

CHAPTER 01

Introduction to the Legal system



Mr. Zahid Qavi

Table of Contents

LO # 01: Introduction to the Law and its Types.....	2
LO # 02: The Process of Legislation as per the Constitution	5

LO # 01: Introduction to the Law and its Types

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.

Sources of Law in Pakistan

The law consists of rules that regulate the conduct of individuals, businesses, and other organizations within society.

The legal system is derived from English common law (including doctrine of equity) and is based on the

Constitution of Pakistan 1973 as well as Islamic law (Sharia).

1. Legislation

It is the law created by the Parliament and other bodies to whom it has delegated authority. It includes the Act of Parliament, the Ordinance promulgated by the President of Pakistan and the delegated legislations.

2. Precedent (case law)

Precedents are judgments or decisions of a superior court which are binding on the subordinate courts.

3. Customs

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

4. Agreement

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

Branches of Law

	<i>Civil Law</i>	<i>Criminal Law</i>
Definition and Explanation	<p>Civil law sets out the rights and duties of persons as between themselves.</p> <p>The person whose rights have been affected can claim a remedy from the wrong doer.</p> <p>A violation of the civil law is a tort (a wrong doing), but is not a crime.</p>	<p>Criminal law is concerned with conduct that is considered so undesirable that the State punishes persons who transgress.</p> <p>Legal action may be brought by the State against individuals who are accused of being in breach of the criminal law. It is the responsibility of the State (and not private individuals) to bring these legal actions, in criminal trials.</p>
Purpose	<p>The purpose is to provide a means whereby an injured party can obtain</p>	<p>The purpose is to regulate the society by the threat of punishment.</p>



Case Filed by	compensation. The claimant sues the defendant for harm caused.	
Burden of proof	If the claimant can prove the wrong on the balance of probabilities, his litigation is successful and the defendant is held liable.	
Remedy	The civil court may order the defendant to pay damages or it might order some other remedy such as specific performance or injunction.	
Examples	<ul style="list-style-type: none"> ▪ property disputes (Transfer of property Act) ▪ work-related disputes (employment law) ▪ accusations of negligence (negligent behavior) (Tort) ▪ claims by consumers against manufacturers or service providers ▪ commercial disputes between business entities (commercial law) ▪ copyright disputes ▪ claims of defamation of character (Tort) ▪ disputes about an alleged breach of contract (Contract Act, 1872) ▪ Pakistan Penal Code ▪ Anti-Money Laundering Act ▪ Prevention of Electronics Crimes Act 	

Basic structure of Constitution of Islamic Republic of Pakistan

The Constitution is the supreme law and sets the governing principles of the country and contains the articles covering fundamental rights, state's structure, political system, mandate of different levels of government, mandate and separate powers of cabinets, judiciary etc. The Parliament cannot make any laws which are against the Constitution.

The Constitution contains **Preamble, 12 Parts, 280 Articles and 5 Schedules**.

Preamble

- It defines the objectives of the provisions of the Constitution.
- It identifies that the Muslims will be enabled to live in accordance with the teachings of Quran and Sunnah while provisions be made for minorities to practice their religion and culture.
- It also entails guarantee for fundamental rights, safeguarding depressed classes, securing independence of judiciary, safeguarding sovereign rights.



12 Parts**1. Introductory**

It identifies the country as Islamic Republic of Pakistan divided into four territories and defined the religion of the state. It also includes provisions such as elimination of all sorts of exploitation, rights of individuals to be dealt in accordance with the law, loyalty to the state and abiding by the Constitution and the defining high treason along with its punishment.

2. Fundamental Rights and Principles of Policy

It begins with the definition of the State and continues with detailing of the laws regarding fundamental right and principles of policy. Fundamental rights include laws that deem void which are inconsistent with fundamental rights, safeguards regarding arrest and detention; prohibition of slavery; child labor and all forms of forced labor; right to enter lawful profession and trade; right to education and safeguard against discrimination etc.

The second part contains policies such as discouraging prejudices and discrimination, providing free and compulsory education and fostering goodwill and friendly relations among all nations etc.

3. The Federation of Pakistan

It includes the eligibility of President of Pakistan, term of office, powers vested in the position, removal of the President, job responsibilities and limitations such as exercising functions in accordance with the advice of the Cabinet or Prime Minister.

This part also includes information about the composition, duration and meetings of the Parliament and Senate, qualifications and disqualifications for membership of the Parliament, introduction and passing of Bills etc.

4. Provinces

It includes entails composition and function of the provincial governments and governor. It also includes the financial procedure such as Provincial Consolidated Fund and public account and procedure relating to annual budget statement and ordinances etc.

5. Relations between Federation and Provinces

It includes distribution of legislative powers, administrative relations between Federation and Provinces such as obligation of Federation and Provinces and inter-provincial trade etc. It also entails special provisions relating to Council of common interests, National Economic Council, broadcasting and telecasting etc.

6. Finance, Property, Contracts and Suits

It includes distribution of revenues between the federation and the provinces and other financial provisions such as exemption and imposition of certain taxes. It also entails borrowing by Federal and Provincial government; appointment, powers and functions of Auditor General of Pakistan. This part also includes provisions regarding property, contracts, liabilities and suits.



7. The Judicature

It encompasses establishments, jurisdictions and functions of courts (Supreme Court, High Courts and Federal Shariat Court), appointment of judges and general provisions such as contempt of court, remuneration of judges, Supreme Judicial Council etc.

8. Elections

It includes the formation and duties of Chief Election Commissioner and Election Commissions along with electoral laws and conduct of elections.

9. Islamic Provisions

It includes provisions relating to the Holy Quran and Sunnah along with composition and functions of the Islamic Council.

10. Emergency Provisions

It includes proclamation of emergency on account of war or internal disturbance etc., power to suspend fundamental rights during emergency period, revocation of proclamation etc.

11. Amendment of Constitution

It includes amendment of Constitution by Parliament through Constitution Amendment Bill.

12. Miscellaneous

It includes establishment and constitution of Public Service Commission, command and functions of Armed Forces etc. Moreover, it comprises definition and administration of tribal areas; protection to President, Governor, Minister; national language etc.

Schedules

1. **First Schedule** "Laws exempted from the operation of Articles."
2. **Second Schedule** "Election of President"
3. **Third Schedule** "Oaths of Office"
4. **Fourth Schedule** "Legislative Lists"
5. **Fifth Schedule** "Remuneration and Terms and Conditions of Service of Judges"

LO # 02: The Process of Legislation as per the Constitution**System / Structure of Government**

Pakistan has a Federal Parliamentary System of Governance in which:

- Prime Minister is the Head of the Government, and
- President is the Head of State

Prime Minister and President are selected by Parliament / Legislation i.e.

- President by Senate, National Assembly and Provincial Assembly
- Prime Minister by National Assembly



The President

1. The President of Pakistan is Pakistan's Head of State and represents the unity of republic.
2. The President must be a Muslim.
3. The President is elected for a five-year term by Senate, National Assembly and members of Provincial Assemblies.
4. The President is eligible for re-election, but no individual may hold the office for more than two consecutive terms.
5. The majority party in the National Assembly usually nominates and elects a person as the President.
6. The Prime Minister shall keep the President informed on all matters of internal and foreign policy and on all legislative proposals the Federal Government intends to bring before Majlis-e-Shoora (Parliament).
7. The President approves the statutes passed by the National Assembly and the Senate.
8. The President acts on and in accordance with the advice of the cabinet or the Prime Minister.

