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Chapter # 01
Introduction to Legal System

Introduction to Legal System:

Definition of Law

Law means a set of rules or a system of rules of conduct designed and enforced by the state to control and regulate the conduct of people.

Legislation:

It is the law created by Act of the Parliament of a country, or other bodies with delegated authority.

Process of Legislation:

When National Assembly is in session a bill in respect of any matter may originate in either house.

Scenario 1:

- If it is passed by the house in which it is originated then it is transmitted to the other house, and
- If the bill is also passed by the other house (without any amendment) then it is presented to the President for assent.

Scenario 2:

- If the bill is transmitted to a House and is passed with amendments it shall be sent back to the House in which it originated and
- If that House passes the Bill with those amendments it shall be presented to the President for assent.

Scenario 3:

- If a bill transmitted to a House is rejected or not passed within ninety days or a Bill sent to a House with amendments is not passed by that House with such amendments
- The bill at the request of the house in which it originated shall be considered in the joint sitting of both the house i.e. National Assembly and the Senate and
- If it is passed by the votes of the majority of the members present and voting in the joint sitting it shall be presented to the President for assent.

Scenario 4:

- When the President has returned a Bill to the Parliament it shall be reconsidered by the Parliament in Joint Sitting and
- If it is again passed with or without amendment by the Parliament by the votes of the majority of the members of both Houses present and voting.
- It shall be presented to the President for assent.

The President shall within **ten days** assent to the bill or return it to the Parliament for reconsideration (in case of a bill other than money bill) of any provision or any amendment therein.

In case a bill is pending in the National Assembly or passed by it, is pending in the Senate. The bill shall lapse on the dissolution of National Assembly. But if the bill is pending in the Senate not passed by the National Assembly shall not lapse on dissolution of the National Assembly.

Money bills

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.

The Ordinance

- The President if deems necessary to take immediate action, he has power to make an Ordinance when the National Assembly is not in session.
- Such Ordinance promulgated thus, shall have the same force and effect as an Act of the Parliament.
- The Ordinance shall stand repealed after one hundred and twenty days if it is not presented or passed
 - by the National Assembly in case of Money Bill and
 - by both houses if it is other than Money Bill.

Sources of Law in Pakistan:

Legislation:

It is the law created by act of the Parliament of a country, or other bodies with delegated authority.

Precedent:

Precedent is a judgment or decision of a court of law cited as an authority in deciding identical cases, and is binding on the subordinate courts.

Customs:

In Pakistan, customary law has been replaced by Shariat Law. Key sources of Shariat law are Quran, Sunnah, and Ijtihad.

Agreement:

Agreement is a kind of special law (in addition to general law) which is applied to parties who have agreed to stipulated terms for themselves.

Governing Structure:

President:

President is the head of the state, and is considered a symbol of unity. He approves the statute passed by the National Assembly and Senate. President must be a Muslim.

National Assembly:

- Seats of National Assembly are determined on the basis of population of provinces. It is composed of 342 seats in total consisting of:
 - 272 General seats
 - 60 women members (reserved)
 - 10 minority members (reserved)
- Members are selected by registered voters for a period of 5 years.
- Among themselves, members select a Speaker, Deputy Speaker and Prime Minister.
- Most important function of National Assembly is law making and formulation of policies.

Prime Minister

- The Prime Minister must be nominated and elected by a majority of members in the National Assembly. That individual is then appointed as Prime Minister by the President.
- The Prime Minister is assisted by the Federal Cabinet. A council of ministers whose members are appointed by the President on the advice of the Prime Minister.
- Federal Ministers are supported by secretaries and other government officers appointed in each department for ensuring that policies formulated by the government are acted upon.

Senate:

- All provinces are represented in Senate equally. It is composed of 104 sets in total consisting of:
 - 14 general seats for each provincial assembly, 8 general seats for FATA and 2 for Federal Capital.
 - 4 women sets (reserved) for each provincial assembly, and 1 for Federal Capital.
 - 4 technocrats (reserved) for each provincial assembly, and 1 for Federal Capital.
 - 1 minority(reserved) for each provincial assembly.
- Members are elected (by members of respective provincial assembly and President) for a period of 6 years. Senate is a permanent institution. Half of members retire after 3 years and are replaced by equal number of newly elected senators.
 - Among themselves, member select a Chairman and a Deputy Chairman.
 - All statutes passed by National Assembly are also approved by Senate, with the exception of money bills.

Delegated Legislation:

What is meant by Delegated Legislation:

In delegated legislation, power is given to a subordinate executive authority to make bye-laws for specified purposes only.

Advantages of Delegated Legislation:

1. Time Saving:

Delegation of work of making detailed provision to appropriate minister or body saves time of Parliament. Parliament concentrates on broad issues, rather than masses in detail.

2. Use of Expert Knowledge:

Parliament may not have persons with sufficient technical knowledge on the subject. It allows technical matters to be determined by those competent to do so.

3. Flexibility:

It is simpler to amend delegated legislation than to amend act of Parliament.

4. Speed:

Process of Parliament takes lot of time. Delegated legislation allows rapid action to be taken in times of emergency.

Disadvantages of Delegated Legislation:

1. Unconstitutional:

It takes away law-making power from democratically elected members. Power to make law is given to unelected civil servants.

2. Loss of Accountability and Control:

Govt. ministers and their staff effectively become the source of law. It raises questions of accountability and control over so much powers given to these individuals.

3. Bulk:

Delegated legislation may result in large number of law making, which makes it difficult to manage and keep up-to-date.

4. Control over Delegated Legislation:

Following controls have been established to overcome the shortcomings of delegated legislation:

5. Parliamentary Control:

Parliament can control delegated legislation by restriction and defining the power to make rules. Any new legislation created must be laid in front of Parliament for approval.

6. Judicial Control:

Delegated legislation can be challenged in Court if it is ultra-vires (i.e. beyond powers delegated to them). Court may declare such legislation void if objection is valid.

Syed Burhan Hassan (ACA) ST Academy (Spring 2022)

Past Papers

Spring 2021

Deleted from the current syllabus.

Autumn 2020

Q.2 Briefly describe how an Ordinance is promulgated in Pakistan and what is the effect of such Ordinance. (04)

Spring 2020

Q.1 (b) What is a delegated legislation? State one disadvantage of a delegated legislation. (02)

Autumn 2018

Q.1 Specify Pakistan's system of government and identify Senate's role in the legislation process. (05)

Spring 2018 Q.1

(a) Briefly describe how delegated legislation takes place and also describe how control is exercised over delegated legislation. (04)

(b) What is the process of legislation in case of a money bill when National Assembly is in session? (02)

Autumn 2016

Q.1 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)

Spring 2016

Q.1 Identify the basis of legal system and explain the main sources of law in Pakistan. (5)

Spring 2015

Q.1 What do you understand by delegated legislation? Give two advantages and disadvantages of such legislation. (5)

Chapter # 02
Introduction to the Law of Contract

Introduction to the Law of Contract

Definitions:

➤ Offer/Proposal:

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the consent of that other to such act or abstinence, he is said to make a proposal.

➤ Acceptance:

When the offeree shows his consent to offer, it is called acceptance.

➤ Promise:

A proposal when accepted becomes a promise. The person making the proposal is called the promisor and the person accepting the proposal is called the promisee.

➤ Agreement:

Promises forming consideration for each other are called agreement.

➤ Contract:

Contract is an agreement enforceable by law.

Difference between an agreement and a contract:

BASIS FOR COMPARISON	AGREEMENT	CONTRACT
Meaning	When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.	When an agreement is enforceable by law, it becomes a contract.
Elements	Offer and Acceptance	Agreement and Enforceability
In writing	Not necessarily	Normally written and registered
Legal obligation	Does not create legal obligation	Creates legal obligation
One in other	Every agreement need not be a contract.	All contracts are agreement

Essentials of a valid contract

➤ Offer and acceptance:

There must be an agreement between parties to create a valid contract. An agreement involves a valid offer and its acceptance.

➤ Intention to create legal relationship:

Parties should have intention to create legal relationship between them which may result in legal consequences.

Subject to contract, there is a usual presumption that:

- Social or domestic or religious agreements do not intend to create legal relationship, and
- Commercial or business agreements intend to create legal relationship.

➤ Capacity/Competency of parties:

The parties to an agreement must be competent to contract. Following persons are incompetent to contract:

- Minor
- Person of unsound mind and
- Person disqualified by law.

➤ Free Consent

There must be free consent of parties on terms of an agreement. If consent is not free, contract becomes voidable. The consent must not be obtained from following:

- Coercion
- Undue Influence
- Fraud
- Misrepresentation
- Mistake

➤ Consideration:

Consideration means benefits moving from one party to another, or simply “something in return”. Generally, an agreement without consideration is void.

➤ Lawful Object

The object of an agreement must be lawful. An object is said to be unlawful when:

- It is forbidden by law
- Is of such a nature that if permitted would defeat the provisions of any law
- It is fraudulent
- It involves an injury to the person or property of another
- The court regards it as immoral, or opposed to public policy

➤ Not declared as void:

An agreement which is not enforceable by law is called void agreement. There are certain agreements which have been expressly declared as void such as:

- Agreement, the consideration or object of which is partly unlawful
- Agreement made without consideration
- Agreement in restraint of marriage
- Agreement in restraint of legal proceedings
- Agreement in restraint of trade
- Uncertain agreements
- Wagering agreement

➤ **Certainty:**

Terms and conditions of the agreement must be certain or capable of being certain.

➤ **Possibility of performance:**

The terms of the agreement must be capable of being performed. An agreement to do an act impossible in itself is void.

Classifications of contract

1. On the basis of Enforceability/Validity of Contracts:

Valid contract:

An agreement which is enforceable by law.

Void contract:

It means a contract not enforceable by law.

Voidable contract:

An agreement which is enforceable by law at the option of the aggrieved party.

Illegal agreements:

An agreement the object of which is illegal.

2. On the basis of Creation/Formation:

Express contracts:

It is a contract in which both offer and acceptance are made through words (spoken or written)

Implied contracts:

It is a contract in which both offer and acceptance are made through conduct of parties, and not by words.

Quasi contracts:

A quasi contract is not created by any express or implied agreement between parties, it is created by law on the basis of principle that “no one should get benefit at the expense of other”.

Example of quasi contract is when someone finds the lost goods.

3. On the basis of execution/performance:

Executory contract and Executed contract:

A contract in which something remains to be done is called executory contract.

A contract where both the parties have performed their respective promises is called executed contract.

Unilateral and Bilateral contract:

A unilateral contract is one in which only one party has to fulfill its obligation at time of formation of contract, the other party has already fulfilled its obligation.

A bilateral contract is one in which both parties have to fulfill their obligations at the time of formation of contract.

Offer and Acceptance

➤ **Offer/Proposal:**

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the consent of that other to such act or abstinence, he is said to make a proposal.

Types of an Offer:

➤ **Specific Offer:**

If an offer is made to definite or a particular person or specific group of persons it is said to be specific offer. Such offer can be accepted only by that definite person or that specific group of persons to whom it is made.

➤ **General Offer:**

An offer is general when it is made to the world at large or public in general. Such an offer can be accepted by any person.

➤ **Counter Offer:**

It is an offer made by the other party in response to a previous offer. Counter offer cancels the original offer.

➤ **Standing/open/continuing offer:**

If an offer is of ongoing nature, it is said to be a standing offer. A contract is entered only when the person signifies his acceptance on the basis of the tender.

Essentials of an offer/proposal:

➤ **Two Persons:**

For a valid offer there needs to be two persons. A person cannot make an offer to himself. The person making the proposal is called offeror and the person to whom offer is made is called offeree.

➤ **Certain and definite:**

The terms of the offer must be certain and definite, and not vague.

➤ **Contractual intention:**

An offer must be made with an intention to create a contract.

➤ **Offer must be communicated to the offeree:**

An offer is valid only when it has been communicated to the offeree. Until an offer is known to offeree, there can be no acceptance and no contract.

➤ **Objective of consent:**

An offer must be made with a view to obtain the consent of the other party.

➤ **Conditional:**

An offer may be subject to some conditions. If there are special terms and conditions in an offer:

- They must be specifically communicated to other party (otherwise, these will not be considered part of the offer).
- Offeree will have to accept all conditions of the offer without modification (otherwise, offer lapses).

➤ **Negative Confirmation:**

An offer should not contain a term that non-compliance of something would be presumed as acceptance e.g. offer stating that if acceptance/rejection is not communicated upto a certain date, it would be assumed acceptance. In such case if the offeree does not reply, there is no contract.

➤ **Invitation to an offer:**

Person issuing invitation to offer does not make an offer, rather he invites the other parties to make offer.

Following are the examples of invitation to offer:

- An advertisement for sale of goods by auction.
- Display of goods with prices on departmental stores
- Notice for sale of goods by tender.

➤ **Communication of special conditions:**

When there are special terms and conditions in an offer they must be specifically communicated to the other party.

Lapse/revocation of an offer/proposal:

➤ **Revocation:**

An offer may be revoked before its acceptance by the offeree.

➤ **Rejection by offeree:**

An offer comes to an end if it is not accepted by the offeree. An offer is said to be rejected if the offeree expressly rejects. Rejection will be effective when it reaches offeror.

➤ **Acceptance not in prescribed manner:**

If the acceptance is not made in prescribed manner, or in an usual and reasonable manner it lapses.

➤ **Non-fulfilment of condition precedent:**

An offer comes to an end when the acceptor fails to fulfil the conditions precedent to the offer.

➤ **Counter offer:**

An offer comes to an end if the counter offer is made.

➤ **Death/Insanity:**

If offeree dies or become insane, offer lapses.

An offer comes to an end by the death or insanity of the offeror if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

➤ **Subsequent illegality or destruction:**

An offer comes to an end if it becomes illegal or the subject matter is destroyed before its acceptance.

Communication of revocation

As against the person who makes it	When it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it.
As against the person to whom it is made	When it comes to his knowledge.

Timing of revocation

Timing of revocation of an offer	An offer can be revoked at any time before its acceptance.
Timing of revocation of an acceptance	Acceptance can be revoked at any time before it comes to the knowledge of the offeror.

Acceptance

When the person to whom the proposal is made signifies his assent to it, the proposal is said to be accepted.

Essentials of acceptance:

The essentials of acceptance are as follows:

➤ **Acceptance must be absolute and unconditional:**

An offer should be accepted without any condition. If any condition is imposed on an offer then it turns out to be counter offer instead of acceptance.

➤ **Acceptance must be communicated to the offeror:**

Acceptance must be communicated to offeror by words (written or spoken) or by conduct of persons. a valid acceptance is communicated either by the offeree himself or any person authorized by him to communicate to the offeror.

➤ **Reasonable time:**

Acceptance must be given within the time specified, or within reasonable time (if no time is specified). Further, acceptance must be given before offer is revoked or lapses.

➤ **Reasonable manner:**

Acceptance should be made in the manner specified or in a usual manner where no manner is specified. If acceptance is not made in the prescribed mode, offeror:

- May accept the deviated acceptance.
- May communicate offeree that offer shall be accepted only in the prescribed manner.

➤ **Awareness of proposal**

The acceptor must be aware of the proposal at the time of acceptance of the proposal.

➤ **Before lapse of an offer**

The acceptance must be given before the offer lapses or is withdrawn.

➤ **Acceptance cannot precede an offer:**

Acceptance must be given after receiving offer. It cannot be given before the offer.

➤ **Acceptance cannot be implied from silence:**

If no reply is received from the offeree, it cannot be assumed as acceptance. Similarly, just mental acceptance by offeree is not a valid acceptance.

Past Papers

Spring 2021

Q. 4(a) On 4 March 2021, Aliya agreed to sell her ancestral jewels to Salma at a discounted price. However, on the next day when Salma came to take the delivery, Aliya's brother being custodian of the jewels refused to honour the delivery on the premise that Aliya was admitted to the mental hospital and, therefore, her earlier agreement to sell the jewels was not valid.

