed in the following manner:

The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:

- In paying the debts of the firm to third parties;
- In paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
- In paying to each partner rateably what is due to him on account of capital;
- The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profit.

In respect of Habib's individual debts, following rules shall apply:

- (i) The property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of the partner shall be applied in payment of his separate debts or paid to him.
- (ii) The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus, if any, in the payment of the debts of the firm.

37 Yawar, a minor may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

Rights

- (i) He has a right to such share of the property and of the profits of firm as may be agreed upon, and
- (ii) He may have access to and inspect and copy any of the accounts of the firm.

Liabilities

- (i) His share is liable for the acts of the firm but he is not personally liable for any such act.
- (ii) He may not sue the partners for an account or payment of his share of the property or profits of the firm.

38 The property of the firm

Subject to the contract between the partners, the property of the firm includes:

- (i) all property and rights and interests in property originally brought into the stock of the firm or
- (ii) all property acquired by purchase or otherwise, by or for the firm or for the purposes and in the course of the business of the firm,
- (iii) The goodwill of the business.
- (iv) Property and rights and interests in property acquired with money belonging to the firm unless the contrary intention appears.

The shop is not property of the firm as Irfan has bought it with the firm's money and by debiting it in his account, he showed his intention of taking the money as loan.

- 39**
- (i) No Zohair cannot file a suit against his co-partner Ikram to recover the loss, as in case of an unregistered firm no suit can be instituted in a Court by any co-partner to enforce a right arising from a partnership contract, or conferred by a Partnership Act, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
 - (ii) Similarly, Moon Enterprises also cannot file a suit against Mohsin to enforce its right arising from a contract in the court of law. If Moon Enterprises wants to file a suit it will have to get registered itself before filing a suit. The persons suing as a firm should be shown in the

Register of Firms as partners in the firm.

40 Procedure for registration of a firm:

The registration is obtained by filing an application on a prescribed form accompanied by the prescribed fee and filing the same with the Registrar of the Firms of the area in which any place of business of the firm is situated or proposed to be situated. This application can be sent by post also. The statement should be signed and verified in the prescribed manner by all the partners, or by their agents specially authorized in this behalf.

41 Mutual rights and liabilities of partners

In the absence of any express contract:

- (i) every partner has a right to take part in the conduct of the business;
- (ii) every partner shall have the right to express his opinion before a matter is decided. Any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, but no change may be made in the nature of the business without the consent of all the partners;
- (iii) every partner has a right to have access to and to inspect and copy any of the books of the firm;
- (iv) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- (v) the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm;
- (vi) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of the profits;
- (vii) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum;
- (viii) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him:
 - in the ordinary and proper conduct of the business, and
 - in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- (ix) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

42 Rights of transferee of a partner's interest

Where a partner's interest is transferred, the transferee does not become a partner and similarly the transferor does not cease to be a partner. Therefore, Adil would not be considered as a partner in the firm.

Rights of Adil:

Adil would be entitled only to receive the share of the profits of the firm to which Fauzia is entitled. He would be bound to accept the account of profits agreed to by the partners.

Upon dissolution of the firm or, in case, if Fauzia ceases to be a partner, Adil would be entitled, as against the remaining partners, to receive the share of the assets of the firm, to which Fauzia was entitled and for the purpose of ascertaining that share he would be entitled to ask for the accounts as from the date of the dissolution.

Restrictions on Adil:

Adil would not be entitled, during the continuance of the partnership:

- (i) to interfere in the conduct of the business; or

- (ii) to require accounts; or
- (iii) to inspect the books of the firm.

43 A contract of partnership like any other contract may be rescinded on the ground of fraud or misrepresentation. Therefore, Basit who was misled by Danish has a right to rescind the partnership contract and is entitled to the following rights, without prejudice to any other right:

- (i) to a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;
- (ii) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and
- (iii) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

44 Partner's Act not under implied authority

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:

- a. submit a dispute relating to the business of the firm to arbitration,
- b. open a banking account on behalf of the firm in his own name,
- c. compromise or relinquish any claim or portion of a claim by the firm,
- d. withdraw a suit or proceeding filed on behalf of the firm,
- e. admit any liability in a suit or proceeding against the firm,
- f. acquire immovable property on behalf of the firm,
- g. transfer immovable property belonging to the firm, or
- h. enter into partnership on behalf of the firm.