Prime Minister

1. 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.
2. 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.
3. 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

1. The Senate is a permanent legislative body with equal representation from each of the four Provinces with representatives elected by the members of their respective Provincial Assemblies. There are also representatives from Islamabad Capital Territory.
2. Members are elected for a period of six years. Half the members retire after three years and are replaced by the equal number of newly elected senators.
3. Senate is a permanent institution. The election of all members is not held at the same time and so it continues to be present on a permanent basis.
4. The members elect from themselves a chairman and a Deputy Chairman.
5. The Chairman of the Senate under the constitution is next in line to act as President if the office becomes vacant and until such time a new President can be formally elected.
6. The role of the Senate is to promote national cohesion and harmony and to alleviate fears of the smaller provinces regarding domination by any one province because of its majority, in the National Assembly.
7. All statutes passed by the National Assembly are also approved by the Senate with the exception of Money Bills.



National Assembly

1. The seats for the National Assembly are determined on the basis of population of provinces. The members on general seats are elected for a period of five years on the basis of direct votes by the voters registered. There are also reserved seats for women and non-Muslims.
2. The members elect from themselves Speaker, Deputy Speaker and Prime Minister.
3. The most important function of the National Assembly is law making and formulation of policies.

Process of Legislation

The Bill in respect of any matter, other than money bill, may originate in either House (i.e. the National Assembly or the Senate).

Scenario 1: The Bill passed without amendment

- A Bill is originated and passed in either the National Assembly or the Senate.
- The Bill is transmitted to the other House and passed by the other House without any amendment.
- The Bill is presented to the President for assent.

Scenario 2: The Bill passed with amendment

- A Bill is originated and passed in either the National Assembly or the Senate.
- The Bill is transmitted to the other House and passed by the other House with amendment.
- The Bill is sent back to the House in which it was originated and that House passes the Bill with those amendments.
- The Bill is presented to the President for assent.

Scenario 3: The Bill is rejected or not passed by the other House

- A Bill is originated and passed in either the National Assembly or the Senate.
- The Bill is transmitted to the other House and is either rejected or not passed within 90 days by that other House.
- The Bill at the request of the House in which it was originated shall be considered in the joint sitting of both the Houses.
- The Bill is passed by the votes of the majority of the members present and voting in the joint sitting.
- The Bill is presented to the President for assent.

Scenario 4: The Bill with amendment is not passed

- A Bill is originated and passed in either the National Assembly or the Senate.
- The Bill is transmitted to the other House and passed by the other House with amendment.
- The Bill is sent back to the House in which it was originated and is not passed by that House with such amendment.
- The Bill at the request of the House in which it was originated shall be considered in the joint sitting of both the Houses.
- The Bill is passed by the votes of the majority of the members present and voting in the joint sitting.



- The Bill is presented to the President for assent.

Scenario 5: The Money Bill

- A Money Bill (relating to finance or tax etc.) is originated in the National Assembly.
- A copy of the Bill is sent to the Senate for recommendations.
- The National Assembly passes the Bill with or without incorporating the recommendations of the Senate.
- The Bill is presented to the President for assent.

The Power of the President

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

Scenario 6: The President returns the Bill for reconsideration

- The Bill is returned by the President for reconsideration by the Parliament in joint sitting.
- 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.
- The Bill is presented to the President for assent.

Lapse of the Bill

A Bill shall lapse on dissolution of the National Assembly if:

1. It is pending in or passed by the National Assembly; and
2. It is pending in the Senate.

A Bill shall not lapse on dissolution of the National Assembly if:

1. It is pending in the Senate; and
2. It has not been passed by the National Assembly.

Power of President to Promulgate Ordinances

The President if deems necessary to take immediate action, he has power to make an Ordinance when the Senate or the National Assembly are 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 the Houses if it is other than Money Bill.

However, National Assembly may extend any Ordinance for another period of **one hundred and twenty days** by passing a resolution.

If National Assembly, before expiration of above one hundred and twenty days, passes a resolution disapproving any Ordinance, it shall expire on the day of passing of such resolution.



Delegated Legislation

In Delegated Legislation power is given to an Executive (a minister or public body to make subordinate or delegated legislation for specified purposes only) e.g. local authorities are given statutory powers to make byelaws which apply within a specific locality.

Control over delegated legislation

- Parliament has some control over delegated legislation by restriction and defining the power to make rules.
- Rules made under delegated power to move legislation may be challenged in the courts on the grounds that it is ultra vires. In other words, it exceeds the prescribed limits or has been made without due compliance if the objection is valid the court declares it void.

Advantages of delegated legislation

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

Disadvantages of delegated legislation

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



CHAPTER 02

Offer, Acceptance and Revocation



Mr. Zahid Qavi

Table of Contents

LO # 01: Introduction to Contract	11
LO # 02: Communication, Acceptance and Revocation of Proposal.....	12

LO # 01: Introduction to Contract

Offeror

Offeror is one who makes an offer to another

Offeree

Offeree is one to whom an offer is made

Offer or Proposal

When a person signifies to another his willingness to do something or not to do something, to obtain the assent of other person, he is making an offer.

Promise

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. 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 “**Promissee**”

Express Promise

If the proposal or acceptance of any promise is made in words, the promise is said to be express.

Implied Promise

If the proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Agreement

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

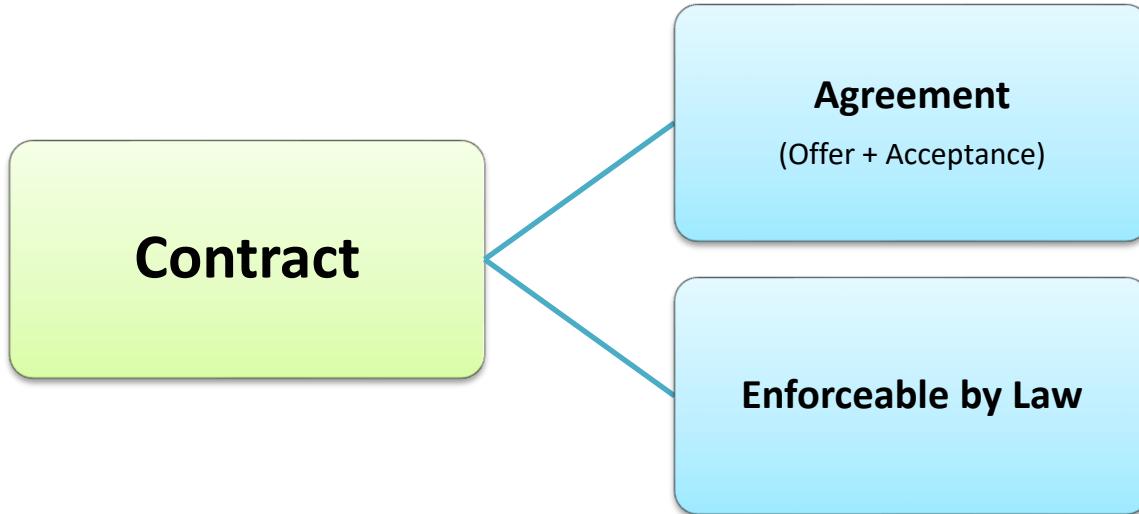
An agreement enforceable by Law is a **contract**.

Enforceability

- Every contract is an agreement, but every agreement is not always a contract.
- An agreement creating a legal obligation is said to be enforceable by law.
- The parties to an agreement must be bound to perform their promises and in case of default by either of them, must intend to sue.
- For an agreement to be enforceable by law there should be legal obligation instead of social, moral or religious obligation.