Under the provisions of the Contract Act, 1872 discuss whether Aliya's brother is justified in refusing to deliver the jewels to Salma. **(03)**

Autumn 2020

Q.4 (a) Under the provisions of the Contract Act, 1872 list the essentials of a valid acceptance. **(04)**

(b) Sulman's son was missing. Mehmood, one of the bodyguards of Sulman, volunteered to find Sulman's son. Meanwhile, Sulman gave an advertisement in the newspaper announcing an award of Rs. 25,000 to anyone who finds the missing boy. Mehmood found the boy and brought him home. Sulman refused to pay the reward and Mehmood filed a suit against him.

Under the provisions of the Contract Act, 1872 briefly describe whether Mehmood is entitled to the reward. **(02)**

Spring 2020 Q 3(c)

Respond to the following independent scenarios, under the provisions of the Contract Act, 1872:

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)**

Spring 2019 Q1 (b) (ii)

Respond to the following scenarios, under the provisions of Contract Act, 1872:

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? **(02)**

Autumn 2018 Q4 (b)

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. 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)**

Autumn 2017 Q3 (b)

Under the provisions of the Contract Act, 1872:

- (i) List the essentials of a valid acceptance. **(04)**

Spring 2016 Q3 (b)

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 upon knowing about the reward, Aftab claimed it from Badar.

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. **(04)**

Autumn 2015 Q3 (b)

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. Under the provisions of the Contract Act, 1872 explain whether it is a valid contract. **(03)**

Spring 2015 Q2 (b)

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. **(03)**

Chapter # 03
Lawful Consideration and Objects, and
Capacity of Parties

Consideration:

When at the desire of the promisor, the promisee or any other person who has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.

Essential elements of consideration

1. Consideration must move at the desire of the promisor:

The consideration must have been done at the desire of the promisor. If it is done at the instance of a third party or without the desire of the promisor, it is not consideration.

2. Consideration may move from the promisee or any other person:

Consideration may be from the promisee himself or by any other person even by stranger.

3. Consideration may be past, present or future:

The consideration may be past (done or abstained from doing), present (does or abstains from doing) or future (promises to do or to abstain from doing).

The consideration which has moved before the formation of agreement is said to be **past consideration**.

The consideration which moves simultaneously with the promise is called **present consideration**.

The consideration which moves after the formation of an agreement is called **future consideration**.

4. Consideration to have some value:

There is no requirement for the adequacy of consideration but it should have some value. There should be something in return and this something in return need not necessarily be equal in value to something given.

5. Consideration must be real:

Consideration must be real. It should not be:

- Physically impossible
- Uncertain

6. Consideration must be something which the promisor is not already bound to do:

The consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.

7. Consideration must be lawful:

Consideration must not be illegal, immoral or opposed to public policy, involving fraud or injury to others.

Agreements without consideration

Consideration is an essential element of a contract. General rule is that an agreement made without consideration is void. However, in the following situations, contracts made without consideration are valid.

1. Agreement made on account of natural love and affection:

Agreements 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.

2. Agreement to compensate past voluntary services:

Such promise made without consideration is valid if it is a promise to compensate and the person who is to be compensated has already done something voluntarily or has done something which the promisor was legally bound to do.

3. Agreement to pay a time barred debt:

A promise by a debtor to pay a time barred debt is enforceable provided:

- If it is made in writing, and
- Signed by debtor or his authorized agent, and
- It relates to a debt which could not be enforced by a creditor because of law of limitation.

4. Gifts:

If any gift is actually made between a donor and a donee, it shall be valid even without consideration.

5. Contribution to charity:

A promise to contribute to charity would be enforceable if, on the faith of the promise, promisee takes step and undertakes a liability.

6. Contract of guarantee:

Consideration received by the principal debtor is sufficient for the surety and it is not necessary to result in some benefit to the surety himself.

7. Contract of bailment:

A consideration is not necessary for a contract of bailment i.e. gratuitous contract of bailment.

Privity of Contract:

Privity of contract means the relationship subsisting between the parties who have entered into contractual obligations. Therefore, only parties to the contract may sue or may be sued under the contract.

Legality of Object, Consideration and Agreements Opposed to Public Policy:

Circumstances where consideration or object is unlawful in the following cases:

1. It is forbidden by law i.e., an act which is punishable by the criminal laws of Pakistan. E.g., A promises to obtain for B an employment in the public service, and B promises to pay Rs.1,000/- to A. The agreement is void as the consideration for it is unlawful.

The effects of such agreements are following:

- The collateral transactions to such an agreement also become tainted and hence cannot be enforced.
 - No action can be taken for the recovery of money paid or property transferred under such an agreement and for the breach of any such agreement.
2. If the object or the consideration of an agreement is of such nature that, if permitted, it would defeat the provisions of any law, the agreement is void.
 3. If the object of agreement is to defraud others.

Example:

A, B and C enter into an agreement of the division among them of gains acquired, or be acquired, by them by fraud. The agreement is void, as its object is unlawful.

4. The object of an agreement will be unlawful if it tends to injure a person or the property of another. Property can either be movable or immovable.
5. If the court regard it as immoral e.g. immoral acts, interference with marital relations, or acts against good public moral.
6. If the court regard it as opposed to public policy. i.e.
 - Trading with an alien enemy.
 - Stifling prosecution. If a person has committed a crime, he must be punished. Hence any agreement which seeks to prevent the prosecution of the guilty is void.
 - The agreements of sale of public offices are illegal as such agreements, if enforced, would lead to inefficiency and corruption on public life. Similarly, an agreement to pay money to a public servant to induce him to act corruptly or to retire and thus make way for the appointment of a promisor are void on the ground of public policy.
 - Agreement in restraint of parental rights of guardianship. An agreement which prevents a parent to exercise his right of guardianship is void. A father is entitled by law to the custody of his child. He cannot enter into an agreement which is inconsistent with his duties arising out of such custody.
 - Agreement in restraint of personal liberty is void as law generally allows all persons freedom to enter into any contract.
 - Agreement to create monopoly.
 - Agreement in restraint of marriage.

Agreement, the consideration or object of which is partly unlawful:

A contract may contain several distinct promises or a promise to do several distinct acts of which some are legal and others illegal, or a part of which is legal and a part of which is illegal. In case of an agreement containing the promise, some part of which is legal and other part(s) illegal, the legal position is as follows;

- If the illegal part cannot be separated than the whole agreement is illegal.
- If the illegal part can be separated than court will enforce the legal part and will reject illegal party.

Promise to do legal and 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.

Example:

A and B agree that A shall sell B a house for Rs.10,000,000 but that, if B uses it as a gambling house, he shall pay Rs.50,000,000 for it. The first set for reciprocal promises, namely to sell the house and to pay Rs.10,000,000 for it, is a contract. The second set is for an unlawful object, namely, that B may use the house as a gambling house and is a void agreement.

Alternative promise being illegal

In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Example:

A and B agree that A shall pay B Rs.1,000 for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Capacity of Parties:

Following persons are incompetent to contract:

- Minor.
- Person of unsound mind.
- Person disqualified by law.

Agreement with minor:

A minor is a person who has not attained the age of majority which is 18 years of age. However, if a guardian is appointed by court for a minor then the age of majority will be 21 years.

➤ **Position of agreements by a minor:**

Agreement by a minor is void against him, but minor can derive benefits under it. E.g. a promissory note in favor of minor is valid. However, a promissory note by a minor cannot be enforced against him. Similarly, a lender cannot recover money borrowed from a minor.

➤ **Rules of estoppel does not apply to a minor:**

If a minor falsely represents himself as of age of majority, he can still avoid the contract subsequently.

➤ **No ratification of agreement by minor:**

An agreement made by a minor cannot be ratified subsequently by him after he attains age of majority as he was not competent to contract at the time the contract was entered into.

➤ **Minor in a partnership:**

A minor can be admitted for the benefits of partnership with the consent of all the partners. He cannot be a partner until he attains majority.

➤ **Minor in an agency:**

A minor can be an agent but cannot be a principal.

- If minor is appointed as an agent, he can bind his principal by his acts but minor cannot be personally liable for negligence or breach of duty.
- If minor appoints someone as his agent, agent will be personally liable.

➤ **Position of minor's parent:**

If the parent of a minor entered into on behalf of a minor being within the scope of the authority and for the benefit of the minor then such agreements can be enforced by or against the minor.

➤ **Contract by minor and adult jointly.**

If a minor enters into an agreement jointly with a major person then such agreement can be enforced only against the major person who has jointly promised to perform and minor has no liability under a contract.

➤ **Minor and insolvency:**

A minor cannot be declared insolvent because he is incompetent to contract.

➤ **Filing suit:**

A minor can sue but cannot be sued in civil court.

➤ **Minor liabilities for necessities of life:**

A person who supplied necessities to a minor is entitled to be reimbursed from the property of such minor. Such claim is against the property of the minor and not against the minor personally. Supplier will get the reasonable price only and not the price agreed by the minor.

Agreement with person of unsound mind:

A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it he is capable of understanding it and forming a rational judgement as to its effect upon his interests.

Examples of persons of unsound mind includes;

- **Specific persons/idiots:** A person who is so mentally deficient by birth as to be incapable of ordinary reasoning or rational conduct is said to be a specific person.
- **Lunatic:** A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. A lunatic can enter into a contract during the period when he is of sound mind.
- **Drunken person**

Position of agreements with a person of unsound mind

➤ **Agreement with specific person:**

A person who is of unsound mind by birth (specific person) can never make a contract.

➤ **Agreement with lunatic:**

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind (e.g. a lunatic).

➤ **Agreement with a person who is usually of sound mind (but occasionally of unsound mind):**

Agreement with a person who is usually of sound mind but occasionally of unsound mind cannot make a contract when he is of unsound mind (e.g. a sane man delirious from fever, or drunken so much that he cannot understand terms of contract).

➤ **Legal status of contract with unsound mind:**

An agreement made by a person of unsound mind is on same position as that of minors contract i.e.

- An agreement made by a person of unsound mind is void against him, but he can derive benefits under it.

- If he or his legally dependent persons are supplied necessities of life by other person, such other person can be reimbursed from property of person of unsound mind.

➤ **Burden of proof:**

- If a contract is made by a person who is usually of sound mind, he is assumed “competent” unless he is proved unsound at time of contract by party avoiding contract.
- If a contract is made by a person who is usually of unsound mind he is assumed “incompetent” unless he is proved sound at time of contract by party enforcing contract.

Agreements with persons disqualified by law

Position of agreements with disqualified persons:

➤ **Agreement with alien enemies:**

An alien is a person who is the citizen of a foreign country. He can enter into a contract and be sued during peace time but if a war is declared then an alien enemy can neither enter into a contract or be sued during the period of war. Contracts entered before the declaration of war are either suspended or terminated during the period of war.

➤ **Agreement with Foreign sovereigns and ambassadors:**

Such persons can enter into contracts and can sue others to enforce contracts. However, they have immunity and cannot be sued unless they choose to submit themselves to our courts.

➤ **Agreement with convicts:**

During the period of imprisonment, a convict is incompetent:

- To enter into contracts, and
- To sue on contracts made before conviction.

This disability ends on expiry of sentence or when he is on parole.

➤ **Agreement with insolvent:**

A person who is declared an undischarged insolvent cannot make agreements to dispose his property because his property rests with official assignee/receiver.

➤ **Agreement with companies:**

An agreement by a company is valid only if it is within powers mentioned in its memorandum of association.

Past papers

Spring 2021

Q. 4(b) Salman agreed to supply cotton yarn to Rehan for the entire year, whenever requisitioned, at prevailing wholesale prices. The contract also stipulated that in case of dispute, Salman and Rehan would not seek settlement through the Court.

Under the provisions of the Contract Act, 1872 discuss the validity of the contract and determine any remedy available to Rehan, in case of dispute with Salman. **(03)**

Spring 2020

Q. 3 (b) Respond to the following independent scenarios, under the provisions of the Contract Act, 1872:

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)**

Q.2 (b) 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)**

Autumn 2019 Q.3 (a)

Respond to the following scenarios, under the provisions of the Contract Act, 1872:

Shoaib, aged 15, is the son of a billionaire businessman, Ijaz Munsif. Last month Shoaib 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 Shoaib at his house. The seller requested for payment for the car but Shoaib 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 Shoaib or Ijaz Munsif. **(05)**

Spring 2017 Q2 (a)

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)**

Autumn 2016

Q2 (a) What do you understand by the doctrine of 'Privity of contract'? Describe the circumstances in which a stranger to a contract may file suit under the Contract Act, 1872. **(05)**

Q3 (b) 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.

Under the provisions of the Contract Act, 1872 advise under what circumstances Mrs. Ikram would be able to recover the amount from Nadeem. **(04)**

Spring 2014 Q3 (a)

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.

(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)**

Autumn 2012 Q3 (b)

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. **(04)**

Autumn 2011 Q3 (c)

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? **(03)**

Chapter # 04

Free Consent & Void Agreements

Consent

Two persons are said to consent when they agree upon the same thing in the same sense.

Effect of absence of consent:

The effect of absence of consent is that the agreement is not valid and is not enforceable by law.

Free Consent:

The consent is said to be free when it is not caused by:

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

Effect of absence of free consent:

The effect of absence of free consent is that the contract becomes voidable if the consent is obtained by coercion, undue influence, fraud, misrepresentation at the option of the party whose consent was so obtained. However, if the consent is obtained by mistake then agreement may be void-ab-initio or contract is not voidable depending upon the nature of the mistake.

Coercion:

Coercion is the committing or threatening to commit any act which is forbidden by Pakistan Penal Code or unlawful detaining or threatening to detain, any property with an intention of causing any person to enter into an agreement.

Effects of Coercion:

The effects of coercion are as follows;

- The contract becomes voidable at the option of the party whose consent was so caused. The burden of proof lies on the party who rescinds the contract.
- The party rescinding a voidable contract shall, if he has received any benefit from another party, restore such benefit i.e., restitution.
- A person to whom money has been paid or anything delivered by coercion must repay or return it.

Undue Influence:

A contract is said to be induced by undue influence where the relations 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.

A person is in a position to dominate the will of another where he:

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

Effects of undue influence:

Where the presumption of undue influence does not exist, the burden of proof will be on the weaker party, who will have to prove that undue influence has been exercised over him. But where such presumption exists, the burden of proof will be upon a person who is in a position to dominate the will of the other. He shall have to prove that the consent of other party was not caused by undue influence.

In the following relationships it is presumed that a person is in a position to dominate the will of another person:

- Father and son
- Guardian and ward
- Employer and Employee
- Trustee and beneficiary
- Teacher and student
- Doctor and patient
- Solicitor and client
- Fiancé and fiancée
- Pardanasheen lady (Completely secluded)

In the following relationship there is no presumption that a person is in a position to dominate the will of another person:

- Landlord and tenant
- Creditor and debtor
- Husband and wife (non parda observing)

Rebutting presumption

The presumption of undue influence can be rebutted by showing that the:

- Dominant party has made a full disclosure of all the facts to the weaker party before making the contract
- Price was adequate
- Weaker party was in receipt of competent independence advice before entering into the contract.

The contract may be set aside either absolutely or if the party who was entitled to avoid it has received any benefit, upon such terms and conditions as to the Court may seem just.

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 to it or his agent or to induce to enter into a contract:

- The suggestion as a fact of that which is not true, by one who does not believe it to be true. **Example:** *Azam sells to Babar locally manufactured goods representing them to be imported goods charging a higher price, it amounts to fraud.*
- The active concealment of a fact by one having knowledge or belief of the fact. **Example:** *Zia a furniture dealer conceals the cracks in furniture sold by him by using some packing material and polishing it in such a way that the buyer even after reasonable examination cannot trace the defect, it would amounts to fraud through active concealment.*
- A promise made without any intention of performing it. **Example:** *Buying goods under a contract of sale with an intention of not paying the price is fraud.*
- Any other act fitted to deceive. **Example:** *A company issued a prospectus containing a statement that company paid dividend between 2001 and 2007 implying that company has been profitable. In fact, the company suffered losses in those*
- years and paid dividend out of reserves. Held, there was an intention to deceive.
- Any such act or omission as the law specifically declares to be fraudulent.

Essentials of Fraud:

- The fraud must be committed by a party to a contract or by his agent. Thus, the fraud by a stranger to the contract does not affect its validity.
- There must be a false representation and it must be made with the knowledge of its falsehood.
- The representation must relate to a fact than it amount to fraud. A mere opinion does not amount to fraud.
- Other party must have acted on the faith of the fraudulent representation, and must have been actually deceived.
- Other party must have suffered loss. There is a common rule of law that “ there is no fraud without damage”.