45 Return of premium on premature dissolution

Moeen would be entitled to claim the refund of the premium or of such part thereof as may be reasonable, however, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner.

Moeen would however, not be entitled for the return of premium if:

- (i) the dissolution is mainly due to his own misconduct, or
- (ii) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it, or
- (iii) the dissolution is due to the death of a partner.

46 Right of Pervez to share subsequent profits

In the absence of a contract to the contrary, Pervez has an option either:

- (i) to claim such share of the profits of the firm, earned after he ceased to be a partner, as may be attributable to the use of his share of the property of the firm; or
- (ii) to claim interest at the rate of six percent per annum on the amount of his share in the property of the firm.

47 Personal profits earned by partners

No, Talha and Umair are not liable to share such profits with Sohail as this transaction was not within the scope of the partnership.

Subject to the contract between the partners, the partner shall account for that profit and pay it to the firm, which:

- (i) He derives for himself, from any transaction of the firm, or from the use of the property or business connection of the firm or the firm's name; or
- (ii) He made for himself, from carrying on any business of the same nature as and competing with that of the firm.

BLAW | RANA NAVEED

Chapter 10 | Negotiable instruments Act

1 (a)

In the following situations, the alteration does not render the negotiable instrument void:

- (i) Alteration made for the purpose of correcting a mistake or a clerical error.
- (ii) Alteration made to carry out the common intention of the original parties.
- (iii) Alteration made with the consent of the parties liable on the instrument.
- (iv) Conversion of bearer cheque into an order cheque.
- (v) Crossing of an uncrossed cheque.

(b)

When cheque not duly presented and drawer damaged there by:

It was the duty of Rahat to present the cheque for payment within reasonable time of its issue. But he failed to present it and in the meantime the bank failed causing an actual damage of Rs. 40,000 to Jahanara due to this delay.

In this case, Jahanara is discharged from her liability to the extent of her damage i.e. Rs. 40,000. However, Rahat can still recover Rs. 35,000 from Jahanara.

Rahat, after the discharge of Jahanara, is now the creditor of the bank in lieu of Jahanara to the extent of Rs. 40,000 and can recover Rs. 40,000 from the bank.

(c)

Payment in due course:

Yes, Amjad is discharged from his liability on the bill.

Amjad made payment to the presenter, who was in possession of the bill, according to the apparent tenor of the instrument, in good faith and without negligence, after making due inquiry as to his identity.

It is therefore, a payment in due course and the acceptor is discharged.

2 (a)

(ii) Payment in due course of crossed cheque:

The banker in this case would not be liable to Samad and can debit Samad's account with the amount of the cheque provided the payment was made in due course without negligence and in accordance with the apparent tenor of the cheque. The banker is not expected to verify the signatures of the payees and the endorsees in an order cheque. The banker would only be liable to Samad if he can prove that payment was not made in due course.

(b)

(i) Qualified Acceptance:

An acceptance is qualified in the following manner:

- Conditional: where acceptance is conditional i.e., payment dependent on the happening of an event therein stated;
- Part Payment: where it undertakes part payment of the sum ordered to be paid;
- Place of Payment: where no place of payment being specified in the order it undertakes the payment at a specified place and not otherwise or elsewhere; or where a place of payment being specified in the order it undertakes the payment at some other place and not otherwise or elsewhere;

- Time of Payment: where it undertakes the payment at a time other than that at which under the order it would be legally due.

(ii) Payment in due course:

Payment in due course means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

- 3 (d) Holder in due course** - means any person who for consideration becomes the possessor (holder) of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective.

Acceptor for honour - when a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honour of the drawer or of any one of the endorsers, such person is called an "acceptor for honour."

- (i)
- 4 (a)**
- (i) It is a valid bill of exchange as it contains an unconditional order to pay.
 - (ii) It is in the nature of bill of exchange but it is not a valid bill of exchange as it contains only request to pay and not an order to pay.
 - (iii) It is a valid promissory note containing all the essential elements.
 - (iv) It is a valid promissory note. It is not considered to be conditional, for it is certain that Nauman will die, though the exact time of his death is uncertain.