In case of social or domestic agreements, the usual presumption is that the parties **do not intend to create legal relationship** but in commercial or business agreements, the usual presumption is that the parties intend to **create legal relationship unless otherwise agreed upon**.



LO # 02: Communication, Acceptance and Revocation of Proposal

Essential of a valid offer

1. **Two persons:** For a valid offer there needs to be two persons. A person cannot make an offer to himself.
2. **It must be capable of creating legal relations:** Offer must be such as in law is capable of being accepted and giving rise to legal relationship. If the offer does not intend to give rise to legal consequences and creating legal relations, it is not considered as a valid offer in the eye of law.
3. **It must be certain, definite and not vague:** If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.
4. **It must be communicated to the offeree:** Unless an offer is communicated, there can be no acceptance by it. An acceptance of an offer, in ignorance of the offer, is not acceptance and does not confer any right on the acceptor.
5. **It must be made with a view to obtaining the assent of the other party:** Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.
6. **It may be conditional:** An offer can be made subject to any terms and conditions by the offeror.
7. **Offer should not contain a term the non-compliance of which would amount to acceptance:** One cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.



8. **The offer may be either specific or general:** Any offer can be made to either public at large or to the any specific person.
9. **The offer may be express or implied:** An offer may be made either by words or by conduct.

Communication

The communication of proposals is deemed to be made by any act or omission of the party proposing by which he intends to communicate such proposal or which has the effect of communicating it. It means that an offer can be made by words spoken or written or through conduct of the person.

Communication when Complete

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Revocation of proposal

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

Manner of revocation of proposal

An offer is revoked either

1. By a notice of revocation before accepting the offer by acceptor.
2. A lapse of time regarding the communication of the acceptance.
3. Failure on the part of the acceptor to fulfill a condition precedent to acceptance.
4. Death or insanity of the party making the offer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.
5. An offer is also terminated by non-acceptance or rejection by offeree.
6. An offer is also terminated by counter offer. A counter offer is an offer by offeree in response to the original offer.
7. An offer once accepted becomes a contract and cannot be revoked

Acceptance

When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise.

Conditions for valid acceptance

- Acceptance can be given only by the person to whom offer is made.
- Acceptance must be absolute and unqualified.
- The acceptance must be communicated.
- Acceptance must be in the prescribed mode.
- Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.
What is reasonable time is nowhere defined in the law and thus would depend on facts and circumstances of the particular case.

- **Mere silence is not acceptance:**

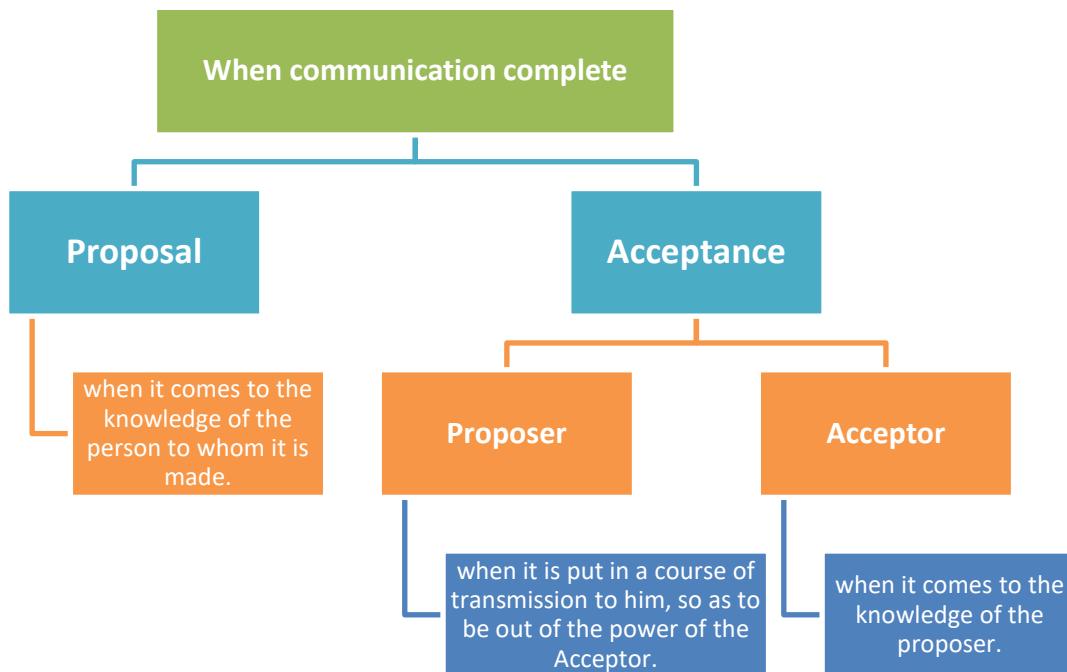
The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

Note: A proposal is not considered accepted if the offeree remains silent. It cannot be in the form of negative confirmation i.e. if it is not accepted within a specific time then it will be presumed to have been accepted.

Communication when Complete

The communication of an acceptance is complete:

- a) As against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor.
- b) As against the acceptor, when it comes to the knowledge of the proposer.

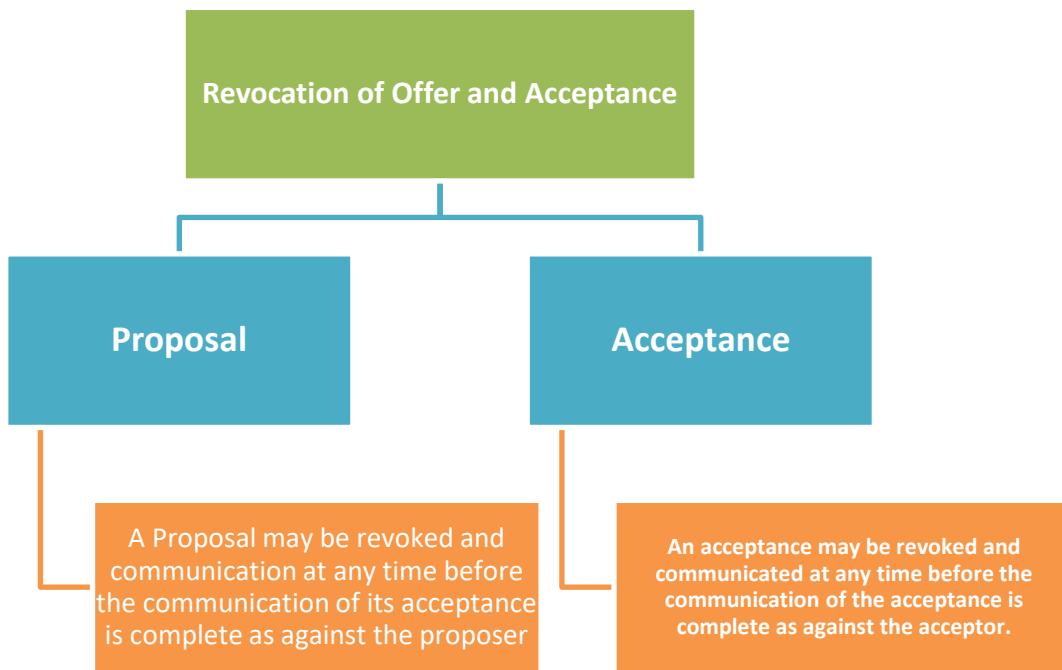


Acceptance by performing conditions or receiving consideration

Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Revocation of acceptance

An acceptance may be revoked at any time before the communication of its acceptance is complete as against the acceptor, but not afterwards.