Effect of Fraud:

The effects of fraud are as follows;

- The contract becomes voidable at the option of the party whose consent was so caused.
- The party whose consent was so caused may insist on performance of the contract.
- The party whose consent was so caused is entitled to claim damages.

Exceptions to rescind the contract

A party cannot rescind the contract where:

- Silence amounts to fraud and the aggrieved party had the means of discovering the truth with ordinary diligence
- The party gave the consent in ignorance of fraud
- The party after becoming aware of the fraud takes a benefit under the contract
- An innocent third party before the contract is rescinded acquires for consideration and in good faith some interest in the property passing under the contract,
- The parties cannot be restored to their original position.

Silence as to fraud:

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 parties stands in fiduciary relationship or where silence itself is equivalent to speech.

Example: Silence as to fraud

A sells by auction to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud by A.

B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

B says to A, "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech. If the horse turns out to be vicious. A can be held liable for fraud.

Misrepresentation:

Misrepresentation means and includes;

- A person believes and gives a statement to be true, but which is false. **Example:** *Anwar sold a mine to Munawar and told certain facts about the mine which were incorrect. Anwar believed them to be true. Later, Munawar discovered the real facts. This is a misrepresentation.*
- Any breach of duty which without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him. **Example:** *Azhar told Mazhar that the monthly sale of his business was Rs. 50 million before the contract was signed. Sales was decreased to Rs. 35 million. Azhar did not inform Mazhar about the decrease. Held, there was misrepresentation.*
- A party innocently causes other party to make a mistake as to the nature or quality of subject of agreement. **Example:** *The seller told the buyer that the bike is free from defects but there was a built-in defect in it. There is a misrepresentation.*

Essentials of Misrepresentation:

- Representation must be made by a party to a contract or by anyone with his connivance or by his agent. Thus, the representation by a stranger to the contract does not affect the validity of the contract.
- There must be a false representation and it must be made without the knowledge of its falsehood i.e. the person making it must honestly believe it to be true.
- A mere opinion does not amount to misrepresentation. A representation must relate to a fact if it amounts to misrepresentation.
- The objective is to induce the other party to enter into contract without the intention of deceiving the other party.
- The other party must have acted on the faith of the representation.

Effects of misrepresentation

The effects of representation are following;

- The contract becomes voidable at the option of the party whose consent was so caused.
- The party whose consent was so caused may insist on performance of the contract.

Exceptions to rescind the contract

A party cannot rescind the contract where:

- The party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence;
- The party gave the consent in ignorance of misrepresentation
- The party after becoming aware of the misrepresentation takes a benefit under the contract
- An innocent third party before the contract is rescinded acquires for consideration and in good faith some interest in the property passing under the contract,
- The parties cannot be restored to their original position.

Mistake:

Where both the parties to an agreement are under a mistake as to matters of facts essential to the agreement, the agreement is void.

Mistake of Pakistan law:

A contract is not voidable because it was caused by a mistake as to any law in force in Pakistan.

Example: *Azam and Babar make a contract which is based on erroneous belief that a particular debt is barred by Pakistani Law of limitation. The contract is valid.*

Mistake of foreign law:

A mistake as to the law not in force in Pakistan has the same effect as a mistake of fact i.e. void.

Example: *Andrew, a Pakistani, agrees to export a particular medicine to Boris, a foreign national. Unknown to both of them, the law of that country has banned the sale and purchase of that particular medicine. This is a mistake of foreign law and the agreement is void.*

Bilateral mistake:

Where both the parties to an agreement are under a mistake as to a matter of facts essential to the agreement, the agreement is void.

An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of facts.

Bilateral mistake as to the subject matter

A bilateral mistake as to the subject matter includes the following mistakes as to the:

- existence of subject matter
- quantity of subject matter
- quality of subject matter
- price of subject matter
- identity of subject matter
- title of subject matter

Example: *Atif agrees to buy from Babar a certain horse. It turns out that the horse was dead at the time of bargain though neither party was aware of the fact. The agreement is void because there is bilateral mistake as to the existence of subject matter.*

Bilateral mistake as to the possibility of performance

Where the parties believe that an agreement is capable of performance and actually it is not then it is said to be a bilateral mistake as to the possibility of performance due to which agreement is void.

Example: *Azam agrees to sell to Babar a specific cargo of goods supposed to be on its way from England to Karachi. It turns out that, before the date of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of facts. The agreement is void.*

Unilateral mistake

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of facts.

Example: *Azam buys a painting believing it to be worth Rs 100,000 while in fact it is worth only Rs 10,000. This is unilateral mistake and the contract is valid.*

Exceptions

Following are the exceptions where agreement is void on the basis of unilateral mistake:

- Mistake relating to the identity of the person. **Example:** *Asif knew that on account of his criticism of the plays in the past, he would not be allowed entry to the performance of a play at the theatre. The managing director of the theatre gave instructions that ticket should not be sold to Asif. Asif, however, obtained a ticket through one of his friends. On being refused admission to the theatre, he sued for damages for breach of contract. It was held that there was no contract between the theatre company and Asif as the theatre company never intended to contract with Asif.*
- Mistake relating to the nature of the contract. **Example:** *An old illiterate man was induced to sign a cheque by means of a false representation that it was a mere guarantee. It was held that he was not liable for the cheque because he never intended to sign a cheque.*

Void Agreement & Void – ab- Initio Agreement:

A void agreement is an agreement which is not enforceable by law. The agreement which are not enforceable by law right from the time when they are made, are void-ab-initio.

When an agreement is void, other agreement which is collateral to it is also void and is not enforceable by law if the other party has knowledge about it.

Examples of Void Agreement.

1. Agreements by or with persons incompetent to contract.
2. Agreements made under mutual mistake of fact.
3. Agreements made under mutual mistake of foreign law.
4. Agreement, the object or consideration of which is unlawful.
5. Agreement, the consideration or object of which is partly unlawful.
6. Agreement made without consideration.
7. Agreements in restraint of trade.
8. Wagering agreement.
9. Agreements in restraint of legal proceedings.
10. Agreements in restraint of marriage.
11. Uncertain agreements.
12. Agreements contingent on impossible events.
13. Agreements to do impossible acts.
14. Agreement to enter into an agreement in future.

Agreement in Restraint of Trade:

Every agreement by which anyone is restricted from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exceptions of Agreement in Restraint of Trade:

1. Sale of Goodwill:

If a person sells goodwill, he can be restricted to carry on a business if following conditions are met:

- Such restriction must relate to a similar business.
- Such restriction must be within the specified local limits
- Such specified local limits must be reasonable (having regard to the nature of the business).
- Such restriction must be for the time so long as the buyer carries on similar business in the specified local limits.

2. Partner's agreements:

The Partnership Act allows following agreements as an exception to the agreement in restraint of trade:

Existing partner:

Subject to contract between partners, a partner may not carry on any business competing with that of the firm while he is a partner.

Outgoing partner:

An outgoing partner may agree with his partners that he will not carry on any business similar to that of the firm for a specified period and for specified local limits.

Dissolution of the firm:

Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm for a specified period and for specified local limits.

Sale of goodwill:

Partner(s) may upon the sale of the goodwill of a firm, make an agreement that partner(s) will not carry on any business similar to that of the firm for a specified period and for specified local limits.

Trade combinations:

An agreement between different firms in the nature of a trade combination in order to maintain a price level and avoid under selling is not void.

Example: An agreement among some manufacturing companies not to sell goods below a minimum price and to divide the profits in a certain proportion is not void because such agreement was made to regulate the business and not to restrain it.

Service Agreements:

Following agreements are enforceable:

1. A clause to serve the employer for a specified period.
2. A clause to prevent the employee from accepting any other engagement during his employment.

3. A clause to prevent the employee from accepting a similar engagement after the termination of his services within specified period or local limit, but only if restraint is intended to protect employer.

Wagering Agreement

An agreement between two persons under which money or money's worth is payable, by one person to another on the happening or non-happening of a future uncertain event is called a wagering event. An agreement by way of wager is void.

Example: Wagering agreement

A promises to pay Rs. 10,000 to B if it rained today, and B promises to pay Rs. 1,000 to A if it did not.

Example: Transactions which are not held wagers:

An agreement to contribute to a plate or prize of the value of Rs. 500 and above to be awarded to the winner of a horse race.

Stock market transaction in which the delivery of shares is intended to be given.

Effects of Wagering Agreement

- Agreement by way of wager is void.
- No suit can be filed to recover the amount won on any wager.

Other Void Agreements:

Agreements in restraint of legal proceedings:

Every agreement by which any party is restricted from enforcing his right under a contract by the usual legal proceedings or which limits the time within which he may enforce his right is void.

Exceptions

- An agreement between two or more persons who agree that any dispute which may arise between them shall be referred to arbitration, is valid.
- An agreement whereby parties agree not to file an appeal in upper court of law, is valid.
- Parties making an agreement to select one court of law between two courts equally competent.

Agreements in restraint of marriage

Every agreement in restraint of the marriage of any person other than a minor is void. This is because the law regards marriage and married status as the right of every individual.

Uncertain Agreement:

An agreement the meaning of which is not certain or capable of being made certain are void.

Example: Uncertain agreements:

- A agrees to sell to B "a hundred ton of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.
- A agrees to sell to B "all the grain in my granary at Peshawar." There is no uncertainty here to make the agreement void.

Syed Burhan Hassan (ACA) ST Academy (Spring 2022)

Past papers

Spring 2021

Q. 3(b) Maria purchased a diamond necklace of Rs. 700,000 from Emerald Jewellers (EJ) and issued a cheque in favour of EJ fully knowing that she does not have enough funds to make the payment. Consequently, the cheque was dishonoured because of insufficient funds in Maria's bank account. EJ demanded to return the necklace. However, before the said demand, Maria had pledged the necklace with Ruby Traders (RT) against an obligation of Rs. 800,000.

Under the provisions of the Contract Act, 1872 discuss the status of the agreement between Maria and EJ. Also explain the validity of the pledge and discuss whether EJ would be able to recover the necklace. **(04)**

Autumn 2020

Q.3(a) Under the provisions of the Contract Act, 1872 list any **three** circumstances in which a party whose consent was obtained by misrepresentation cannot rescind the contract. **(03)**

Autumn 2019

Q.3 Respond to the following scenarios, under the provisions of the Contract Act, 1872:

b) 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)**

Autumn 2018

Q2 (a) 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.

Under the provisions of the Contract Act, 1872 explain whether Mughal is justified in repudiating the contract. **(04)**

Q4 (c) 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. **(02)**

Autumn 2017 Q3 (a)

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 2,300 trees could eventually be planted on the land.

Under the provisions of the Contract Act, 1872 discuss whether Ghaffar can claim damages on the grounds of fraud. (03)

Spring 2017 Q2 (b)

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)

Autumn 2016 Q2 (b)

Until recently, Mansoor and Arif were independently engaged in the business of selling sweets at the 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 the 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)

Spring 2016 Q2 (a)

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.

Under the provisions of the Contract Act, 1872 list the circumstances under which Shafiq may not be able to rescind the contract. (05)

Chapter # 05
Performance of a contract

Performance of a contract:

A contract is said to have been performed when the parties to a contract either perform or offer to perform their respective promises.

Types of Performance:

There are two types of performance;

1. Actual Performance:

If the promisor offers to perform the promise and promisee accepts it is called actual performance.

2. Attempted Performance:

Here the promisor has made an offer of performance but the offer of performance of promisor is not accepted by the promisee it is called an attempted performance. Attempted performance is also known as tender.

Essentials of a valid tender/attempted performance:

1. To Proper Person:

It must be made to promisee or to his duly authorized agent. In case of several joint promisee, a tender made to one of them has the same legal consequences as tender to all of them.

2. At Proper Time:

Tender must be made on specified date during business hours. Tender of goods or money before the due date is also not a valid tender.

3. Proper Place:

Tender must be made on specified place. If no place is mentioned in the contract, it is the duty of promisor to ask promisee to appoint a reasonable place, and to perform at such place.

4. According to Terms and Condition:

Tender should be made in accordance with the terms of the contract.

5. Reasonable Opportunity to Inspect:

Promisee should be given reasonable opportunity to check that the goods offered are the same as agreed.

6. For Whole Obligation:

Tender must be for whole obligation and not for the part of the whole obligation. However, a minor deviation from the terms of the contract does not make the tender invalid.

7. Of Exact Amount and in Legal Tender:

In case of tender of money, it must be of exact amount and in legal tender.

Effect of Refusal:

➤ Effect of refusal to accept a valid tender of money:

Here the promisor offers to pay the amount but the promisee refuses to accept the same.

- Promisor is still liable to pay the amount, means he is not discharged.
- However, promisor is not liable to pay the interest for delay in payment.

➤ Effect of refusal to accept a valid tender of goods and services:

Here the promisor offers to deliver the goods or services but the promisee refuses to accept.

- Promisor is discharged from his liability. He is not liable to deliver goods or services again.
- Goods or services need not be offered again.
- Promisor can sue promisee for breach of contract, and may claim damages.

➤ Effect of refusal to perform:

When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his willingness in its continuance.

Persons who may Perform the Contract:

1. Promisor:

If it was the intention of the parties that promise must be performed by the promisor himself, such promise must be performed by the promisor.

2. Promisor's Agent:

If it was not the intention of the parties that promise must be performed by the promisor himself, such promise may also be performed by the promisor's agent.

Example: A promises to pay B a sum of money. A may perform this promise either by personally paying the money to B, or by causing it to be paid B by another, and if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

3. Legal Representatives:

In case of death of promisor, his legal representative can perform the contract unless a contrary intention appears or the contract is of personal nature.

4. Third Party:

A contract can be performed by a third party if the promisee accepts the arrangement. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

5. Joint Promisors:

In case of several promisors, unless a contrary intention appears, the following persons must perform the promise:

Case	Who must perform the promise
In case all the promisors are alive	All the promisors jointly.
In case of death of any of joint promisors	Representatives of the deceased promisor jointly with the surviving promisor(s).
In case of death of all joint promisors	Representatives of all of them jointly.

Persons who may Demand Performance of a Contract:

1. Promisee

Promisee can demand the performance of the promise under a contract.

2. Legal Representative

In case of death of the promisee, his legal representative can demand performance unless a contrary intention appears from the contract or the contract is of a personal nature.

3. Third Party

A third party can also demand the performance of the contract in some exceptional cases like beneficiary in case of trust, the person for whose benefit the provision is made in family arrangements.

4. Joint Promisees

In case of several promisees, unless a contrary intention appears, the performance can be demanded by the following persons:

Case	Who can demand the performance of promise
In case all the promisees are alive	All the promisees jointly.
In case of death of any of joint promisees	Representatives of deceased promisee jointly with the surviving promisee (s).
In case of death of all joint promisees	Representatives of all of them jointly.

Rules regarding the performance of joint promise:

1. Joint and several liability of joint promisors:

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel anyone or more of such joint promisors to perform the whole of the promise.

2. Right to claim contribution:

Each of two or more joint promisors 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.

Example: A, B and C jointly promise to pay D a sum of Rs.3,000. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive Rs.500 from A's estate and Rs.1,250 from B.

3. Sharing of loss in contribution

If anyone of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Example: A, B and C are under a joint promise to pay D Rs.3,000. C is unable to pay anything and A is compelled to pay the whole. A is entitled to receive Rs.1,500 from B.

4. Release of one joint promisor

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

Example:

A, B and C jointly promise to pay D Rs.3,000. D releases A from his liability and sues B and C for payment. Here, neither B and C are released from their liability to D nor is A released from his liability to B and C for contribution.

5. Devolution of joint rights:

Devolution means passing over from one person to another. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests;

- as between him and them,
- with them during their joint lives and,
- after the death of any of them, with the representative of such deceased person jointly, with the survivor or survivors and after the death of the last survivor, with the representatives of all jointly.

Example: A, in consideration of Rs.5,000 lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

Time and Place of Performance:

Where promisee prescribes the manner and/or time:

The promise must be performed in the manner and at the time prescribed by the promisee

Where promisor is to perform his promise without application by the promisee:

If no time for performance is specified	The contract must be performed within a reasonable time. The question 'What is reasonable time' is a question of fact in each particular case.
If a certain day is specified for performance	The promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.
If no place for performance is specified	The promisor must apply to the promisee to appoint a reasonable place for the performance and to perform the promise at such place.