(e) Effect(s) of the words 'Not negotiable' on a cheque crossed specially.

The effect of the words "not negotiable" on a crossed cheque is that the title of the transferee of such a cheque cannot be better than that of its transferor. The addition of the words not negotiable does not restrict the further transferability of the cheque. It only takes away the main feature of negotiability, which is transferability free from defects.

5 (a) Endorsement

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument such act is called endorsement.

6 (a) In the following situations, the alteration does not render the negotiable instrument void:

- (i) Alteration made for the purpose of correcting a mistake or a clerical error.
- (ii) Alteration made to carry out the common intention of the original parties.
- (iii) Alteration made with the consent of the parties liable on the instrument.
- (iv) Conversion of bearer cheque into an order cheque.
- (v) Crossing of an uncrossed cheque.
- (vi) Filling blanks in the case of inchoate or incomplete instruments.
- (vii) Conversion of blank endorsement into an endorsement in full.
- (viii) Making qualified acceptance.
- (ix) Alteration which is the result of an accident, e.g., mutilation by washing, ravages by white ants, document torn by a child, document burnt in part by the hot end of a cigarette.
- (x) Alteration made before the instrument is issued.

(b) The holder is entitled to enforce payment from the banker in the following two cases:

- The holder does not present the cheque within reasonable time of its issue and in the meantime the bank fails. The drawer is discharged to the extent of the loss suffered by the drawer due to the non-presentation of the cheque in time. For the remaining amount, the bank becomes liable to the holder.
- Where a banker pays a cheque crossed generally over the counter or a cheque crossed specially otherwise than to the banker to whom the same is crossed, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

7 (a) Drawee in case of need:

The person whose name is given in addition to the drawee to be referred in case of need.

By whom the name is given:

- By the drawer while drawing the bill
- By the endorser while indorsing the bill.

(b) If the landlord has no knowledge of the defects in title of the previous holders of the cheque, he would be regarded as holder in due course as he has received the cheque against consideration (rent). Therefore, he is entitled to recover the amount of the cheque.

However, if the landlord was aware of the defective title of the holder from whom he derived his own title, then he would not be considered as holder in due course and he would not be able to recover the amount of the cheque.

(c) Qualified Acceptance:

An acceptance is qualified in the following manner:

- Conditional: where acceptance is conditional i.e., payment dependent on the happening of an event therein stated;
- Part Payment: where it undertakes part payment of the sum ordered to be paid;
- Place of Payment: where no place of payment being specified in the order it undertakes the payment at a specified place and not otherwise or elsewhere; or where a place of payment being specified in the order it undertakes the payment at some other place and not otherwise or elsewhere;
- Time of Payment: where it undertakes the payment at a time other than that at which under the order it would be legally due. All prior parties whose consent was not obtained to qualified acceptance would be discharged from liability.

8 (i) Acceptor for honor:

When a bill of exchange has been noted or protested for non-acceptance or for better security and any person accepts it supra protest for honor of the drawer or of any one of the endorsers, such person is called an acceptor for honor.

(ii) Material alteration:

An alteration is material which:

- alters the character or identity of the instrument or which shakes the very foundation of the instrument or
- changes the rights and liabilities of the parties or
- Alters the operation of the instrument.

- The following alterations are material:
- Date
- Sum payable,
- Time of payment,
- Place of payment,
- Addition of place of payment,
- Rate of interest.

9 Negotiation:

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder of it, the instrument is said to be negotiated.

Indorsement:

When the maker or holder of a negotiable instrument signs the same, otherwise than as maker, for the purpose of negotiation on the back or face of it or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument he is said to indorse the same and is called the indorser."

10 Sarwat would issue a promissory note to Zain

Draft of the promissory note	
Rs. 500,000/- only	Date: March 12, 2016
Five months after date I promise to pay Zain or to his order the sum of Rupees Five Hundred Thousand, for value received	
To Zain ABC Road Karachi	Sd/- _____ Sarwat New Town Karachi

11 Purpose of crossing a cheque:

The purpose of crossing a cheque is to direct the drawee (banker) to pay the amount of the cheque only to a banker so that the party who receives the payment can easily be traced.