Revocation

Meaning and time limit

Revocation means the act of taking back, withdrawing or cancelling. An offer or acceptance may be revoked subject to following time limits:

- A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.
- An acceptance may be revoked at any time before the communication of its acceptance is complete as against the acceptor, but not afterwards.

Communication when Complete

The communication of a revocation is complete:

- As against the person making it, when it is put in 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.

CHAPTER 03

Validity of Contracts and Agreements



Mr. Zahid Qavi

Table of Contents

LO # 01: Validity of Contracts and Agreements	17
LO # 02: Consideration and Objects.....	22

LO # 01: Validity of Contracts and Agreements

Valid Contract:

An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract.

Void Contract:

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus a void contract is one which cannot be enforced by a court of law.

Voidable Contract:

An agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a **voidable contract**".

This in fact means where one of the parties to the agreement is in a position or is legally entitled or authorized to avoid performing his part, then the agreement is treated and becomes voidable.

Such a right might arise from the fact that the contract may have been brought about by one of the parties by coercion, undue influence, fraud or misrepresentation and hence the other party has a right to treat it as a voidable contract.

Essentials of a valid contract



- **Two Parties:** One cannot contract with himself. A contract involves at least two parties- one party making the offer and the other party accepting it. A contract may be made by natural persons and by other persons having legal existence e.g. companies, universities etc. It is necessary to remember that identity of the parties be ascertainable.
- **Parties must intend to create legal obligations:** There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements is not enforceable in court of law and hence they do not result into contracts.
- **Other Formalities to be complied with in certain cases:** In case of certain contracts some formalities must be complied with to create a valid contract for example some contracts must be in writing or registered under the laws which are in force at the time.
- **Certainty of meaning:** The agreement must be certain and not vague or indefinite.
- **Possibility of performance of an agreement:** The terms of agreement should be capable of performance. An agreement to do an act impossible in itself cannot be enforced.
- **Offer and Acceptance:** There must be a valid offer and valid acceptance to create a valid contract.
- **Free Consent:** Two or more persons are said to consent when they agree upon the same thing in the same sense. (Identity of minds or consensus ad idem). Further such a consent must be free. Consent would be considered as free consent if it is not caused by coercion, undue influence, fraud or, misrepresentation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. When consent is caused by mistake, the contract becomes void.
- **Capacity of the parties:** Capacity to contract means the legal ability of a person to enter into a valid contract. Contract Act 1872 specifies that every person is competent to contract who
 - ✓ Is of the age of majority.
 - ✓ Is of sound mind and.
 - ✓ Is not otherwise disqualified from contracting by any law to which he is subject.
- **Lawful Consideration and Object:** The consideration and object of the agreement must be lawful.
- **Not expressly declared to be void:** The agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.



Competent to contract

Who are competent to contract?

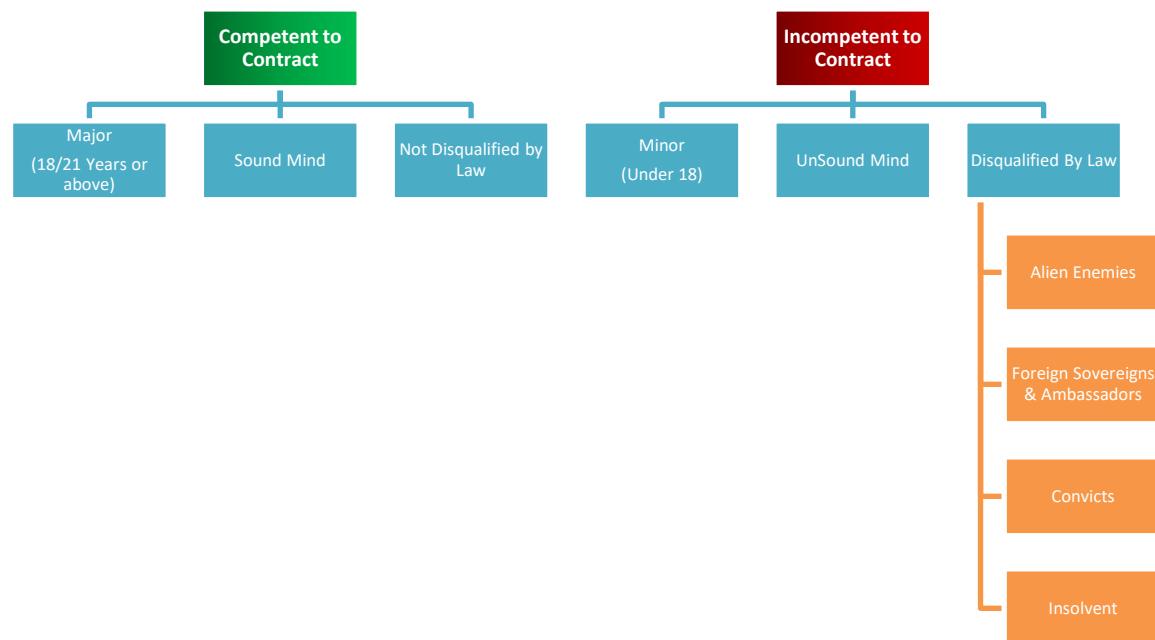
Every person is competent to contract:

- Who is of the age of majority according to the law to which he is subject, and
- Who is of sound mind, and
- Who is not disqualified from contracting by any law to which he is subject

Who are not competent to contract?

A person is not competent to contract if

- He is minor according to the law to which he is subject, or
- He is of unsound mind, or
- He is disqualified from contracting by any law to which he is subject
 - Alien enemies
 - Foreign sovereigns and ambassadors
 - Convicts
 - Insolvent



Agreements with a minor:

Who is Minor?

A person who has not attained majority which is:

- 21 years where a guardian of a minor's person or property is appointed by the court of law under the Guardians and Wards Act, 1890; or
- 18 years in other cases.



Void agreement	<i>An agreement with a minor is void ab initio</i>
Rule of estoppel does not apply	Where an infant / minor represents fraudulently or otherwise that he is of the age of majority and induces another to enter into a contract with him, even then, he will not be liable.
Ratification not allowed	Ratification is approving or accepting something which has happened already. It is necessary that the minor must be competent to contract at the time of entering in the contract. Therefore, an agreement with a minor cannot be ratified subsequently after he attains majority.
Contract by minor and adult jointly	If a minor enters into an agreement jointly with a major person then such agreement can be enforced against the major person who has jointly promised to perform.
Minor may be admitted to benefits of 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 as an agent	A minor can be agent but cannot be a principal. However, if anyone acts on behalf of minor principal, he will be personally liable.
Minor and insolvency	A minor cannot be declared insolvent because he is incompetent to contract.
Minor can be beneficiary	A minor can file a suit but cannot be sued.
Agreements on behalf of minor by parents or guardian	If the parent of a minor entered into an agreement 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.
Minor and necessaries	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.

Agreement by Persons of Unsound Mind

Who is said to be sound mind?

A person is said to be of sound mind at the time of contract if he is

- capable of understanding it and
- capable of forming a rational judgment regarding his interest.

Who is said to be unsound mind?

A person is said to be of unsound mind at the time of contract if he is

- Not capable of understanding it or
- Not capable of forming a rational judgment regarding his interest.