Where promisor has not undertaken to perform his promise without application by the promisee:

If a certain day is specified for performance:

It is the duty of the **promisee** to apply for performance at a proper place and within the usual hours of business. The question "what is a proper time and place" is a question of fact in each particular case.

Time as essence of contract

Time is essence of a contract means that it is necessary for the parties to a contract to perform their respective promises within the specified time. But if the promisor fails to do so, can the promisee rescind the contract? This question can be answered by deciding whether in such a case time was or was not the essence of the contract.

➤ Cases where time is essence

In the following cases, time is usually considered to be the essence of contract:

- Where the parties have expressly agreed to treat the time as the essence of the contract.
- Where the non-performance at the specified time operates as an injury to the party.
- Where the nature and necessity of the contract requires the performance of the contract within the specified time.

Consequences where time is essence

In case the performance is not made where time is essence the breach will have following consequences:

- Voidable at the option of promisee.
- Promisee is entitled to claim compensation for any loss arising to him due to non-performance of the promise at agreed time where performance beyond the stipulated time is not accepted.
- Promisee is not entitled to claim compensation for any loss arising to him due to non-performance of the promise at agreed time where performance beyond the stipulated time is accepted, unless the promisee gives notice to the promisor of his intention to claim compensation.

Consequences where time is not essence

In case the performance is not made where time is not essence the breach will have the following consequences:

- Not voidable at the option of promisee.
- Promisee is entitled to claim compensation for any loss arising to him due to nonperformance of the promise at agreed time where performance beyond the stipulated time is not accepted.
- Promisee is not entitled to claim compensation for any loss arising to him due to nonperformance of the promise at agreed time where performance beyond the stipulated time is accepted, unless the promisee gives notice to the promisor of his intention to do so.

Example:

A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week for the next two months. B agrees to pay her Rs 100 for each performance. On the sixth night, A willfully absents herself from the Theatre. In this case, B has the following two options:

B may rescind the contract and claim compensation for the loss occasioned to him by A's failure to sing on the sixth night.

B may permit A to sing on the seventh night and claim compensation for loss from A by giving a notice to A of his intention to do so.

Reciprocal Promises:

Promises which form the consideration or part of the consideration for each other, are called 'reciprocal promises'.

Example:

In a contract for sale, A promises to deliver the goods to B at a fixed price and B promises to give promise for the payment of the price. Such promises are called reciprocal promises.

Types of Reciprocal Promises:

Mutual and Independent:

When the promises are to be performed by each party independently, without waiting for the other party to perform his promise.

Mutual and Dependent:

When the performance of one party depends on the prior performance of the other party.

Mutual and Concurrent:

When the promises are to be performed simultaneously.

Rules Regarding Performance of Reciprocal Promises

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.

Example:

A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods, unless A is ready and willing to deliver them on payment.

Regarding 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 the order which the nature of the transaction requires.

Example:

A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

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.

Example:

A and B contract that B shall execute certain work for A, for Rs.1,000. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effects of non-performance in case of Mutual and Dependent Reciprocal Promises:

Where the performance of one party depends on the prior performance of the other party and the 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 the non-performance of the contract.

Example:

A contracts with B to execute certain builder's work for a fixed price, B supplying the timber necessary for the work. B refuses to furnish any timber. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

Effect of Promise to do Legal and 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.

Example:

A and B agree that A shall sell B a house for Rs.10,000 but that, if B uses it as a gambling house, he shall pay Rs.50,000 for it.

Effect of alternative Promise being Illegal:

In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Assignment of Contract:

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

Modes of Assignment of Contract:

Assignment of a contract may take place in the following ways:

1. Assignment by act of parties
2. Assignment by operation of law

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:

1. If it is a contractual obligation/right involving a personal skill or ability, then it cannot be assigned.
2. If the contract expressly or impliedly provides that the contract shall be performed by the promisor only, such obligation cannot be assigned.
3. If the contract does not expressly or impliedly provide that the contract shall be performed by the promisor only, the promisor or his representative may employ a competent person to perform such obligation, but promisor still remains liable to the promisee for proper performance.
4. Actionable claims (i.e. claim to any debt or to any beneficial interest in movable property) can always be assigned by instrument in writing.

Assignment by Operation of Law:

In case of death of any party:

The rights and obligations (other than those of personal nature) of the deceased party pass on to his legal representatives.

In case of insolvency of any party:

The rights and obligations (other than those of personal nature) of the insolvent party pass on to the Official Receiver or Assignee.

Appropriation of Payment:

Appropriation of payment means application of payment to a particular debt.

Rules Regarding Appropriation of Payments:

Where a debtor owes several distinct debts to a creditor and makes payment to a creditor, the following various rules regarding appropriation of payments shall apply:

1. Where debt to be discharged is indicated:

The payment, if accepted must be applied accordingly.

2. Where debt to be discharged is not indicated

The creditor has option to apply the payment to any lawful debt due from the debtor even if it is a time barred debt. But he cannot apply to a disputed debt.

3. Where neither party makes any appropriation:

The payment shall be applied in discharge of the debts in order of time whether or not they are time barred. If principal and markup both are due, then markup is settled first and then principal amount is settled.

Past papers

Autumn 2020

Q.4 (c) Mohsin and Jaleel jointly borrowed a sum of Rs. 300,000 from Muslim and Munaf jointly. On due date, Mohsin and Jaleel defaulted in making the payment. Munaf, without Muslim's knowledge, filed a suit against Mohsin and Jaleel for the recovery of the amount due.

Under the provisions of the Contract Act, 1872 briefly describe whether Munaf would succeed in his case. (02)

Spring 2020 Q.2 (c)

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)

Spring 2019 Q1 (a)

Briefly explain five rules regarding performance of reciprocal promises under the provisions of Contract Act, 1872. (05)

Autumn 2017 Q3 (c)

Following is the statement of sums payable by Nisar to Mairaj on 4 March 2017:

Date of invoice	Rupees	Remarks
01/01/2016	200,000	Guaranteed by Imran.
08/06/2016	150,000	
	<u>350,000</u>	

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)

Spring 2017 Q3

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;

(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)

Spring 2014 Q10 (b)

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: **(05)**

(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?

Chapter # 06
Discharge of a Contract & Remedies for
Breach of Contract

Discharge of Contract

Discharge of a contract means termination of a contract. A contract is said to be discharged when contractual relations between the parties to a contract are terminated or comes to an end.

Modes of discharge of contract:

➤ Discharge by performance:

1. Actual Performance:

If the parties to the contract perform their respective promises in accordance with the terms of the contract then it is called discharge by actual performance.

Example: A contracted to deliver to B at his warehouse on 1st November, 500 bales of cotton of a particular quality. A brought the cotton of requisite quality to the appointed place on the appointed day during the business hours, and B took the delivery of goods. This is an actual performance.

2. Attempted performance:

If the promisor has made an offer of performance as per the terms of the contract and the promisee refuses to accept the offer of performance then the promisor is said to be discharged by attempted performance. It is also known as tender. It is equivalent to actual performance. In this performance, the promisor offers to perform his obligation, but the promisee refuses to accept his performance.

Example: A contracted to deliver to B at his warehouse on 1st November, 500 bales of cotton of a particular quality. B refused to take the delivery of goods; it is a case of attempted performance because A has done what he was required to do under the contract.

➤ Discharge by mutual agreement:

1. Novation:

Novation means existing contract is replaced with a new contract with mutual consent, before date of performance. In novation, parties to the new contract may or may not be the same.

Example: A owes money to B under a contract. It is agreed between A, B and C that B shall now accept C as his debtor; instead of A. The old debt of A to B no longer exists and a new debt from C to B has been contracted.

2. Alteration:

Alteration means a material alteration in the terms of a contract with mutual consent of the parties. In alteration, parties to the contract remains the same.

Example: X promise to sell and deliver 500 bales of cotton, on 1st November and Y promises to pay for goods on 1st December. Afterwards, X and Y mutually decide that the goods shall be delivered in five equal instalments at Z's godown. Here, original contract has been discharged and a new contract has come into effect.

3. Rescission:

Rescission is the cancellation of a contract by mutual agreement of parties.

Example: A promises B to sell and deliver 500 Bales of cotton on 1st November at his godown and B promises to pay for goods on 1st December. A does not supply the goods. B may rescind the contract.

4. Remission:

Remission means accepting a less amount than the initial amount agreed.

Example: A promises to paint a picture for B. B afterwards requested A not to do so. A, if agreed is no longer bound to perform the promise.

5. Waiver:

Waiver means abandonment of a right under the contract. Thus, the other party is released from his obligation.

➤ Discharge by operation of law:

1. By Death:

A contract involving personal skill or ability of the promisor is discharged automatically on the death of the promisor.

2. By insolvency:

When a person's debt exceeds his assets, he is adjudged insolvent and his property stands vested in the Official Receiver or Official Assignee appointed by the court. Such person cannot enter into contracts relating to his property, sue or be sued. Therefore, on declaration of a person as an insolvent person is discharged from his liabilities incurred prior to his adjudication.

3. Material Alteration:

A contract is discharged if the terms of the contract are materially altered without getting prior consent of parties.

4. Same identity:

When the promisor becomes the promisee, the other parties are discharged e.g. negotiation back in case of a negotiable instrument i.e. creditor to himself becomes a debtor of the same loan.

➤ Discharge by impossibility of performance:

Supervening impossibility

Supervening impossibility means impossibility did not exist at the time of making contract but which arises after the formation of the contract.

- Such contract becomes void when the act becomes impossible.

- If a person has received any benefit under such contract, he must restore or compensate it.

Cases when a contract is discharged on the ground of supervening impossibility:

- I. If the subject matter of the contract is destroyed after the formation of the contract without any fault of either party then a contract is said to be discharged.
- II. If a contract is of personal nature then on the death / incapacity / illness of a person a contract is said to be discharged.
- III. At the time of declaration of war the contracts with alien enemies are either suspended or declared as void.
- IV. The contract is discharged if that particular state of thing which forms the basis of a contract ceases to exist or occur.

Cases when a contract is not discharged on the ground of supervening impossibility:

- I. A contract will not be discharged if the performance of a contract becomes difficult, more costly or less beneficial than that agreed at the time of its formation.
- II. When the contract becomes commercially unviable or non-profitable it is not said to be discharged.
- III. A contract is not said to be discharged on default of a third party on whose work the promisor is relying.
- IV. Unless otherwise agreed by the parties to the contract, a contract is not discharged on the grounds of strikes, lockouts and civil disturbances.
- V. If the performance of the contract becomes unlawful due to a change in the law after the formation of the contract then the contract is said to be discharged.
- VI. A contract is not discharged simply on the grounds of partial impossibility of some of the objects of the contract.

➤ **Discharge by lapse of time:**

Limitation period

If a contract is not performed within the period of limitation then it is discharged as the parties cannot legally enforce their rights.

After the expiry of the limitation period, the debt becomes time barred and hence cannot be recovered through court of law.

Discharge by Breach:

A contract is said to be discharged by breach of contract if any party to the contract refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract.

Types of breach of Contract and their consequences:

A breach of contract may occur in the following two ways:

1. Actual Breach of Contract:

Actual breach of contract occurs in the following two ways:

I. On Due Date of Performance:

When a party refuses or has disabled himself from performing his promise at the time fixed for performance.

Example:

A agreed to sell to B 10 tons of wheat @ Rs.8,000 per ton to be delivered in two equal instalments on 20th November and on 21st November. On 20th November, A refused to deliver the goods. It is an actual breach of contract on due date of performance.

II. During the Course of Performance:

When a party has performed a part of the contract and then refuses or has disabled himself from performing the remaining part of the contract.

Example:

A agreed to sell to B 10 tons of wheat @ Rs.8,000 per ton to be delivered in two equal instalments on 20th November and 21st November. On 20th November, A delivered 5 tons and refused to deliver remaining 5 tons. It is an actual breach of contract during the course of performance.

Consequences of Actual Breach of Contract:

In case of actual breach, consequences depend on whether time is the essence of contract or not:

Where time is essence of a contract:

- Contract becomes voidable at the option of the promisee
- If performance beyond stipulated time is not accepted, promisee is entitled to claim the compensation for any loss occasioned to him by the nonperformance of the promise at the stipulated time.
- if performance beyond stipulated time is accepted, promisee is entitled to claim the compensation for any loss but only if promisee gives notice to the promisor of his intention to do so.

Where time is not essence of a contract:

- Contract does not become voidable at the option of the promisee.
- Promisee is entitled to claim the compensation for any loss but only if promisee gives notice to the promisor of his intention to do so.

Example: Time is not essence

A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week for the next two months. B agrees to pay her Rs.100 for each performance. On the sixth night, A wilfully absents herself from the Theatre.

In this case, B has the following two options:

- B may rescind the contract and claim compensation for the loss occasioned to him by A's failure to sing on the sixth night.
- B may permit A to sing on the seventh night and claim compensation for loss from A by giving a notice to A of his intention to do so.

2. Anticipatory Breach of Contract:

Anticipatory breach of contract occurs when the party declares his intention of not performing the contract before the performance is due.

Anticipatory breach in the following two ways:

Refusal to perform promise

When a party to a contract has refused to perform his promise

Example:

A, a farmer agrees to sell to B his entire crop of 10 tons of wheat @ Rs. 8,000 per ton to be delivered on 20th November. On 1st November, A informs B that he is not going to supply the goods. A has committed anticipatory breach of contract by express repudiation.

Disabled to perform promise

When a party to a contract has disabled himself from performing his promise in its entirety.

Example:

A, a farmer agrees to sell to B his entire crop of 10 tons of wheat @ Rs. 8,000 per ton to be delivered on 20th November. On 1st November, A contracted to sell his entire crop to C @ Rs. 10,000 per ton. A has committed anticipatory breach of contract by implied repudiation.

Consequences of Anticipatory Breach of Contract:

In case of anticipatory breach, the aggrieved party has the following two options:

Option I. He can rescind the contract and claim damages for breach of contract without waiting until the due date for performance, or

Option II. He may treat the contract as operative and wait till the due date for performance and claim damages if the promise still remains unperformed.

Option exercised	Amount of damages
When the aggrieved party rescinds the contract at the date of breach.	The amount of damages will be equal to the difference between the price prevailing on the date of breach and the contract price.
When the aggrieved party does not rescind the contract at the date of breach	The amount of damages will be equal to the difference between the price prevailing on the due date of performance and the contract price.

Consequences of Treating Contract as Operative:

In case of anticipatory breach, if the aggrieved party treats the contract as operative and waits till the due date for performance, the consequences will be as follows:

1. The promisor may perform his promise on or before the due date of performance and the promisee will be bound to accept the performance.
2. The promisor may take advantage of the discharge by supervening impossibility arising between the date of breach and the due date of the performance and in such a case, the promisee shall lose his right to sue for damages.

Example: Consequences of treating contract as operative

A, a farmer agrees to sell to B his entire crop of 10 tons of wheat @ Rs. 8,000 per ton to be delivered on 20th November. On 1st November, A informs B that he is not going to supply the goods. B decided not to rescind the contract on 1st November and to wait till 20th November. On 19th November, the entire crop was destroyed by fire without the fault of either party. Since the contract becomes void on the ground of impossibility of performance, B had lost the right to sue A for damages.

Remedies for Breach of Contract:

Remedy:

A remedy is the course of action available to an aggrieved party (i.e. the party not at default) for the enforcement of a right under a contract.

Remedies can be categorized into the following types:

Common law remedies:

Damages and action for the price are more frequently sought remedies for breach of contract, since they arise as of a right. The object of such a remedy is not to punish the party at fault but to compensate the aggrieved party (pecuniary loss) as far as money can do so.

Equitable remedies:

Equitable remedies are the court ordered action that directs parties to do something (specific performance) or not to do something (injunction). In other words, equitable remedies are only appropriate in specialized circumstances e.g. where monetary damages would be inadequate compensation for the breach of an agreement.