Can a Cheque be Crossed Specially more than Once:

Yes. It is allowed when a banker in whose favor a crossing is made, once again crosses it specially in favor of his agent (another banker) for collection.

12 Bill of Exchange:

The above negotiable instrument is a bill of exchange.

Essential characteristics of a bill of exchange:

Following are the essential characteristics of a bill of exchange:

(i) In writing

A bill of exchange is required to be in writing.

(ii) Order to pay

The drawer orders the drawee to pay money to the payee. Mere request does not constitute an

order.

(iii) Definite and unconditional

The order to pay should not depend upon a condition or upon the happening of an uncertain event.

(iv) Signed by drawer

The instrument must be signed by the maker (drawer) and accepted by the drawee.

(v) Certain parties

All the parties must be certain i.e. indicated in a bill of exchange with reasonable certainty.

(vi) Sum payable must be legal tender

The order must be to pay money and money only.

(vii) Sum Payable must be certain

It is essential that sum of money ordered to be payable must be certain and definite. However, it may include future interest or return in any other form or is payable at an indicated rate of exchange, or is payable at the current rate of exchange or the sum payable being subject to adjustment for profit or loss of the business of the maker.

(viii) Time for payment

The time for payment may be on demand or at a fixed or determinable future time.

(ix) It must be delivered:

A bill of exchange is incomplete until it is delivered to the payee

13 When cheque not duly presented and drawer damaged thereby:

It was the duty of Zoab to present the cheque for payment within reasonable time of its issue. But he failed to present it and in the meantime the bank failed causing an actual damage of Rs. 30,000 to Salma due to this delay.

In this case, Salma is discharged from her liability to the extent of her damage i.e. Rs. 30,000.

However, Zoab can still recover Rs. 20,000 from Salma. Zoab, after discharge of Salma, is now the creditor of bank in lieu of Salma to the extent of Rs. 30,000 and can recover Rs. 30,000 from bank.

14 Crossing after issue

- Where a cheque is uncrossed, the holder may cross it generally or specially.
- Where a cheque is crossed generally, the holder may cross it specially.
- Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".
- Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.
- When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

15 Holder:

A person is called holder of a negotiable instrument if he satisfies the following two conditions:

- He must be entitled to the possession of the instrument in his own name and
- He must be entitled to receive / recover the amount due on the instrument from the parties liable under the instrument Thus a holder is a bearer of the bearer instrument and the endorsee or payee of the order instrument.

Explanation:

Where the note, bill or cheque is lost and not found again, or is destroyed, the person in possession of it or the bearer thereof at the time of such loss or destruction shall be deemed to continue to be its holder.

Holder in due course:

Holder in due course means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective.

Explanation:

The title of a person to a promissory note, bill of exchange or cheque is defective when he is not entitled to receive the amount due thereon.

Payment in due course:

Payment in due course means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

- 16** Yes it is a valid bill. If the amount in words and figures is different in a negotiable instrument, the amount stated in words is taken as final.
- 17** Advise whether Habib may further negotiate the instrument:
Zubair has not restricted or excluded the negotiability of the instrument, mere absence of words implying right to negotiate does not make the indorsement restrictive. Therefore, Habib may further negotiate the instrument.
- 18** A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. General crossing:
A cheque is said to be crossed generally when it bears across its face an addition of:-
(i) the words “and company” or any abbreviation thereof, between two parallel transverse lines, either with or without the words “not negotiable”; or
(ii) Two parallel transverse lines simply, either with or without the words “not negotiable”.

19 Payment in due course of a cheque crossed generally:

In order that payment of a cheque crossed generally may be considered a payment in due course it is necessary that the banker on whom it is drawn should pay it in good faith without negligence to a banker.

Consequences of payment of a cheque, crossed generally, in due course:

If a banker pays a cheque crossed generally in due course, he can debit his customer, the drawer, with the amount so paid even though the amount of the cheque does not reach the true owner and is entitled to and be placed in the same position in all respects as if the amount of the cheque had been paid to and received by the true owner thereof.