Rules:

1. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.



2. A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.
3. An agreement with a specific person/idiot is void.
4. If a lunatic enters into a contract while he is of unsound mind, an agreement during this period is void.
5. If a lunatic enters into a contract while he is of sound mind, an agreement during this period is valid.
6. A person delirious from fever or drunken person cannot enter into a contract while such delirium or drunkenness lasts and he is not able to understand the terms of the contract or form a rational judgment.
7. A person of unsound mind can enforce a contract for his benefits.
8. A person, who supplied necessaries to a person of unsound mind or his dependents, is entitled to be reimbursed from the property of such person of unsound mind. Such claim is against the property of the person of unsound mind and not against the person personally.

Burden of Proof

- **If a person is usually of sound mind.** Burden of proof, that he was of unsound mind at the time of making contract, lies on the person who questions the validity of contract.
- **If a person is usually of unsound mind.** Burden of proof that he was of sound mind at the time of making the contract lies on the person who wants to enforce the contract.

Agreement with person disqualified by law

There are some disqualifications imposed on certain persons in respect of their capacity to contract which are discussed below:

Alien enemies An alien is a person who is the citizen of a foreign country.

1. He can enter into a contract and be sued during peace time.
2. If a war is declared, then an alien enemy can neither enter into a contract nor be sued during the period of war.
3. Contracts entered before the declaration of war are either suspended or terminated during the period of war.

Foreign sovereigns and ambassadors	Such persons have immunity unless they choose to submit themselves to the jurisdictions of our courts. They have a right to enter into a contract but can claim the privilege of not being sued.
Convicts	A convict while under imprisonment is incapable of contracting but this disability comes to an end <ol style="list-style-type: none"> 1. After the expiry of the sentence or 2. When he is on parole.
Insolvent	A person declared as insolvent cannot enter into a contract as his property is dealt with by official assignee or official receiver.
Companies	A company is an artificial person and a contract entered into by a company will be valid only if it is within the powers granted to it by the Memorandum of Association.



LO # 02: Consideration and Objects

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**.



- *Desire of Promisor*
- *Move from Promisee or any other Person*
- *Executed and executory consideration*
- *may be past, present or future*
- *Adequate*
- *legally bound to perform*
- *real and not illusory*
- *not be unlawful, immoral, or opposed to public policy*

1. **Consideration must move at the desire of the promisor:** Consideration must be offered by the promisee or the third party at the desire of the promisor. An act done at the desire of a third party is not a consideration.
2. **Consideration may move from promisee or any other person:** Consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration but not stranger to a contract.
3. **Executed and executory consideration:** A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.
4. **Consideration may be past, present or future:** The consideration may be past, present or future. 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 agreement is called future consideration.



5. **Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value. Something in return need not be equal to something given. It can be considered a bad bargain of the party.
Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate.
But as an exception if it is shockingly less and the other party alleges that his consent was not free than this inadequate consideration can be taken as an evidence in support of this allegation.
6. **Performance of what one is legally bound to perform:** The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. But where a person promises to do more than he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration.
7. **Consideration must be real and not illusory:** Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.
8. **Consideration must not be unlawful, immoral, or opposed to public policy.** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

Agreement without consideration

An agreement without consideration is void except under the following cases:

- **Natural love and affection**
 - ✓ It must be made out of natural love and affection between the parties.
 - ✓ Parties must stand in near relationship to each other.
 - ✓ It must be in writing.
 - ✓ It must also be registered under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.
- **Compensation for past voluntary services**
 Promise to pay for the past voluntary services is binding, if the following essential factors exist
 - ✓ 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.
- **Time barred debt**
 A promise to pay time barred debt is enforceable if:
 - ✓ it is made in writing,
 - ✓ it is signed by the debtor or his agent, and
 - ✓ it relates to a debt which could not be enforced by a creditor because of law of limitation



- **Completed gift**

In case of completed gifts, the rule no consideration no contract does not apply.

- **Contribution to Charity**

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

- **Other Contracts**

No Consideration is necessary for a

- ✓ Contract of Bailment
- ✓ Contract of Guarantee
- ✓ Contract of Agency

Lawful / unlawful object and consideration

The consideration or object of an agreement is lawful unless:

- It is forbidden by law. (**e.g. wagering agreements**)
- It 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.

Forbidden by law

If the law of the state prohibits an object or the consideration of an agreement, then such agreements are void.

An act is forbidden by law when it is punishable by the law of the country. 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.

Wagering Agreements:

Agreement to pay money (or to other valuable items) to other person on happening or non – happening of a future uncertain event (in which no party has any real interest) is called wagering agreement

For example

- Bet on match
- Bet on Rain
- Gambling
- Lottery



Defeats the provisions of any law

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.

Fraudulent

Where the object of an agreement is fraudulent the agreement is void.

Involves or implies injury.

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.

Court regards it as immoral or opposed to public policy

Where the object or consideration of an agreement is such that the court regards it as immoral or opposed to the public policy then the agreement is void.

Where Object or Consideration is Partly Unlawful

1 <i>Non-separable promises</i>	2 <i>Separable promises</i>	3 <i>Alternative promise being illegal</i>
<i>When an agreement contains things to do legal as well as illegal and the legal part cannot be separated from illegal part, the whole agreement is illegal and void.</i>	<i>When an agreement contains things to do legal as well as illegal and the legal part can be separated from illegal part, the legal part is a contract and the illegal part is a void agreement.</i>	<i>In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.</i>



CHAPTER 04

Free Consent and Void Agreements



Mr. Zahid Qavi

Table of Contents

LO # 01: Consent: Coercion and Undue Influence.....	27
LO # 02: Consent: Fraud and Misrepresentation.....	29
LO # 03: Consent: Mistake	32
LO # 04: Expressly declared as void agreement.....	32

LO # 01: Consent: Coercion and Undue Influence**Consent:**

Two persons are said to consent when they agree upon the same thing in the same sense. Both the parties must be at the same frequency of mind at the time of entering into a contract Consensus ad idem

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:

1. Coercion or
2. Undue influence or
3. Fraud or
4. Misrepresentation or
5. Mistake

Effect of absence of free consent:

The effect of absence of free consent is that the contract becomes voidable except in case of mistake when the contract may be void or valid 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.

- Coercion may be compelling a person to enter into a contract under pressure or a threat.
- It is immaterial that Pakistan Penal Code is or is not in force in place where coercion is employed. If the suit is filed in Pakistan, the provisions of Pakistan Penal Code shall apply.
- Coercion may be exercised from any person, and may be directed against any person, even a stranger.

Effects of coercion

The contract becomes voidable at the option of the party whose consent was so caused.

Burden of proof

The burden of proof lies on the party who rescinds the contract.

Liability of rescinding party

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.

Position to Dominate in a Relationship

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

1. Holds the real or apparent authority over the other.
2. Stands in a fiduciary relation to the other.
3. Makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

Presumption of position to dominate

It is presumed that following persons are in a position to dominate the will of another person

1. Father and Son,
2. Guardian and Minor.
3. Employer and Employee,
4. Trustee and Beneficiary,
5. Teacher and Student,
6. Doctor and Patient,
7. Solicitor and Client,
8. Fiancé and Fiancée and
9. Contract by or with Pardanasheen lady.

The burden of proof lies on the person who is in the position to dominate.

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

The price was adequate the weaker party was in receipt of competent independence advice before entering into the contract.