Quantum meruit claim:

Quantum meruit claim is categorized as a claim in quasi contract. Quantum meruit is likely to be sought where one party has already performed part of his obligations and the other party then repudiates the contract. When the aggrieved party elects to treat the contract as terminated, he may claim a reasonable amount for the work done.

Remedies for Breach of Contract:

Rescission of Contract:

Rescission means a right not to perform obligation. In case of breach of a contract, the promisee may put an end to the contract. In such a case, the aggrieved party is discharged from all the obligations under the contract and is entitled to claim compensation for the damage which he has sustained because of the non-performance of the contract.

The court may grant rescission in the following two cases:

- Where the contract is voidable at the option of the aggrieved party.
- Where the contract is unlawful for causes not apparent on its face and defendant is more to blame than the plaintiff.

The court may not grant rescission in the following cases:

- Where the aggrieved party has expressly or impliedly ratified the contract.
- Where owing to the change of circumstances, the parties cannot be restored to their original positions.

- Where the third party has acted in good faith and for consideration.
- Where only part of a contract is sought to be rescinded and such part is not severable from the rest of the contract.

Restitution:

Restitution means return of the benefit received by one party to the contract from the other under a void contract. When a contract becomes void it needs not to be performed by either party.

Example:

A pays B Rs. 1,000 in consideration of B's promising to marry C (A's daughter). C is dead at the time of promise. The agreement is void but B must repay A Rs.1,000.

Damages:

Damages are monetary compensation allowed for loss suffered by the aggrieved party due to breach of a contract.

Specific Performance:

Suit for specific performance means demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract.

Cases where suit for specific performance is maintainable

1. Where Actual damages arising from breach are not measurable
2. Where Monetary compensation is not an adequate remedy.
3. There is a contract for the sale of rare commodities
4. There is a contract for the sale of land, building, houses.

Cases where suit for specific performance is not maintainable:

1. Where the damages are considered as an adequate remedy.
2. Where the contract is of personal nature, e.g. contract to marry.
3. Where the court cannot supervise the performance of the contract.
4. Where one of the parties is a minor.
5. Where the contract is inequitable to either party.

Example:

A agreed to sell an old painting to B for Rs. 500,000. Subsequently, A refused to sell the painting. Here, B may file suit against A for the specific performance of the contract.

A agrees to sell two rare Pakistani Handmade carpets to B for Rs. 2 million. In case of breach by A, B may compel A to perform the contract specifically, because there is no standard for ascertaining the actual damages which would be caused by the nonperformance by A.

Injunction:

Suit for injunction means demanding court's stay order. Injunction means an order of the court which prohibits a person to do a particular act. Where a party to a contract does something which he promised not to do, the court may issue an order prohibiting him from doing so.

Example:

A agreed to play cricket for Apple Cricket Club during the contract period of 3 years. During the contract period, A made a contract with Orange Cricket Club and refused to play cricket for Apple Cricket Club. Here, A could be restrained by injunction from doing so.

Quantum Meruit:

In case of breach of contract the application or non-application of the term quantum meruit varies depending upon the terms of the contract. Further, the divisibility or indivisibility of performance of the contract may also be taken into account. Quantum Meruit is likely to be sought where one party has already performed part of his obligations and the other party then repudiates the contract. Provided the injured elects to treat the contract as terminated, he may claim a reasonable amount for the work done.

Example:

C as owner of a magazine engaged P to write a book to be published by instalments in his magazine. After a few instalments were published, the publication of the magazine was stopped. It was held that P could claim payment for the part already published.

Kinds of Damages:

Ordinary damages are those which naturally arise in the usual course of things from such breach. These damages can be recovered if:

- The aggrieved party has suffered by breach of contract, and
- The damages must be a direct consequence of the breach of contract.

Example:

On 1st December; X contracted to sell and deliver 50 tons of wheat @ Rs. 8,000 per ton to Y on 1st January. On 20th December y, afterwards, contracted to sell those goods to Z at Rs. 10,000 per ton. X failed to deliver goods on 1st January when the price of the wheat was Rs. 9,500 per ton. Y is entitled to recover Rs. 75,000 [i.e. (Rs. 9,500 – Rs. 8,000) x 50]. Y is not entitled to recover Rs. 1,00,000 as profit which would have arisen to Y from the sale to Z because the profit is the indirect consequence of the breach of contract.

Special Damages:

Special damages are those which are not natural or direct consequences of breach of a contract, but arise on account of special or unusual circumstances. These are awarded by the court if both parties knew, at the time of contract, about the likely special loss in case of breach. E.g. loss of profits on account of default by the other party to the contract can be claimed only when an advance notice of such damages has been given before.

Example:

A, a builder; contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January it falls down, and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

Exemplary or Punitive or Vindictive Damages:

Exemplary damages are those which are in the nature of punishment.

The court may award these damages in case of

- 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. 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.

Damages for Inconvenience and Discomfort:

If a party has suffered physical inconvenience and discomfort due to breach of contract, that party can recover the damages for such inconvenience and discomfort.

Example:

H with his wife and children booked a ticket for a midnight train, to be transported to a particular place where he lived. They were, however, transported to a wrong place and they had to walk several miles on a drizzling night and as a result, his wife caught cold and he had to incur some medical expenses., It was held that he could recover compensation for inconvenience and not for medical expenses for the sickness of his wife because it was a very remote consequence.

Liquidated Damages:

When the parties to a contract at the time of formation of contract, specify a sum which will become payable by the party responsible for breach, such specified sum is called **Liquidated Damages** if the specified sum represents a fair and genuine pre-estimate of the damages likely to result due to breach;

Penalty:

If a contract states that a particular sum is to be paid on breach of the contract and

- that sum is not the genuine pre-estimate of the loss that would be suffered in the event of breach or
- that the sum is disproportionate to the actual loss likely to result due to breach this is penalty clause.
- the court can decrease but not increase the penalty stipulation.

Nominal Damages:

These damages consist of a sum of money which is very small in quantity. Where the court finds that the party has not actually suffered many damages or when court is of the opinion that the breach complained of was too petty or insignificant, the court allows a petty sum as damages.

Stipulation for Interest:

Two parties may agree to give a specific rate of interest in case of breach of contract.

Forfeiture of Security Deposit (or Earnest Money):

A clause in a contract which provides for forfeiture of security deposit in the event of failure to perform is in the nature of a penalty. In such cases, the court may award reasonable compensation only.

Rules regarding amount of damages

- The object of awarding damages is not to punish the party at fault
- The injured party is to be placed in the same position as money can do if the contract had been performed
- The aggrieved party can recover actual loss suffered by him arising naturally.
- The fact that damages are difficult to assess does not prevent the injured party from recovering.
- Where no real loss arises nominal damages are awarded.
- If the parties fix any amount as damages in case of breach of contract then the court will allow only reasonable amount.
- It is the duty of the injured party to minimize the damage suffered.

Remoteness of damages:

There are some losses which clearly result from the defendant's breach of contract but are considered too remote from the breach for it to be fair to expect the defendant to compensate the claimant for them.

Example:

A taxi driver is booked to take a passenger to the airport in time for a certain flight to Karachi where the passenger expects to complete a deal worth Rs. 1 million. If the taxi driver breaches the contract by arriving late, the taxi firm may be liable for expenses such as any extra cost for getting the next flight but is unlikely to be expected to compensate the passenger for the loss of Rs. 1 million.

Syed Burhan Hassan (ACA) ST Academy (Spring 2022)

Past Papers

Autumn 2020

Q.3(b) Sarya Traders (ST) agreed to supply building materials to Khwaja Contractors (KC) on 10 September 2020 for the construction of a charitable hospital in District Malir. However, on due date, ST failed to fulfil their obligation

Under the provisions of the Contract Act, 1872 explain the rights available to KC under the above situation. Assume time was the essence of the contract. **(03)**

03(c) What would be your answer in (b) above if KC had to procure building material from another supplier at a price higher than the price agreed with ST and also had to pay a penalty of Rs. 50,000 to the owner of the hospital for construction delay? **(03)**

Spring 2020 Q3 (d)

Respond to the following independent scenarios, under the provisions of the Contract Act, 1872

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)**

Spring 2019 Q1 (b) (i)

Respond to the following scenarios, under the provisions of Contract Act, 1872:

(i) On 11 February 2019, Isfandiyar agreed to sell his house to Javed for Rs. 15 million. On 19 February 2019, Javed came to know that Isfandiyar has finalized a deal for the same house with Jenny. Discuss the option(s), if any, available to Javed. **(02)**

Autumn 2018 Q2 (b) (i)

Under the provisions of the Contract Act, 1872:

(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. **(05)**

Spring 2018 Q2 (a)

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)**

Autumn 2017 Q1

(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.

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)**

Spring 2016 Q2 (b)

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. **(08)**

Autumn 2015 Q3 (a)

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. **(08)**

Spring 2015 Q2 (a)

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. **(07)**

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

(i) Whether the contract would be discharged under the above circumstances.

(ii) What would be your decision if Lalchi Traders were importing yarn and Government has imposed a ban on its import.

Chapter # 07
Specific Types of Contract

Quasi Contract:

A Quasi contract is an obligation imposed by law in absence of any agreement between the parties. A quasi-contract is not an actual contract, but is a legal substitute formed to impose equity between two parties. The concept of a quasi-contract is that of a contract that should have been formed, even though in actuality it was not. Quasi contract is also called constructive contracts.

Types of Quasi Contract:

➤ **Right to recover the price of necessities supplied:**

The person who has supplied necessities to a person who is incompetent to contract or anyone who is dependent on any such incompetent person, is entitled to claim their price from the property of such incapable person.

➤ **Right to recover money paid for another person by interested person:**

If an interested person pays the legal obligation of another person, he is entitled to recover the amount from that another person.

➤ **Right to recover price for non-gratuitous act:**

Such right to recover arises if the following three conditions are satisfied:

- i. The thing must have been done or delivered lawfully.
- ii. The person who provided goods or services, must not have intended to do it gratuitously.
- iii. The person who has received goods or services, must have enjoyed the benefit of goods or services.

➤ **Responsibility for 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. He is bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his own goods. He must also take reasonable steps to trace its owner. If he does not, he will be guilty of wrongful conversion of the property.

➤ **Right to recover payment made 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.

Quantum Meruit

The term Quantum Meruit means “as much as earned or deserved.” In case of breach of contract the application or non-application of the term quantum meruit varies depending upon the terms of the contract. Further, the divisibility or indivisibility of performance of the contract may also be taken into account.

The aim of such an award is based on an implied agreement to pay for what has been done. Quantum Meruit is likely to be sought where one party has already performed part of his obligations and the other party then repudiates the contract. Provided the injured elects to treat the contract as terminated, he may claim a reasonable amount for the work done.

Cases in which the claim of Quantum Merit arises:

➤ **Void agreement or contract that becomes void:**

If an agreement is discovered to be void, a person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it. He cannot demand performance of the contract or claim damages for non-performance.

Example: A contracts with B to deliver to him 250 kg of rice before May. A delivers 130 kg only before the agreed time, and none after. B retains the 130 kg. He is bound to pay A for them.

➤ **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.

Example: A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

➤ **Act preventing completion of performance:**

If a party prevents the other party to complete the contract, the aggrieved party can sue on quantum meruit.

Example: C, an owner of a magazine engaged P to write a book to be published by instalments in his magazine. After a few instalments were published, the publication of the magazine was stopped. It was held that P could claim payment for the part already published.

➤ **Divisible contract:**

The party at default may sue on a quantum meruit if the contract is divisible and the party not at default has enjoyed benefits of the part performance.

Example: A hired B to construct a house for Rs. 1 million but B abandoned this contract after having done the work worth Rs. 0.5 million. Afterwards, A got the work completed. B could not recover anything for the work done because he was entitled to the payment only on the completion of the work.

➤ **Indivisible contract performed completely but badly:**

If it is an indivisible contract which has been completely performed but with faults than the party at default may claim the amount agreed after deducting any amount which the other party has paid to remove faults.

Example: A agreed to decorate B's flat for a lump sum of Rs. 200,000. A did the complete work but B complained of faulty workmanship. It costs B another Rs. 30,000 to remedy the defect. It was held that A could recover only Rs. 170,000 from B.

➤ **Express or implied contract to render services but no remuneration is pre-settled:**

When there is an express or implied contract to render services but no remuneration is decided, in such a case reasonable remuneration is payable.

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. E.g., Insurance contract.

Features/Characteristics of contingent contracts

The following are the characteristics of contingent contracts:

- the performance of a contingent contract depends upon the happening or non-happening of some future event.
- the event must be collateral to the contract
- the event must be uncertain

Rules regarding contingent contracts

Kind of Contingent Contract	Rule Regarding Performance of Contingent Contract
Contracts contingent upon the happening of an event.	<p><u>If time is fixed</u></p> <p>Such contract can be enforced by law only when the event happens within specified time. If the event becomes impossible or does not happen within the time specified, such contract becomes void.</p> <p><u>If time is not fixed.</u></p> <p>Such contracts can be enforced by law only when that event has happened. If the event becomes impossible, such contracts becomes void.</p>
Contracts contingent upon the non-happening of an event.	<p><u>If time is fixed</u></p> <p>Such contract can be enforced by law only when the event becomes impossible or does not happen within specified time.</p> <p><u>If time is not fixed.</u></p> <p>Such contracts can be enforced by law only when the happening of that event becomes impossible.</p>
Agreement contingent upon impossible events.	Such agreements are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.
Contract contingent upon the future conduct of a person.	If the uncertain event is the conduct of a living person, such event shall be considered impossible if that such person does anything by which it becomes impossible to perform the contract within any definite time.

Wagering Agreement

An agreement between two persons under which money or money's worth is payable, by one person to another on the happening or non-happening of a future uncertain event is called a wagering agreement. An agreement by way of wager is void.

Effects of Wagering Agreement

The effects of wagering agreements are following:

- Such agreements are void
- No suit can be filed to recover the amount won on any wager.

Transactions which are collateral to wagering agreements may also be void.

Difference between contingent contract and wagering agreement

Contingent contract	Wagering agreement
Validity It is a valid contract.	It is void and illegal.
Interest of parties In a contingent contract, parties have real interest in the occurrence or non-occurrence of the event e.g., insurable interest in the property insured.	Parties are not interested in the occurrence or non-occurrence of the event except for the winning or losing the amount.
Uncertain event The future uncertain event is merely collateral.	The uncertain event is the sole determining factor of the agreement.
Reciprocal promises It consists of reciprocal promises.	It may or may not consist of reciprocal promises.

Agency:**Agent:**

An "agent" is a person employed to do any act for another or to represent another in dealings with third persons.

Principal:

The person for whom such act is done, or who is so represented, is called the "principal".

Who may employ agent:

Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent:

As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary:

No consideration is necessary to create an agency.

Actual/Real Authority:

Actual or real authority means authority which is given by principal expressly or impliedly.

- Authority of an agent is express when it is given by words written or spoken.
- Authority of an agent is implied when it is inferred from the circumstances.

Extent of agent's authority:

An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

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.

Past papers

Spring 2021

Agency Past Paper deleted from the syllabus

Spring 2020

Q.2(a) 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)

Autumn 2019

Q.3 Respond to the following scenarios, under the provisions of the Contract Act, 1872:

(a) Shoaib, aged 15, is the son of a billionaire businessman, Ijaz Munsif. Last month Shoaib 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 Shoaib at his house. The seller requested for payment for the car but Shoaib 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 Shoaib or Ijaz Munsif. (05)

Autumn 2018 Q2

(c) 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. (02)

Spring 2018

Q2 (b) Under the provisions of the Contract Act, 1872 briefly describe the various types of quasi contracts. (05)

Spring 2017

Q.1b (i) 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. 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:

The type(s) of contractual relationships, if any, between Danish, the retailer and the real owner of the phone. (03)

Q2 (c) Vazir said to Saulat, “I will buy speed boats worth Rs. 10,000,000 from you, if you obtain the license for me to operate the boats at Clifton beach”. Saulat agreed and applied for the license and deposited Rs. 100,000 as processing fee. However, before the issuance of license, the city government imposed a ban on the issuance of new licenses. Saulat wants Vazir to buy the speed boats as he had made necessary efforts to arrange for the license. However, Vazir refuses to buy the speed boats from Saulat.