Payment out of due course of a cheque crossed generally:

If a banker pays a cheque crossed generally otherwise than to a banker, in contravention of the direction of the cheque, is said to have paid it out of due course.

Consequences of payment of a cheque, crossed generally, out of due course:

If a banker pays a cheque crossed generally in contravention of the direction of the crossing he is liable to compensate the true owner of the cheque for any loss sustained by him owing to the cheque having been so paid.

20 A promissory note is:

An instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking signed by the maker to pay on demand or at a fixed or determinable future time a certain sum of money to a certain person or to his order or to the bearer of the instrument

Liabilities of the maker In the absence of a contract to the contrary, the maker of a promissory note, by making it, promises that:

- (i) He will pay it according to the tenor of the note and
- (ii) In default of such payment, he will compensate any party to the no

21 In the following situations, the alteration does not prejudice the rights and liabilities of the parties to a negotiable instrument :

- (i) Alteration made for the purpose of correcting a mistake or a clerical error.
- (ii) Alteration made to carry out the common intention of the original parties.
- (iii) Alteration made with the consent of the parties liable on the instrument.
- (iv) Conversion of bearer cheque into an order cheque.
- (v) Crossing of an uncrossed cheque.
- (vi) Filling blanks in the case of inchoate or incomplete instruments.
- (vii) Conversion of blank endorsement into an endorsement in full.
- (viii) Making qualified acceptance.
- (ix) Alteration which is the result of an accident, e.g., mutilation by washing, ravages by white ants, document torn by a child, document burnt in part by the hot end of a cigarette.
- (x) Alternation made before the instrument is issued.

22 X can claim the amount from A being the principal debtor. On A's refusal or inability to pay, he can claim the same from all intervening parties in the order of acceptance/ transfers/ endorsements.**23 (i) Payment in due course**

- The payment is in accordance with the apparent tenor of the instrument.
- The payment is made in good faith and without negligence.
- The payment is made to a person in possession of the instrument
- The payment is honestly made in the bonafide belief that the person demanding payment is legally entitled to it.

(ii) Holder

The 'holder' of a negotiable instrument means any person entitled to the possession of the instrument in his own name and to receive or recover the amount due thereon from the parties liable thereto.

(iii) Holder in due course

Holder in due course means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before it becomes overdue, without notice that the title of the person from whom he derived his own title was defective.

24 Unless the contrary is proved, the following presumptions shall be assumed in respect of all negotiable instruments:

(i) Consideration:

that every negotiable instrument whenever made, drawn, accepted, endorsed, negotiated or transferred, was accepted, endorsed or transferred for consideration;

(ii) Date:

that every negotiable instrument bearing a date was made / drawn on such date;

(iii) Time of acceptance:

that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(iv) Time of transfer:

that every transfer of a negotiable bill of exchange was transferred within a reasonable time after its date and before its maturity;

(v) Order of endorsements:

that the endorsements appearing on a negotiable instrument were made in the order in which they appear thereon;

(vi) Stamps:

that a lost promissory note, bill of exchange or cheque was duly stamped;

(vii) That the holder is a holder in due course;

Provided that, where the instrument has been obtained from any person in lawful custody thereof by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder in due course lies upon him (the holder).

(viii) Presumption on proof of protest:

In a suit upon an instrument which has been dishonored, the court shall, on proof of the protest, presume the fact of dishonor, unless and until such fact is disproved.