No presumption of position to dominate

1. Landlord and tenant.
2. Creditor and debtor.
3. Husband and wife.
4. Principal and agent.

The burden of proof lies on the person who wants to set aside the contract on the basis of undue influence.



Effect of undue influence

The contract becomes voidable at the option of the party whose consent was so caused. 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.

Difference between coercion and undue influence:

Coercion	Undue Influence
Consent is obtained by giving a threat of an offence or committing an offence.	Consent is obtained by dominating the will.
It involves physical pressure.	It involves moral pressure.
Parties to a contract may or may not be related to each other.	Parties to a contract are related to each other under some sort of relationship.
The objective is to compel a person to enter into a contract.	The objective is to obtain an unfair advantage.
Criminal liability is incurred; therefore, it is illegal.	Criminal liability is not incurred.
Coercion may be employed on a stranger.	Undue influence may only be employed on the party whose consent is desired.
It can be exercised by a stranger to the contract.	It can only be exercised by a party to the contract and not by a stranger.
The onus of proof is on the party who wants to relieve himself of the consequences of coercion.	The onus of proof is on the party in a position to dominate the will of the other party.
The aggrieved party has to restore the benefit received.	The party avoiding the contract may or may not restore benefit.

LO # 02: Consent: Fraud and Misrepresentation

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 an intent to deceive another party thereto or his agent to enter into a contract.

Fraudulent acts

Intentional false assertion	<i>A false representation of a fact made knowingly or without belief in its truth is fraud.</i>
Active concealment of facts	The active concealment of a fact by one having knowledge or belief of the fact such as, where steps are taken by a seller concealing some material facts so that the buyer even after a reasonable examination cannot trace the defects, will amount to fraud.
Intentional non – performance	A promise made without any intention of performing it constitutes to fraud.
Intention to deceive	Any act with an intention to deceive is considered to be fraudulent.
Certain acts or omissions	Under certain situations, law declares certain acts and omissions to be fraudulent.



Essentials of Fraud:

Party to a contract *The fraud must be committed by a party to a contract or by anyone with his connivance or by his agent. Thus, the fraud by a stranger to the contract does not affect its validity*

False representation It means that a false representation is made with the knowledge of its falsehood. It will equal to fraud if a true representation is made but becomes untrue at the time of formation of contract the fact is known to the party who made the representation.

Representation as to fact A mere opinion does not amount to fraud. A representation must relate to a fact then it amounts to fraud.

Actually deceived A deceit, which does not deceive is not fraud. The fraud must have actually deceived the other party who has acted on the basis of such representation.

Suffered loss Loss has been suffered by the party who acted on the representation.

Effects of Fraud:

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

Exceptions to rescind the contract

A party cannot rescind the contract where:

1. Silence amounts to fraud and the aggrieved party had the means of discovering the truth with ordinary diligence.
2. The party gave the consent in ignorance of fraud.
3. The party after becoming aware of the fraud takes a benefit under the contract.
4. 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.
5. 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.

Misrepresentation:

Misrepresentation means and includes:

- **Unwarranted statement** when a person makes a positive statement that a fact is true when his information does not warrant it to be so, though he believes it to be true this amount to misrepresentation.
- **Breach of duty** 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.



- **Inducing mistake about subject matter** (Innocent misrepresentation) A party to an agreement induces (however innocently) the other party to make a mistake as to the nature or quality of the subject of the agreement.

Essentials of Misrepresentation:

Party to a *The 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.*

False representation	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.
Representation as to fact objective	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.
Actually acted	The other party must have acted on the faith of the representation.

Effects of Misrepresentation:

The effects of misrepresentation 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:

1. The party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence;
2. The party gave the consent in ignorance of misrepresentation
3. The party after becoming aware of the misrepresentation takes a benefit under the contract
4. 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,
5. The parties cannot be restored to their original position.

Difference between Fraud and misrepresentation

Fraud	Misrepresentation
Intention Implies an intention to deceive	Representation is innocent without intent to deceive.
Remedies It is civil wrong and aggrieved party can claim damages in addition to Cancellation of contract.	Aggrieved party can only avoid the contract but damages are only payable at discretion of court.



LO # 03: Consent: Mistake

Mistake of Law:

Mistake of Pakistan law

Everyone is deemed to be conversant with the law of his country, and therefore, mistake of law is no excuse and it does not give right to the parties to avoid the contract.

Mistake of Foreign Law

Mistake of foreign law stands on the same footing as the 'mistake of fact'. Here the agreement is void in case of bilateral mistake only.

Mistake of Facts

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 mistakes as to the existence of subject matter, quantity of subject matter, quality of subject matter, price of subject matter, identity of subject matter, and title 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.

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.

Exceptions

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

Mistake relating to the identity of the person

Mistake relating to the nature of the contract

LO # 04: Expressly declared as void agreement

The Following types of agreements have expressly been declared void under various section of the contract Act

1. Agreement in restraint of trade
2. Agreements in restraint of legal proceedings
3. Wagering Agreement
4. Agreements in restraint of marriage
5. Uncertain Agreements



6. Agreements contingent on impossible events or to do impossible Acts
7. Agreements with incompetent person
8. Agreements to enter into an agreement in the future
9. Agreement made without consideration

Effects on agreement collateral to void agreement

Agreement collateral / contingent on void agreement, also become void

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 -where agreements in restraint of trade are not considered as void

Sale of goodwill One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits are reasonable.

Partners' 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 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. Service Agreements.	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.	
	During the employment, agreement of services often contains a clause by which an employee is prohibited from working anywhere else. Such a clause in service agreement by which an employer restricts the employee from engaging in any competing business or accepting any other employment is not restraint of trade. Further, where legitimate interest or goodwill or trade secret of employer is involved an employer may restrict his employee even after the end of employment but such restriction should be just and reasonable.	



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

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



CHAPTER 05

Contingent Contracts



Mr. Zahid Qavi

Table of Contents

LO # 01: Introduction	36
LO # 02: Rules Regarding Contingent Contract.....	37

LO # 01: Introduction

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

Examples of Contingent Contract

Insurance contracts and contracts of indemnity and guarantee provide the best example of contingent contracts.

Characteristics of contingent contracts

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

Difference between contingent contract and wagering agreements:

<i>Contingent contract</i>	<i>Wagering agreement</i>
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.



LO # 02: Rules Regarding Contingent Contract

<i>Contingent on</i>	<i>Time fixed</i>	<i>When enforceable</i>	<i>When void</i>
<i>Happening of uncertain future event</i>	No	If the event happens.	If event becomes impossible
	Yes	If event happens within time fixed	If time expires or event becomes impossible before time expires.
<i>Non-happening of uncertain future event</i>	No	If the event becomes impossible.	If the event happens.
	Yes	If time expires or event becomes impossible before time expires.	If the event happens within time fixed.
<i>Happening of impossible event</i>	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.		
<i>Future conduct of a person</i>	If the future event is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.		