Under the Contract Act, 1872 identify the type of contract between Vazir and Saulat. Also state whether Vazir is now bound to purchase the speed boats from Saulat. **(04)**

Autumn 2015 Q2

(b) 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) 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)**

Chapter # 08
Partnership Act

Partnership Act

Definition: "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Note: Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called "firm name".

An "act of a firm" means any act or omission by all the partners or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm.

"Third party" means any person who is not a partner in the firm.

Essentials of a Partnership:

1. **There must be a contract:**

Partnership is a result of contract. It does not arise from status or inheritance. It may be oral or in writing. Further, it may be expressed or implied. A written agreement is called "Partnership Deed".

Elements of Partnership Deed

1. Name of Firm and its partners along with their addresses.
2. Amount of capital to be contributed by each partner.
3. Duration of partnership (if any).
4. Profit and Losses sharing ratio among partners.
5. Interest, Salary or Commission payable to partners (if any).
6. Rights and Duties of Partners.

2. **There must be association of two or more persons:**

To form a partnership, there must be at least two persons who are competent to enter into contract.

- In case of a partnership firm carrying on banking business maximum number is 10.
- In case of a partnership firm carrying on any other business maximum number is 20.
- In case of a partnership firm of professional persons (e.g., audit firm) maximum number may exceed 20.

3. **Parties must agree to carry on business:**

If there is no business, there will be no partnership. If the purpose is to carry on some charitable work it will not be a partnership.

Business here includes any lawful trade, occupation and profession. An agreement to carry on business at a future time does not result in partnership unless that time arrives and the business is commenced.

4. There must be sharing of profits among parties:

Sharing of profit is necessary but sharing of losses is not necessary. However, if a partner does not share losses, his personal liability will still be unlimited for the debts of the company.

Sharing of profits is a strong test of partnership, but not conclusive evidence. Following are situations in which the parties are sharing profit but they are not partners i.e. the receipt of such share of payment:

1. by a lender of money to persons engaged or about to engage in any business.
2. by a servant or agent as remuneration.
3. by the widow or child of a deceased partner as annuity.
4. by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share.
5. a minor who is admitted to the benefits of an existing partnership.
6. a transferee of a partners' interest.

5. There must be mutual agency among partners:

A partnership is a mutual agency i.e., every partner is both an agent and principal for other partners. In the ordinary course of business, he can bind other partners by his acts and other partners can bind him. Every partner has implied authority to act for all and can make contracts with third parties in the ordinary course of business. However, other partners can make a partner liable if he exceeds his authority.

Test of Partnership

1. All above essentials (1 to 5) must exist simultaneously. If any of these is not present, it will not be a partnership.
2. Partners may agree that:
 - a. a person can become partner without capital or without sharing losses.
 - b. a partner can receive salary, commission or interest on capital.
 - c. a partner will not participate in management of business.

Difference between Partnership and Joint Stock Company:

Partnership	Joint Stock Company
It is created by an agreement alone.	It is created by law.
Registration is optional.	Registration is compulsory.
It is not a separate legal entity.	It is a separate entity or an artificial person distinct from its members.
Partners have joint and several liability i.e., unlimited liability.	It has limited liability i.e., liability is restricted to the amount of capital.
A firm is dissolved on the death or insolvency of a partner. It has no perpetual succession.	A joint stock company continues to exist irrespective of death or insolvency of its members or directors.
A partner is an agent of the firm for the purpose of business of the firm.	Directors are agent of the company. Shareholders are not agents.
A partner cannot transfer his interest without getting consent from other partners.	There is no such restriction for transfer of shares

Minimum two competent to contract persons are required and a maximum of 20 persons can carry partnership other than banking business and professional services.	Minimum one person can carry single member company and no limit on shareholders for a public company.
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Difference between Partnership and Co-ownership:

Partnership	Co-ownership
It is created by an agreement alone.	Co-ownership is not necessarily a result of an agreement (for e.g. inheritance)
In partnership carrying on business in an essential. If there will be end of business it will ultimately result in end of partnership firm.	Co-ownership does not necessarily involve the carrying on of a business. (2 brothers owns a property inherited)
Minimum two competent to contract persons are required and a maximum of 20 persons can carry partnership other than banking business	No limit on maximum number of co-owners.
Sharing of profit is one of the essential elements.	It does not involve sharing of profit.
A partner is an agent of the firm for the purpose of business of the firm.	Co-owners are not agents to one another.
A partner cannot transfer his interest without getting consent from other partners.	Co-owner can transfer his interest without getting consent from other co-owner(s)

Types of partnership:

1. Particular Partnership:

Where a partnership is created for any particular adventures or undertakings, or for a specific time period. Such partnership is dissolved on completion of venture or on expiry of the period.

2. Partnership at will:

Where contract between partners contains no provision for duration of their partnership or for termination of their partnership. Such partnership is dissolved when any of partners give a notice in writing to firm that he intends to dissolve the firm.

Types of partners:

1. Actual or ostensible partner:

A partner who is actively engaged in the conduct of a business is called actual or ostensible partner. Such a partner is an agent of all other partners for the purposes of the business of the firm. He can bind himself and other partners for the acts done in the ordinary course of the business.

2. Sleeping or dormant partner:

This is a partner who is NOT actively engaged in the conduct of the business, and is NOT known to third parties as a partner. A sleeping partner is not required to give a public notice if he retires from firm.

3. **Silent Partner:**

This is a partner who, by agreement, has no voice in the management of the partnership.

Partners in Profit only:

This is a partner who, by agreement, is entitled to share profits but does NOT share losses. However, his liability towards third parties is still unlimited.

4. **Nominal Partner:**

This is a partner who is NOT actively engaged in the conduct of the business. It does not contribute any capital but lends his name to firm. However, his liability towards third parties is still unlimited.

5. **Sub-Partner:**

If a partner agrees to share his share of profits with an outsider, such an outsider is called a sub-partner. A sub-partner has no direct relation with partnership and has no right or liability for partnership.

Doctrine of Holding Out:

Where a man holds himself out as a partner, or allows others to do it, he is then properly estopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A man so acting may be rightly held liable as a partner by estoppel.

The doctrine of holding out is a part of principle of estoppel, namely, that where one person by words or conduct induces another to believe him and act upon the existence of a particular state of facts, he cannot afterwards as regards that person deny the existence of such fact.

In order to estop a person from denying that he is a partner on the doctrine of “holding out” the following elements must co-exist:

- a. A person must represent himself to be a partner in a firm or knowingly permit himself to be so represented by words written or spoken or by conduct: and
- b. Another person must have given credit to the firm on the faith of such representation.

Effect of Holding Out:

If a partner holds himself out to be a partner of a firm, he becomes personally liable. He does not thereby become a partner in the firm; and is not entitled to any rights as against those who are in fact partner in the firm. By holding out to be a partner, he does not become the agent of the firm. He merely makes himself personally liable for the credit.

Property of partnership:

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

1. All property originally brought into the common stock of the firm;
2. All rights or interest in the property originally so brought;

3. All property acquired, by purchase or otherwise, by the firm or for the firm and all rights and interest in any property so acquired;
4. Goodwill of the business of the firm;

Any property purchased with partnership money with or without other partners consent will be deemed to be partnership property, unless any contrary intention appears.

Transferee of a Partners Interest:

A partner assigns or transfer his interest in profits and property of firm by sale, mortgage or charge either fully or partially.

Rights of Transferee:

1. To receive the share of profits of the transferring partner
2. If firm is dissolved, transferee is entitled:
 - a. to receive the share of the assets of the firm to which the transferring partner is entitled, and,
 - b. for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Restrictions on Transferee:

1. He does not have status of a partner.
2. He cannot interfere in the conduct of the business.
3. He cannot require accounts.
4. He cannot inspect the books of the firm.
5. He cannot challenge the account of profits agreed by the partners.

Minor in a Partnership:

Minor is not capable of entering into a contract, therefore he cannot become a partner. However, he can be admitted to benefits of an existing partnership, with the consent of all the partners.

Legal Status of a minor admitted to a partnership:

Rights of minor admitted to partnership:

1. to such share of the profits and property and of the firm as may be agreed upon.
2. have access to inspect and copy any of the accounts of the firm.

Liabilities of minor admitted to partnership:

Minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

Disabilities of minor admitted to partnership:

1. he does not have status of a partner.
2. He cannot sue the partners for an account or payment of his share of the property or profits of the firm except after disconnecting his relation with the firm.

Legal Status of a minor on attaining age of majority:

Within six months of attaining majority (or becoming aware that he was admitted to the benefits of partnership whichever is later), such person shall give notice that:

1. he has elected to become a partner in the firm, or
2. he has elected not to become a partner in the firm.

He has status of a minor upto the date of notice (unless he acts as a partner). If he fails to give such notice, he shall become a partner in the firm, on the expiry of the said six months.

Rights and Liabilities if he has elected to become a partner in the firm:

1. his share in the property and profits of the firm shall be the share to which he was entitled as a minor.
2. he also becomes personally liable to third parties for all acts of the firm done since **he was admitted to the benefits of partnership.**

Rights and Liabilities if he has elected NOT to become a partner in the firm:

1. his share shall not be liable for any acts of the firm done after the date of the notice.
2. he shall be entitled to his share of profits and property and he can sue the partners for it.

Right Duties and Liabilities of a Partner

Implied Authority:

The authority of a partner to bind the firm with his acts is referred to as the implied authority of a partner.

Conditions to be met to bind a firm by act of a partner:

Act of a partner shall bind the firm only if following conditions are met:

1. The act should be for the kind of business carried on by the firm;
2. The act should be done in the usual way of such business;
3. 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.

Examples of powers covered by Implied Authority:

- buying and selling goods in which firm deals
- receiving from and paying to persons dealing with firm
- employing servants
- contracting debts and paying debts on behalf of the firm
- pledging movable property of firm
- drawing cheques, accepting or endorsing bills of exchange and promissory notes in the name of the firm
- Suing on behalf of the firm and defending suits in the name of the firm

Examples of powers NOT covered by Implied Authority:

1. Submit a dispute relating to the business of the firm to arbitration.
2. Open a banking account on behalf of the firm in his own name,
3. Compromise or relinquish any claim or portion of a claim by the firm,
4. Withdraw a suit or proceeding filed on behalf of the firm,
5. Admit any liability in a suit or proceeding against the firm,
6. Acquire immovable property on behalf of the firm,
7. Transfer immovable property belonging to the firm, or
8. Enter into partnership on behalf of the firm.

Statutory restrictions

The restrictions imposed by law are statutory restrictions and is applicable against the whole world whether a particular person dealing with the firm has knowledge of it or not e.g., about the name of the firm, etc.

Restrictions by partnership deed

A restriction which is specifically written in partnership deed is effective only against the person dealing with the firm having knowledge of it.

Ratification of actions taken by a partner outside his actual authority

When a partner exceeds his authority, that is act outside his actual authority, the other partners may approve such unauthorized act with retrospective effect. This is known as ratification.

By giving their retrospective approval to the contract made by another partner, even though it was outside the partner's actual authority at the time, the partners can remove any questions about whether implied authority existed or whether the other party knew that the partner did not have the actual authority to make the contract.

Extension or restriction of partners' implied authority:

Partners may extend or restrict implied authority through partnership agreement.

- If a partner acts on authority which was restricted by contract between partners, firm will be liable if third party did not know about restriction.
- If a partner acts on authority exceeding implied authority, firm will be liable only if third party proves that he had knowledge of extended authority.

Partner's authority in an emergency:

In case of emergency, a partner has authority to do all such acts to protect the firm from loss as would be done by a person of ordinary prudence acting under similar circumstances, and such acts bind the firm.

Rights of Partners:

1. Right to take part in the conduct of the business:

Every partner has a right to take part in the conduct of the business.

2. Right to be consulted:

Every partner has a right to be consulted before any matter is decided. In case of any difference, it will be decided by majority of partners. However, no change may be made in the nature of the business or constitution of partnership without the consent of all the partners.

3. Right of access to books:

Every partner has a right to have access, to inspect and copy any of the books of the firm.

4. Right to share profits:

The partners are entitled to share equally in the profits earned, irrespective of capital contribution or business expertise.

5. Right to interest on advances:

If a partner making, for the purposes of the business, any payment or advance beyond the amount of capital, he is entitled to interest thereon @ 6% p.a.

6. Right to be indemnified:

Every partner has a right to be indemnified by firm for 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.

7. **Right to retire**

A partner has a right to retire.

- With the consent of all the partners or
- In accordance with an express agreement between the parties or
- Where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

Qualified duties of Partners:

Qualified duties are those which depend on contract between partners. However, partnership act will apply if these are not agreed in contract.

1. **Duty to attend diligently his duties:**

Every partner has duty to attend diligently to his duties in the conduct of the business.

2. **Duty to work without remuneration:**

A partner should not take any remuneration for taking part in conduct of the business.

3. **Duty to contribute to the losses:**

Partners must contribute equally to the losses, irrespective of the amount of capital contribution by each partner.

4. **Duty to indemnify for willful neglect:**

Every partner must indemnify firm for any loss caused to firm by his willful neglect.

5. **Duty to use firm's property exclusively for the firm:**

No partner should use firm's property for personal benefit.

6. **Duty to account for personal profits derived:**

If a partner makes profit for himself from the use of partnership property or business connection of the firm or firm name, he is bound to account for and pay to the firm all profits made by him in such business.

7. **Duty not to engage in prohibited and competing business:**

Following are restrictions on trade by a partner:

- Partnership Agreement may provide that a partner shall not carry on any business other than that of the firm while he is a partner.
- A partner cannot carry on any business which is of the same nature and is competing with the firm.

If he does so, he is bound to account for and pay to the firm all profits made by him in such business.

Absolute duties of Partners:

These duties are imposed by law and cannot be varied by agreement between partners. These duties apply to all partnerships.

1. Duty to carry on business to the greatest common advantage:

Every partner shall use his knowledge and skill for the benefits of firm, and should not work for his personal gains.

2. Duty to be just and faithful:

Every partner shall be just and faithful to other partners.

3. Duty to render true accounts:

Every partner shall render true and proper accounts to other partners.

4. Duty to provide full information:

Every partner shall render full information of all things affecting the firm to any partner or his legal representative.

5. Duty to indemnify for loss caused by fraud:

Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

6. Duty to be liable jointly and severally:

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

7. Duty not to assign his interest:

No partner can assign or transfer his partnership interest to any other person to make him a partner in the business without consent of all other partners.

Liabilities of partner:

1. 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. Further, liability of all partners is unlimited. However, a partner paying more than his share of liability may claim reimbursement from others according to the terms of partnership agreement.

2. 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 the firm), a 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.

If a partner commits fraud, firm is liable to third party. However, as between partners, the full loss is borne by partner committing fraud and not by others.

3. Liability of firm for misapplication of money or property by partners:

The firm is liable to make good the loss if

- A partner receives money or property from a third party and misapplies it, or
- A firm 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.

4. Liability to share losses

The partners are bound to contribute to the losses sustained by the firm. An agreement to share profits may imply an agreement to share losses also.

5. Liability to indemnify for wilful neglect

Every partner is under a liability to indemnify the firm for any loss caused to it by his wilful neglect (i.e. failure to perform a duty or to do something which the partner should have done) in the conduct of the business of the firm.

6. Liability to account for profit of competing business

If a partner competes in business (as in the case of personal profit) with the partnership, without the consent of the other partners, he is liable to account to the partnership for all the profits that he earns from the competing business

Rights of Partners on Reconstitution of Firm:

Right of outgoing partner:

If a partner ceases to be partner and surviving partners continue business without settlement of accounts of outgoing partner, outgoing partner or his legal representative is entitled at his option to receive:

- interest @ 6% on the amount of his share in the property of firm, or
- share of profit, proportionate to his share in the property of firm.

Rights of partners after reconstitution of a firm:

If a change occurs in the constitutions of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change.

Effect of admissions by a partner

Any admission or representation made by a partner is evidence against the firm if the following two conditions are fulfilled:

1. Such admission or representation must relate to the affairs of the firm and
2. Such admission or representation must be made in the ordinary course of business.

Effect of notice to an active partner

Any notice to a partner operates as a notice to the firm if the following conditions are fulfilled:

1. Such notice must relate to the affairs of the firm
2. Such notice must be given to a working partner and not to a sleeping partner
3. There must not be any fraud committed by the partner receiving the notice.