- 25** No, B's contention is not justified against C who is a holder of the bill for value, even if C knew that B is an accommodation party. Absence of consideration can be taken as a defense to avoid liability only towards parties who stand in immediate relation to each other.
- 26** An overdue instrument may be negotiated by the holder of such an instrument but the transferee will not be considered as holder in due course and his title will not be better than that of its transferor. Such a holder can recover the amount from the immediate preceding party only. However, in case of an accommodation bill or note, any person who, in good faith and for consideration becomes the holder after maturity, is a holder in due course and can recover the amount of the bill or note from any prior party. Rules in respect of transfer of property to the buyer in case of unascertained and future goods are as follows:
- (i) The property in the goods can be transferred to the buyer only after the goods are ascertained.
 - (ii) Where there is a contract for the sale of unascertained or future goods by description, the property in the goods passes to the buyer when goods of that description in the deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Such assent may be express or implied and may be given either before or after the appropriation is made.
- 27** The liabilities incurred by the drawer of a bill are as follows:
- (i) On due presentment, the bill shall be accepted. and paid according to its tenor, and that
 - (ii) If the bill is dishonored, the drawer shall compensate the holder or any indorser who is compelled to pay it, provided that due notice of dishonor of bill is given to or received by drawer.

(iii) Until acceptance, the drawer is liable thereon as principal debtor.

28 A banker must refuse payment of a customer's cheque in the following cases:

- (i) When customer countermands payment i.e. when a customer (i.e. an account holder) issues instructions to the bank not to honor a cheque issued by him.
- (ii) When banker receives notice of customer's death, but a payment made before receipt of notice is valid.
- (iii) When customer has become insolvent i.e. when a competent court had adjudicated the account holder as insolvent.
- (iv) When banker receives notice of customer's insanity, cheques issued by him while he was sane should not be made until the customer recovers from malady or court orders for payment.
- (v) When court prohibits payment i.e. when Garnishee Order or other legal orders attaching or dealing with customer's money in its custody is made.
- (vi) On notice of assignment i.e. when the customer has given notice to banker of assignment of his credit balance.
- (vii) When holder's title is defective i.e. when the banker comes to know of any defect in the title of the holder presenting for payment.
- (viii) Closing of account i.e. when the customer has given notice to banker of closing his account or has already closed the account.

29 If Salman has authority only to draw bill of exchange, he cannot accept or endorse it so as to bind his principal and shall then be personally liable to Ghani. If Salman normally signs the bill of exchange in the ordinary course of business, he has a right to be indemnified by Malik or else, Salman can recover the amount from the estate of /amount due to Malik.

30 (i) It is not a promissory note as promise to pay is not "unconditional".

(ii) It is a valid promissory note containing all the essential elements.

(iii) It is not a promissory note as the payment is not in terms of money only.

(iv) It is not a promissory note as the amount payable under it is not certain.

(v) It is not a promissory note as the payee in the instrument is not certain.

(vi) It is a valid promissory note. It is not considered to be conditional, for it is certain that Salik will die, though the exact time of his death is uncertain.

(vii) It is not a promissory note as it lacks unconditional undertaking. There is only an acknowledgement of indebtedness.

31 Yes Fouad is entitled to all the rights, in respect of the bill, which were available to Ali at the time of such payment. Fouad may recover the amount along with interest from Idress, on whose honor he paid the amount to Ali and with all expenses properly incurred by him in making such payment. However, in order to make such payment for honor, the bill of exchange is required to be noted or protested for non-payment. Also Fouad or his agent in this behalf must have previously declared before a notary public the party (in this case Idress) for whose honor he was paying and that such declaration had been recorded by such notary public.

32 A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Essential elements of a valid cheque:

Following are the essential elements of a valid cheque.

- (i) It must be in writing,

- (ii) It must contain an unconditional order to pay,
- (iii) It must contain an order to pay in terms of money,
- (iv) It must contain an order to pay a definite amount of money,
- (v) The parties to the cheque must be certain (real),
- (vi) It must be signed by the drawer,
- (vii) It must be drawn on a specified banker,
- (viii) It must be payable on demand.

33 Who can cross the cheque after issue

Following persons can cross the cheque:

- (i) Holder
- (ii) Banker

Crossing of cheque after issue

- (i) Where a cheque is uncrossed, the holder may cross it generally or specially.
 - (ii) Where a cheque is crossed generally, the holder may cross it specially.
 - (iii) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".
 - (iv) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.
 - (v) When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself
- 34** Until the instrument is delivered after execution, it is incomplete and there is no cause of action on it. Therefore, Yaseen cannot recover amount on the note, as it was never delivered to him by Wali.

Dear Students

Please for any suggestion or feedback WhatsApp at
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