CHAPTER 06

Performance of Contracts - I



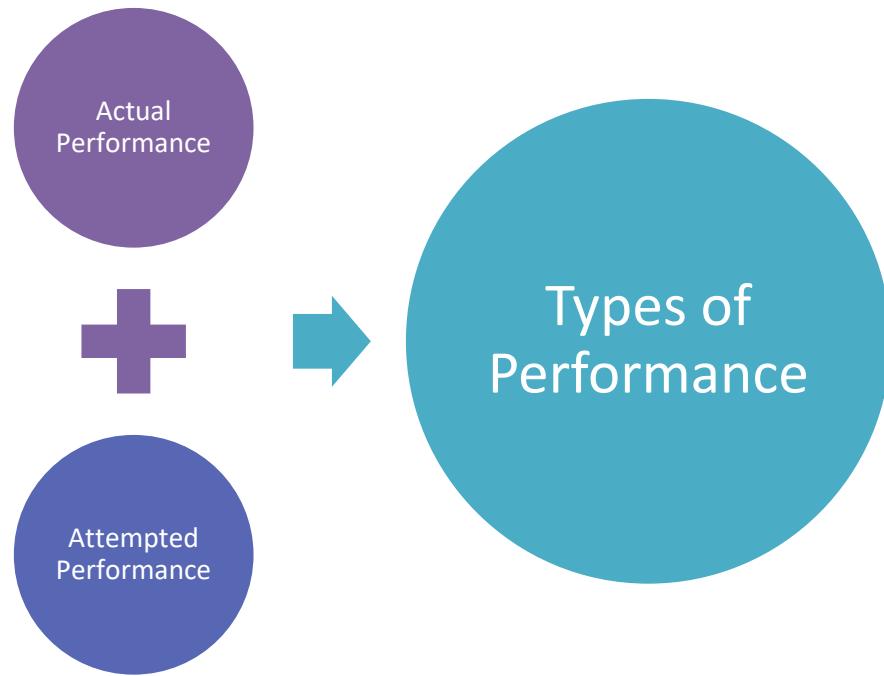
Mr. Zahid Qavi

Table of Contents

LO # 01: Contract which must be Performed	39
LO # 02: Apportionments of Payments.....	41
LO # 03: Contract which need not be performed	41

LO # 01: Contract which must be Performed**Performance of a Contract**

A contract creates an obligation, which continues till the contract has been discharged by performance. Performance of the contract is one of the vital modes of discharge of the contract. The parties to a contract must either perform, or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of Contract Act, or of any other law.

Types of Performance**Actual performance**

When the promisor has made the performance in accordance with the terms of the contract and it is accepted by the Promisee it is called an actual performance.

Attempted performance (Tender)

When 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

Unconditional	Tender is said to be unconditional when it is made in accordance with the terms of the contract.
Proper Time	Tender must be made at the stipulated time or during business hours. Tender of goods or money before the due date is also not a valid tender.
Proper Place	Tender must be made at the stipulated place or at business place.
Proper Person	It must be made to the promisee or his duly authorized agent. In case of several joint promisees, a tender made to one of them has the same legal consequences as tender to all of them.
Reasonable Opportunity	Promisee must have reasonable opportunity for examining that the goods offered are the same as per the terms of the contract.
Whole Obligation	A valid tender is for the whole obligation. However, a minor deviation from the terms of the contract may not render the tender invalid.
Fixed amount and legal tender	In case of tender of money the amount must be fixed and in legal tender.

Effect of Refusal

Effect of refusal to accept a valid tender of goods and services	<p>Where the promisor offers to deliver the goods or services but the promisee refuses to accept, the following rules apply:</p> <p>Goods or services need not be offered again.</p> <p>Promisor may sue the promisee for non-performance and claim damages.</p> <p>Promisor is discharged from his liability i.e. he is not liable for non-performance.</p>
Effect of refusal to accept a valid tender of money	<p>Where the promisor offers to pay the amount but the promisee refuses to accept the same, the following rules apply:</p> <p>Promisor is not discharged from his liability to pay the amount</p> <p>Promisor will not be liable for interest from the date of a valid tender</p>
Effect of refusal to perform	<p>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.</p>



LO # 02: Apportionments of Payments

When debt to be discharged is indicated

Where a debtor makes a payment with either express or implied intimation that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

When debt to be discharged is not indicated

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, 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 the payment to a disputed debt.

Neither party makes an appropriation

The payment shall be applied in discharge of the debts in order of time whether or not they are time barred. In other words, all payments shall be applied towards the payment of first debt till it gets extinguished. Similarly, all subsequent payments applied towards second debt till it gets fully paid and so on and so forth. If the debts are of equal standing, the payment shall be applied in discharge of each, proportionately

When Interest and Principal both are due

As a general rule, if principal amount and mark-up both are due, then mark-up is settled first and then principal amount is settled.

LO # 03: Contract which need not be performed

Novation

Novation means the substitution of a new contract for an old one. The new agreement extinguishes the rights and obligations that were in effect under the old agreement.

A novation ordinarily arises when a new individual assumes an obligation to pay that was incurred by the original party to the contract.

In the case of a novation, the original debtor is totally released from the obligation, which is transferred to someone else. The nature of the transaction is dependent upon the agreement between the parties.

A novation also takes place when the original parties continue their obligation to one another, but a new agreement is substituted for the old one.

Recession

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



Alteration

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

Promissee may Dispense with or remit performance

A promissee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Promissee refusal or neglect

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

Impossible Act

1. Void Agreement

An agreement to do an act impossible in itself is void

2. Subsequent impossibility or illegality

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

The following are acceptable grounds of supervening impossibility:

1. Destruction of subject matter.
2. Death or personal incapacity in contracts of personal nature.
3. Declaration of war making it impossible to perform the contract.
4. The particular state of things ceases to exist or occur which form the basis of contract.

The following are not an acceptable excuse from performance on account of supervening impossibility:

1. The performance of contract becoming difficult, costlier or less beneficial than that agreed at the time of its formation.
2. The contract becomes commercially unviable.
3. There is default by third party, on whose work the promisor was relying.
4. Strikes, lockouts and civil disturbances.
5. Partial impossibility of some of the objects of the contract.

Compensation in certain circumstances

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promissee did not know to be impossible or unlawful, such



promisor must make compensation to such promisee for any loss which such promisee sustains through the non-Performance of the promise

Consequences of rescission of voidable contract

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor.

The party rescinding voidable contract shall if he has received any benefit there under from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Advantage received under void agreement or void contract

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.



CHAPTER 07

Performance of Contracts - II



Mr. Zahid Qavi

Table of Contents

LO # 01: By whom Contract must be Performed	45
LO # 02: Time and Place for Performance	45
LO # 03: Performance of Reciprocal Promises.....	48

LO # 01: By whom Contract must be Performed**1. Promisor himself**

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained, in it should be performed by the promisor himself, such promise must be performed by the promisor himself only.

2. Legal Representative

Promises bind the representatives of the promisors in case of the death of such promisors before performance unless a contrary intention appears from the contract. The liability of legal representatives is limited to the amount of estate of the deceased.

3. Other Competent Person

In other case, the promisor or his representatives may employ a competent person to perform it.

Effect of accepting performance from third party

When a Promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of Joint Liabilities

Unless a contrary intention appears, in case of several promisor the following persons must perform the promise:

1. All the promisors jointly in case of all the promisors are alive
2. Representatives of the deceased promisor jointly with the surviving promisor(s) in case of death of any of the joint promisors
3. Representatives of all of them jointly in case of death of all joint promisors.

LO # 02: Time and Place for Performance**1. No time specified and no application to be made****Circumstances**

No time for performance is specified; and the promisor is to perform his promise without application by the promisee.

Rule of performance

The promise must be performed within a reasonable time. The question "what is a reasonable time" is, in each particular case, a question of fact.

2. Certain day specified and no application to be made**Circumstances**

Promise is to be performed on a certain day; and the promisor has undertaken to perform it without application by the promisee.



Rule of 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.