Rights and duties of partners after the expiry of the term of the firm and where additional undertakings are carried out.

Subject to contract between the partners;

1. where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will.
2. where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

Past Papers:

Spring 2021

Q.5 (a) Malik, Asif and Sohail are partners in a firm carrying on dairy business and sharing the profit or loss equally. Malik has recently started a poultry business in the same vicinity for which he has applied for a loan from a bank. As a security of the loan, he offered the bank to create charge over the book debts of the poultry business together with his interest in the dairy business.

Under the provisions of the Partnership Act, 1932 describe the bank's rights and limitations in the dairy business. **(04)**

(b) Tahira, Farhana and Sadia are partners in a bridal boutique situated in the local market. Sadia also owns a jewellery shop in the same market. The shop is managed by her brother, Wasi. Tahira and Farhana were not aware of Sadia's interest in the jewellery shop. Most of the clients from the bridal boutique buy jewellery sets from Sadia's shop. During the year, Sadia earned a hefty profit of Rs. 10 million from the jewellery business.

Upon knowing the fact of Sadia's interest in the jewellery shop, both Tahira and Farhana demanded Sadia to share her profits equally with them.

Under the provisions of the Partnership Act, 1932 explain whether Tahira and Farhana are justified in their demand. **(04)**

Autumn 2020

Q.5 (a) Under the provisions of the Partnership Act, 1932 what are the general duties of a partner which cannot be altered by an agreement amongst themselves **(03)**

(b) Saeed, Mona and Burhan are engaged in a partnership business. On 26 March 2019, they admitted Laila, on her seventeenth birthday, to the benefits of partnership. Laila is Mona's niece. On 20 April 2020, Laila became aware of her admittance to the benefits of partnership. On acquiring the knowledge, she immediately gave notice to Saeed, Mona and Burhan that she intends to be their partner.

Under the provisions of the Partnership Act, 1932 discuss whether Laila would be regarded as a partner in the firm with effect from the date of her notice. i.e. 20 April 2020. Also describe Laila's liability with regard to firm's debts once she becomes a partner. **(04)**

Spring 2020

Q.4 (a) Respond to the following independent scenarios, under the provisions of the Partnership Act, 1932:

- 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)**

Autumn 2019

Q.4 (a) 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)**

Spring 2019

Q.4 (a) Respond to the following scenarios, under the provisions of Partnership Act, 1932:

- 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)**

Autumn 2018

Q.5 (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.

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. **(02)**

Spring 2018

Q.4 (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.

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)**

Autumn 2017

Q.4 (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)

(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)

Spring 2017

Q.4 (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)

(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)

Autumn 2016

Q.4 (a) 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 partner in

the partnership agreement so that these can be changes 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.

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 restriction imposed on the implied authority of a partner in absence of any usage or custom of trade. **(04)**

(b) 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.

Under the provisions of the Partnership Act, 1932 list the rights and disabilities of Umair before attaining majority. **(03)**

Spring 2016

Q.4 (a) Maqbool, Rufi 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 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. **(06)**

(b) in the above partnership business, Rufi 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 the Partnership Act, 1932 advice Rufi as what is considered to be included in the partnership property and how it is to be applied. **(04)**

Chapter # 09
Negotiable Instrument Act

Negotiable Instrument

Sec 3. Definition

Accommodation party:

Means a person who has signed a negotiable instrument as a marker, drawer acceptor or endorser without receiving the value thereof and for the purpose of lending his name to some other person.

Banker:

Means a person transacting the business of accepting, for the purpose of lending or investment, of or deposits of money from the public, repayable on demand otherwise withdrawable by cheque, draft, order, or otherwise, and includes any Post Office Savings Bank.

Bearer:

Means a person who by negotiable comes into possession of a negotiable instrument, which is payable to bearer.

Delivery:

Means transfer of possession actual or constructive, from one person to another.

Issue:

Means the first delivery of a promissory notice, bill of exchange or cheque complete in form to a person' who takes it as holder.

Material alteration:

In relation to a Promissory note, bill, of exchange or cheque includes an alteration of the date, the sum payable, the time of payment, the of payment, and, where any such instrument has been accepted generally, the addition of a place of payment without the acceptor's assent.

Sec: 13 Definition:

A negotiable instrument means a:

- Promissory note
- Bill of exchange or
- Cheque payable either to order or to bearer.

Negotiable means transferable by delivery and instrument means a written document by which a right is created in favor of some person. Thus, negotiable instrument may mean a written document transferable by delivery.

A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees

Characteristics of negotiable instrument:

1. Payable to order

A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable is called payable to order. e.g., Pay A, Pay A or order and Pay A or B.

2. Payable to bearer

A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank. If an instrument is payable to any person whosoever bears it than it is called payable to bearer. Thus, a note, bill or cheque in the form “**Pay to A or bearer or pay bearer**” is payable to bearer.

Example: Payable to bearer

A cheque is payable to A. A endorses it merely by putting his signature on the back and delivers it to B with the intention of negotiating it (without making it payable to B or B's order). In the hands of B the cheque is a bearer instrument.

3. Easy transferability:

A negotiable instrument is easily transferable from one person to another by:

- ✓ mere delivery (if payable to bearer) or
- ✓ endorsement and delivery (if payable to order)

4. Transferee can sue in his own name:

A bill, note or a cheque represents a debt and implies the right of the creditor to recover something from his debtor. The creditor can either recover this amount himself or can transfer his right to another person. In case he transfers his right, the transferee of a negotiable instrument is entitled to sue on the instrument in his own name in case of dishonor, without giving notice to the debtor of the fact that he has become holder.

A	B
To pay	To receive

A gave a cheque to B who transfers it to C. If the cheque dishonors, C can sue A in his own name without giving notice to A that he has become the holder.

5. Title of holder in due course

It means that once an instrument is received in the hands of holder in due course it becomes free from all defects.

Example:

A gives a promissory note to B. B lost the instrument and it was found by C. C cannot recover the amount on the negotiable instrument as he is not the holder in due course but if C transfer the instrument to D and D becomes holder in due course he can recover the amount on the instrument from A or all prior parties.

Parties to negotiable instrument

Parties to a Promissory Note	Parties to a Bill of Exchange	Parties to a Cheque
1. Maker 2. Payee	1. Drawer 2. Drawee & acceptor 3. Payee 4. Drawee in case of need 5. Acceptor for honor	1. Drawer 2. Drawee 3. Payee
Other Parties if bill is negotiated: Holder, Endorser, Endorsee		

Maker:

The person who makes a promissory note is called “Maker”.

Payee:

The person named in the instrument, to whom or to whose order the money is to be paid is called payee.

Drawer:

The maker of a bill of exchange or cheque is called “Drawer”.

Drawee:

The person on whom bill of exchange or cheque is drawn.

Acceptor:

A bill of exchange must be presented to the drawee for acceptance first, and then presented for payment on due date. Drawee becomes acceptor when he accepts the bill i.e.

- ✓ he signs his assent on the bill and
- ✓ delivers it or give notice of signing to holder or some person on his behalf.

Holder

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

1. He must be entitled to the possession of the instrument in his own name and
2. He must be entitled to receive / recover the amount due on the instrument from the parties liable under the instrument.

Thus, a holder means the bearer of the bearer instrument and the endorsee or payee of the order instrument.

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

Holder in due course:

A holder in due course is a person who fulfills following conditions:

1. He became possessor (in case of bearer instrument), or payee/endorsee (in case of order instrument) for lawful and adequate consideration.
2. He became the holder of the instrument before its maturity.
3. He became the holder in good faith i.e. there were no reasons to believe that any defect existed in the title of transferor.
4. Negotiable instrument must be complete and regular i.e. it must be properly stamped, and should not have material alteration.

Difference between holder and holder in due course

Holder	Holder in due course
A holder is a person who legally obtains the negotiable instrument, with his name entitled on it, to receive the payment from the parties liable.	A holder in due course is a person who acquires the negotiable instrument <i>bona fide</i> for some consideration, whose payment is still due.
Consideration Not necessary.	Necessary.
Right to sue A holder may not sue all prior parties.	A holder in due course can sue all prior parties.
Good faith The instrument may or may not be obtained in good faith.	The instrument must be obtained in good faith.
Free from defects / Better title A holder may not get title free from defects.	A holder in due course gets a better title than that of the transferor.
Maturity A person can become holder, before or after the maturity of the negotiable instrument.	A person can become holder in due course, only before the maturity of negotiable instrument.

Promissory note:

A "promissory note" is in 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 only to, or to the order of a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the following terms:

- a. "I promise to pay B or order Rs. 500."
- b. "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received."
- c. "Mr B, I O U Rs. 1,000."
- d. "I promise to pay B Rs. 500 and all other sums which shall be due to him"
- e. "I promise to pay B Rs. 500, first deducting there out any money which he may owe me."
- f. "I promise to pay B Rs. 500 seven days after my marriage with C."
- g. "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
- h. "I promise to pay B. Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

Essential elements of a promissory note:

It must be in writing:

It must be in writing. Writing includes manual writing, typewriting and printing. A verbal promise to pay is not enough.

Unconditional Promise to Pay:

It must contain an express promise to pay. A mere acknowledgement of debt does not constitute promissory note.

Further, it must be unconditional. However, a promise to pay is not conditional if:

- ✓ Promise is to pay at a particular place or after a specified time.
- ✓ It depends on an event which is certain to happen, although time of happening may be uncertain.

Signed by the maker:

Promissory note must be authenticated by the signature of the maker. If maker is illiterate, he may place his thumb impression.

Certain Parties:

Promissory Note must clearly mention as to who is the maker and who is the payee. If maker or payee cannot be identified with certainty, instrument is not a promissory note.

Certain Sum of Money:

Sum payable must be certain and definite. Amount payable must not include contingent addition or contingent subtraction.

Promise to pay money only:

Payment to be made must be in legal tender money of Pakistan. If instrument contains a promise to pay something other than money, it is not a valid promissory note.

Bill of Exchange:

A bill of exchange is an instrument in writing containing an **unconditional order**, signed by the maker, **directing a certain person to pay on demand or at a fixed or determinable future time** a certain sum of money only, to or to the order of, a certain person, or to the bearer of the instrument.

The analysis of the definition shows that, a bill of exchange is a written and signed order directing a person to pay a certain sum of money to the bear or of the instrument or to a specified person or his order. Generally, a bill of exchange is drawn by a creditor, who directs his debtor to pay the money to the person specified in the instrument.

Essential elements of a bill of exchange

In writing

A bill of exchange is required to be in writing. Like promissory note, a bill of exchange also cannot be oral.

Order to pay

A bill of exchange contains an order to pay instead of a promise to pay like in promissory note. This feature distinguishes it from promissory note. Further, a request to pay money is not considered to be a bill of exchange.

Definite and unconditional

In other words, the order to pay should not depend upon a condition or upon the happening of an uncertain event. This point has already been discussed in detail in case of a promissory note.

Signed by drawer and drawee

The instrument must be signed by the drawer and drawee.

Certain parties

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

Sum payable must be legal tender

If the instrument contains an order to pay something other than money or something in addition to money, it will not be valid bill of exchange.

Sum Payable must be certain

It is essential that sum of money ordered to be payable must be certain and definite. The amount payable must not be capable of contingent addition or subtraction.

Difference between promissory note and bill of exchange

Promissory note	Bill of exchange
Number of parties There are two parties i.e. the maker and the payee.	There are three parties i.e. the drawer, the drawee and the payee.
The maker of the note cannot be payee The maker of a promissory note cannot be the payee for the simple reason that the same person cannot be both the promisor and the promisee.	The drawer and the payee may be one and the same person as where a bill is drawn as “Pay to me or my order”.
Promise and order There is a promise to make the payment.	There is an order for making the payment.
Acceptance A promissory note requires no acceptance as it is signed by the person who is liable to pay.	A bill of exchange needs acceptance by the drawee before it is presented for payment.
Notice of dishonor In case of dishonor of a promissory note, no notice of dishonor is required to be given to the maker.	In case of dishonor of a bill of exchange, notice of dishonor must be given by the “holder” to all prior parties who are liable to pay (including the drawer and endorser).
Nature of liability The liability of the maker of a promissory note is primary and absolute.	The liability of a drawer of a bill of exchange is secondary and conditional. It is only when the acceptor does not honor the bill that the liability of the drawer arises as a surety.

Cheque:

Cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

The analysis of the above definition reveals that a cheque is a bill of exchange but is different in following two characteristics:

- ✓ Drawee will always be a banker
- ✓ Always payable on demand

Essential elements of a cheque

- ✓ It must be in writing
- ✓ There must be an express order to pay and not a request to pay
- ✓ The order must be definite and unconditional
- ✓ It must be signed by the drawer
- ✓ The three parties (drawer, drawee and payee) must be certain.
- ✓ The order must be to pay a certain sum
- ✓ The order must be to pay money only
- ✓ It must always be drawn upon a specified banker
- ✓ It must always be payable on demand

Payment in due course:

Payment in due course means payment to discharge liability of a negotiable instrument, which fulfills following conditions:

1. Payment is made in accordance with apparent tenure of the instrument. It must be made at or after maturity. A payment before maturity does not discharge a negotiable instrument and is not a payment in due course.
2. Payment must be made in good faith and without negligence.
3. Payment must be made to a person who is in possession of the negotiable instrument, and there are no circumstances to believe that he is not entitled to receive payment of the amount.

Types of Instrument**Inland instrument**

A promissory note, bill of exchange or cheque which is:

- Made or drawn in Pakistan and also made payable in Pakistan, or
- Made or drawn in Pakistan upon any person resident in Pakistan, although it may be payable in a foreign country.

is called an inland instrument.

Example:

- A promissory note made in Multan and payable in Peshawar.
- A bill of exchange drawn in Sukkur on a person resident in Toba Tek Singh although it may be payable in Afghanistan.

Foreign instrument:

An instrument, which is not an inland instrument, is deemed to be a foreign instrument.

Example:

- Promissory note made in Pakistan but payable in Myanmar.
- A bill of exchange drawn in Pakistan on a person residing outside Pakistan, and made payable outside Pakistan.

Time Instrument:

An instrument payable after a fixed time or on a specified date is called Time Instrument. It may also be payable after happening of a certain event e.g. death of a person.

Demand Instrument:

A negotiable instrument is payable on demand where:

- It is expressed to be payable on demand, or payable at sight or payable on presentment, or
- No time for payment is expressed on it, or
- It is accepted or endorsed after it is overdue, as regards person accepting or endorsing it.

Note: Payable to order and payable to bearer are also types of instrument mentioned above.

Negotiation:

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

Modes of negotiation

- Negotiation by mere delivery
 - A negotiable instrument payable to bearer is negotiable by delivery (voluntary delivery with the intention of transferring the ownership)
 - It does not require signature of the transferor i.e. endorsement and the transferee becomes the holder by mere possession.
 - The transferor of a bearer instrument is not liable on its dishonour because by not signing as endorser he has not added his credit to the instrument. [Section 47]

Negotiation by endorsement and delivery

- A negotiable instrument payable to order is negotiable by the holder by endorsement and delivery.
- The negotiation of an order instrument requires two formalities

- The holder should endorse it and
- Then deliver to his endorsee (voluntary delivery with the intention of transferring the ownership)

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 or on a slip of paper annexed to it thereto, or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument he is said to endorse the same and is called the endorser.

Essentials of valid endorsement

1. It must be on Instrument itself. If no space is left on instrument, it must be on a separate slip of paper attached to the instrument called "Allonge".
2. It must be signed by endorser for the purpose of negotiation. Signature of endorser without any additional words is sufficient.
3. No particular form of words is necessary for an endorsement.
4. It must be completed by the delivery of the instrument.
5. Negotiation by endorsement must be for the entire instrument. Endorsement for part of the amount, or to two or more endorsees, is invalid.

Endorsement "in blank" and "in full:

If the endorser signs his name only, the endorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be "in full", and the person so specified is called the "endorsee" of the instrument.

Crossing of Cheque

Purpose of crossing

The purpose of crossing 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.

Method of crossing

A cheque is said to be crossed when it bears across its face two parallel transverse lines which are usually drawn on the left hand top corner of the cheque. It is an instance of an alteration which is authorized by the Act. A crossing is a direction to the paying banker not to pay across the counter.

	1. General Crossing	2. Special Crossing	3. Restrictive Crossing
Definition	When two parallel lines are drawn on the face of a cheque (with or without words "& Co"), it is called general crossing.	When name of a banker is added on the face of a cheque (with or without parallel lines), it is called special crossing.	When in general crossing, words "A/C Payee" are added, it is called Restrictive crossing
Effect	A generally crossed cheque can be collected by any bank (not to be paid in cash over counter).	A specially crossed cheque can be collected only by that bank whose name appears on	A restrictively crossed cheque must be credited only to the account of payee.

		face of cheque (or by his agent for collection)	
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	Not negotiable crossing
Definition	The addition of the words not negotiable does not restrict the further transfer ability of the cheque. It only takes away the main feature of negotiability, which is transferability free from defects
Effect	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. Therefore, a holder with a defective title cannot give a good title to a subsequent holder. The object of crossing a cheque not negotiable is to afford protection to the drawer or holder of the cheque against miscarriage or dishonesty in the course of transit by making it difficult for the cheque so crossed cashed, until it reaches its destination.

Crossing of a cheque after issue:

Case	Right to cross
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 by adding the name of the banker.
Where a cheque is crossed generally or specially	The holder may add the word “Not negotiable”.
Where a cheque is crossed specially	The banker to whom it is crossed may again cross it especially to another banker (his agent) for collection

Payment of cheque crossed specially more than once:

Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in due course of crossed cheque

Where the banker, on whom a cross cheque is drawn, makes a payment in due course, the paying banker and the drawer are entitled to be positioned as if the cheque had been paid to and received by the true owner thereof.

Payment of crossed cheque out of due course

Where the banker, on whom a cross cheque is drawn, makes a payment out of due course, the paying banker shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Protection to the collecting banker

A collecting banker is one who receives the payment of a crossed cheque on behalf of his customer. If the collecting banker has collected a cheque on behalf of a person whose title to the cheque was defective, he would be protected and would not be held liable in conversion to the true owner, provided he proves that:

- He acted in good faith and without negligence
- The cheque was already crossed before it reached his hands and
- He received the payment on behalf of a customer and not on his own account i.e. he acted as an agent for collection and not in the capacity of holder for value.

It may be noted that if the banker credits his customer's account with the amount of the cheque before receiving payment, he does not become a holder for value and the protection shall be available to such a collecting banker as well. This protection is not available where the banker allows the proceeds of an "Account payee crossed cheque" to be credited to any account other than the payee and the endorsement in favour of the last payee is proved forged.

Protection to the banker crediting cheque crossed 'account payee'

Similarly, if the collecting banker has collected a cheque which does not at the time of delivery appear to be crossed "account payee" or to have had a crossing "account payee" which has been obliterated or altered, the banker, in good faith and without negligence collecting payment of the cheque and crediting proceeds thereof to a customer, shall not incur any liability by reason of the cheque having been so crossed.

Example 57: Protection to the collecting banker

Question: A cheque is drawn payable to 'Bilal or order'. It is stolen and Bilal's endorsement is forged. The banker pays the cheque in due course. Is the banker discharged from liability? Would it make any difference if the drawer's signature were forged?

Answer:

Where a cheque payable to order purports to be endorsed by or on behalf of the payee (i.e. Bilal), the drawee (i.e. the collecting banker) is discharged by payment in due course. Therefore the banker is discharged from liability as a banker is not expected to know the signatures of payees who are not the clients of the bank. On the other hand, a banker paying a cheque on which the drawer's signature is forged is responsible and should bear the loss.

Revocation of banker's authority

The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by:

- Countermand of payment;
- Notice of customer's death;
- Notice of adjudication of the customer as an insolvent.

Example 58: Loss of cheque

Anum drawn a bearer cheque on her banker but lost it before encashment. She informed the banker immediately the cheque number and details. Someone found that bearer cheque and is demanding the payment. The banker must refuse.

Example 59: Death of customer

A customer died on 16th March. His legal representative informed the banker of his death on 27th March. The banker must refuse to honor cheques from 27th March. However, the banker is not liable if any payment of cheque was made from 16th March to 26th March.

Past Papers

Spring 2021

Q. 6(a) Under the provisions of the Negotiable Instruments Act, 1881 explain different types of crossing of cheque along with their respective effects. (04)

(b) Under the provisions of the Negotiable Instruments Act, 1881 identify the type of each of the following instruments and give reason(s) as to validity of each instrument.

(i) I promise to pay Zahid Rs. 350,000 and all the applicable interest amounts.

(ii) Pay Rs. 350,000 to Jafer along with interest of Rs. 3,500.

(iii) I hereby acknowledge that I have taken Rs. 350,000 from Abid and shall pay the interest to him on the amount at agreed interest rate. (03)

Autumn 2020

Q.6(a) Under the provisions of the Negotiable Instruments Act, 1881 what would be the effect(s) of the words 'Not negotiable' on a cheque crossed generally? (03)

(b) Mujahid bought readymade garments worth Rs. 600,000 from Shoaib on credit. The amount is payable on 25 December 2020. Mujahid wants to issue a negotiable instrument in satisfaction of his debt to Shoaib without involving a third party for the payment.

Under the provisions of the Negotiable Instruments Act, 1881 identify the type of negotiable instrument which Mujahid may issue to Shoaib in satisfaction of his debt. Also prepare a draft of the said instrument. (04)

(You may assume necessary details for the preparation of the negotiable instrument)

Spring 2020

Q.5 (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)

Autumn 2019

Q 5 a (ii) Respond to the following independent situations, under the provisions of the Negotiable Instruments Act, 1881:

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)

Q 5 b (ii) Under the provisions of the Negotiable Instruments Act, 1881 briefly describe:

Payment in due course. (02)

Spring 2019

Q 2 (a) Under the provisions of Negotiable Instruments Act, 1881 define 'Holder in due course' and 'Acceptor for honour'.

Autumn 2018

Q. 3 (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:

(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)

Q 3 (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)

Spring 2018

Q 5 (a) The term endorsement.

Autumn 2017

Q 2 (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)

Spring 2017

Q.5 (a) What do you understand by the term 'Drawee in case of need' under the provisions of the Negotiable Instruments Act, 1881? **(02)**

(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)**

Autumn 2016

Q 5 a (i)

Under the provisions of the Negotiable Instruments Act, 1881 describe the following:
Acceptor for honour **(2.5)**

Spring 2016

Q. 5 (a) Under the provisions of the Negotiable Instruments Act, 1881 briefly describe the terms 'Negotiation' and 'Indorsement'. **(04)**

Q. 5 (b) Sarwat owes Rs. 500,000 to Zain. The amount is payable on 11 August 2016. Sarwat intends to issue a negotiable instrument to Zain in satisfaction of her debt. Under the provisions of the Negotiable Instruments Act, 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 such instrument.

(You may make assumptions wherever you consider necessary) **(04)**

Q. 5 (c) Under the provisions of the Negotiable Instruments Act, 1881 describe the purpose of crossing a cheque. Also state whether a cheque can be crossed specially more than once. **(02)**

Chapter # 10
Other Business Laws

OTHER BUSINESS LAWS

Anti-money Laundering Act:

Sec 3. Offence of money laundering:

A person shall be guilty of offence of money laundering, if the person

- a.** Acquires, converts, possesses, uses or transfers property knowing or having reason to believe that such property is proceeds of crime.
- b.** Conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime.
- c.** Holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime. Or
- d.** Participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified in point a, b and c.

Sec 4. Punishment for money laundering:

Whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term from 1 year to 10 years and shall also be liable for a fine which may extend to 1 million rupees and shall also be liable for forfeiture of property involved in the money laundering.

The aforesaid fine may exceed to Rs. 5m in case of a company and every director, officer or an employee of the company found guilty under this section shall also be punishable under this section.

Payment Systems and Electronic Fund Transfers Act:

Definitions:

Electronic Fund or Electronic Money:

Means money transferred through an Electronic Terminal, ATM, telephone instrument, computer, magnetic medium or any other electronic device so as to order, instruct or authorize a banking company, a Financial Institution or any other company or person to debit or credit an account and includes monetary value as represented by a claim on the issuer which is stored in an electronic device or Payment Instrument, issued on receipt of funds of an amount not less in value than the monetary value issued, accepted as means of payment by undertakings other than the issuer and includes electronic store of monetary value on a electronic device that may be used for making payments or as may be prescribed by the State Bank.

Electronic Fund Transfer:

Means any transfer of funds, other than a transaction originated by cheque, draft or similar paper instrument, which is initiated through an Electronic Terminal, telephonic instrument, point-of-sale Terminal, stored value card Terminal, debit card, ATM, computer magnetic tape or any other electronic device so as to order, instruct, or authorize a Financial Institution to debit or credit an Account.

Operator:

Means any financial or other institution or any person, authorized by the State Bank to operate any Designated Payment System.

Sec 4. Designation of Payment System:

(1) The State Bank may, if it finds it to be necessary in the public interest, by a written order designate a Payment System as a Designated Payment System.

(2) The State Bank may, in considering whether to designate a Payment System as a Designated Payment System, inspect the premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions relating to the Payment System.

Sec 5. Revocation of Designation of Payment System:

(1) The State Bank may revoke the designation of a Designated Payment System if it is satisfied that:

(i) the Designated Payment System has ceased to operate effectively as a Payment System;

(ii) the operator of the designated system has knowingly furnished information or documents to the State Bank in connection with the designation of the Payment System which is/are false or misleading in any material particular;

(iii) the operator or settlement institution of the Designated Payment System is in the course of being wound up or otherwise dissolved, whether in Pakistan or elsewhere;

(iv) any of the terms and conditions of the designation or requirements of this Act has been contravened;
or

(v) the State Bank considers that it is in the public interest to revoke the designation.

(2) The State Bank shall not revoke a designation without giving the operator of the Designated Payment System an opportunity to be heard. Provided that the State Bank may, if an immediate systemic risk is involved, suspend the designation of a Payment System without notice pending the final order.

Sec 11. Operational Arrangement:

An Operator of a Designated Payment System shall establish the following operational arrangements:

- (i) rules and procedures setting out the rights and liabilities of the operator and the participant and the financial risks the participants may incur;
- (ii) procedures, controls and measures for the management of credit, liquidity and settlement risk, including rules determining the time when a payment instruction and a settlement is final;
- (iii) criteria for participation in the Designated Payment System; and
- (iv) measures to ensure the safety, security and operational reliability of the Designated Payment System including contingency arrangements.

Prevention of Electronic Crimes Act, 2016

Definitions:

Sec 2 (b) Access to data:

Means gaining control or ability to use, copy, modify or delete any data held in or generated by any device or information system.

Sec 2 (c) Access to information system

Means gaining control or ability to use any part or whole of an information system whether or not through infringing any security measure.

Sec 2 (j) Critical infrastructure:

Means critical elements of infrastructure namely assets, facilities, systems, networks or processes the loss or compromise of which could result in:

(i) major detrimental impact on the availability, integrity or delivery of essential services including those services, whose integrity, if compromised, could result in significant loss of life or casualties taking into account significant economic or social impacts; or

(ii) significant impact on national security, national defense, or the functioning of the state.

Provided that the Government may designate any private or Government infrastructure in accordance with the objectives of point (i) and (ii) above as critical infrastructure.

Sec 2 (n) Data damage:

Means alteration, deletion, deterioration, erasure, relocation, suppression of data or making data temporarily or permanently unavailable.

Sec 2 (ze) Unauthorized access:

Means access to an information system or data which is not available for access by general public, without authorization or in violation of the terms and conditions of the authorization.

Sec 3. Unauthorized access to information system or data:

Whoever with dishonest intention gains unauthorized access to any information system or data shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to fifty thousand rupees or with both.

Sec 4. Unauthorized copying or transmission of data:

Whoever with dishonest intention and without authorization copies or otherwise transmits or causes to be transmitted any data shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred thousand rupees or with both.

Sec 5. Interference with information system or data:

whoever with dishonest intention interferes with or damages or causes to be interfered with or damages any part or whole of an information system or data shall be punished with imprisonment which may extend to two years or with fine which may extend to one hundred thousand rupees or with both.

Sec 6. Unauthorized access to critical infrastructure information system or data:

Whoever with dishonest intention gains unauthorized access to any critical infrastructure information system or data shall be punished with imprisonment which may extend to three years or with fine which may extend to one million rupees or with both.

Sec 7. Unauthorized copying or transmission of critical infrastructure data:

Whoever with dishonest intention and without authorization copies or otherwise transmits or causes to be transmitted any critical infrastructure data shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to five million rupees or with both.

Sec 8. Interference with critical infrastructure information system or data:

Whoever with dishonest intention interferes with or damages, or causes to be interfered with or damaged, any part or whole of a critical information system, or data, shall be punished with imprisonment which may extend to seven years or with fine which may extend to ten million rupees or with both.

Sec 9. Glorification of an offence:

whoever prepares or disseminates information, through any information system or device, with the intent to glorify an offence relating to terrorism, or any person convicted of a crime relating to terrorism, or activities of proscribed organizations or individuals or groups shall be punished with imprisonment for a term which may extend to seven years or with fine which may extend to ten million rupees or with both.

The Arbitration Act,

Definitions

Sec 2(a) Arbitration agreement:

Means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

Sec 2(d) legal representative:

Means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting.

Sec 3. Authority of appointed arbitrator or umpire irrevocable except by leave of Court:

The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.

Sec 4. Arbitration agreement not to be discharged by death of party thereto:

An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

Nothing in this section shall affect the operation of any law by virtue of which any right of section is extinguished by the death of a person.

Sec 5. Provisions in case of insolvency:

1. Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.
2. Where a person who has been adjudged an insolvent had before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which point 1 does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make as order accordingly.
3. In this section the expression "receiver" includes an Official Assignee.

Sec 13. Power of Court to modify award:

The Court may by order modify or correct an award

- (a) Where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) Where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) Where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Sec 21. Order of reference:

- (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall in the order specify such time as it thinks reasonable for the making of the award.
- (2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Act, deal with such matter in the suit.

Competition Act,

Definitions:

Sec 2(f). Goods:

Goods includes any item, raw material, product or by-product which is sold for consideration.

Sec 2(k). Relevant market:

Means the market which shall be determined by the Commission with reference to a product market and a geographic market. Product market comprises all those products or services which are regarded as interchangeable or substitutable by the consumers by reason of the products' characteristics, prices and intended uses. A geographic market comprises the area in 'which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of competition are appreciably different in those areas.

Sec 2(l). Retailer:

In relation to the sale of any goods, means a Person who sells the goods to any other person other than for re-sale.

Sec 2(r). wholesaler:

In relation to the sale of any goods, means a person who purchases goods and sells them to any other person for re sale.

Sec 3. Abuse of Dominant Position:

- (1) No person shall abuse dominant position.
- (2) An abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consists of practices which prevent, restrict, reduce or distort competition in the relevant market.
- (3) The expression "practices" referred to in point (2) shall include, but are not limited to,---
 - (a) limiting production, sales and unreasonable increases in price or other unfair trading conditions;
 - (b) price discrimination by charging different prices for the same goods or services from different customers in the absence of objective justifications that may justify different prices;
 - (c) tie-ins, where the sale of goods or service is made conditional on the purchase of other goods and services;

Sec 4. Prohibited Agreements

(1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting, or reducing competition within the relevant market.

(2) Such agreements include, but are not limited to.

(a) fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any service.

(b) dividing or sharing of markets for goods or services, whether by' territories, by volume of sales or purchases, by type of goods or services sold or by any other means.

(c) fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services.

(d) limiting technical development or investment with regard to the production, distribution or sale of any goods or the provision of any service.

(e) collusive tendering or bidding for sale, purchase or procurement of any goods or services.

(f) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage. And

(g) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Any agreement entered into in contravention of the aforesaid provision shall be void.

Sec 10. Deceptive marketing practices:

(1) No undertaking shall enter into deceptive marketing practices.

(2) The deceptive marketing practices shall be deemed to consider if an undertaking resorts to;

(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking.

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods.

(c) false or misleading comparison of goods in the process of advertising. Or

(d) fraudulent use of another's trademark, firm name, or product labeling or packaging.