3. Certain day specified and application to be made**Circumstances**

Promise is to be performed on a certain day; and the promisor has not undertaken to perform it without application by the promisee.

Rule of 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, in each particular case a question of fact.

4. No place fixed and no application to be made**Circumstances**

No place is fixed for the performance; and the promise is to be performed without application by the promisee.

Rule of performance

It is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

5. Prescribed or sanction by promisee**Circumstances**

The manner or time prescribed or sanctioned by the promisee

Rule of performance

The promise should be made in the manner and at the time which the promisee prescribes or sanctions.

When time is essential?

The time is essential to a contract if the intention of parties (expressed or implied) was that time should be of essence of the contract.

Effect of failure to perform at fixed time, when time is essential

In case the performance is not made within or at time fixed and time is essence, the contract (or so much of it as remains unperformed) becomes voidable at the option of the promisee. He may rescind the contract and sue for the breach caused by non-performance.

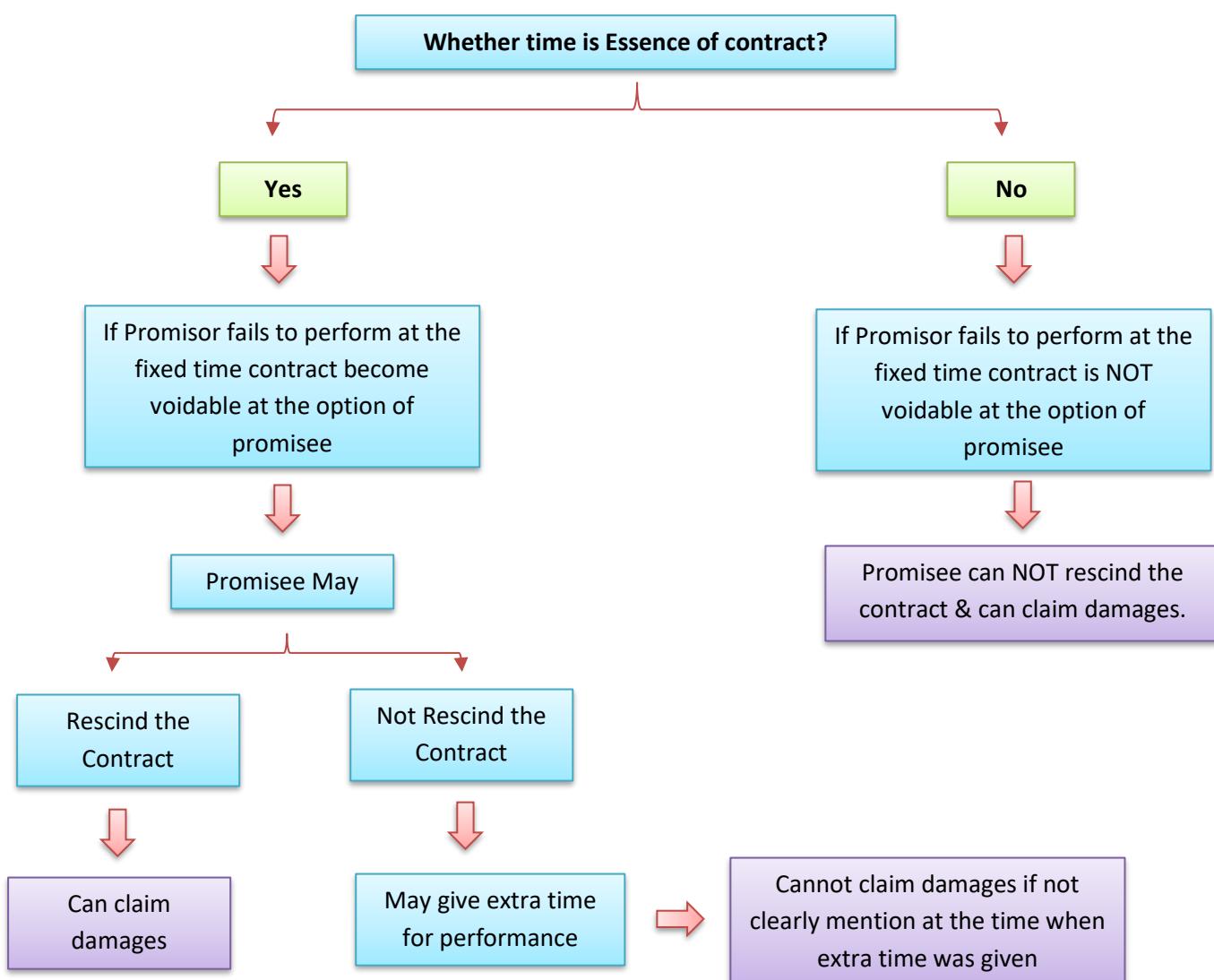


Effect of failure to perform at fixed time, when time is not essential

In case the performance is not made within or at time fixed and time is not essence, the contract is not voidable at the option of promisee but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of delayed performance

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.



LO # 03: Performance of Reciprocal Promises**Definition**

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

Rules regarding Performance of Reciprocal Promises**1. When promisor is not bound to perform**

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

2. Order of performance

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

3. Liability of party 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.

4. Effect of default of promise which should be first performed

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

5. Reciprocal promise to do things legal, and also other things illegal

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.

6. Alteration promise, one branch 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.



CHAPTER 08

Certain Relations Resembling Those Created by Contract



Mr. Zahid Qavi

Table of Contents

LO # 01: Quasi Contracts.....50

LO # 01: Quasi Contracts

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. These are also known as constructive contracts.

Types of Quasi Contracts**1. Supplies of Necessaries**

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

2. Reimbursement of payment by interested person

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

3. Person enjoying benefit of Non – Gratuitous Acts

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.

4. Responsibilities of finder of goods

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

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. Until the true owner is found, he has right to retain possession of the goods.

A finder of goods may sell the goods when the goods are of perishable nature or when the lawful charges for finding the true owner amount to two-third or more of the value of the goods.

5. Payment or delivery 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.



CHAPTER 09

Consequences for Breach of Contract



Mr. Zahid Qavi

Table of Contents

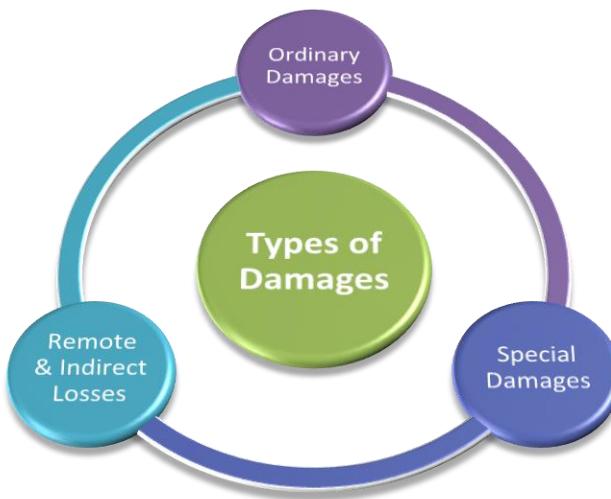
LO # 01: Compensation for loss or Damages caused by Breach.....	52
LO # 02: Compensation where Penalty is Stipulated.....	53

LO # 01: Compensation for loss or Damages caused by Breach

Breach of contract:

Breach of contract occurs when a party either refuses or fails to perform his part of contract other than when such performance is excused under the law. There are various remedies available to an aggrieved party of which damages are more frequently sought remedies for breach of contract.

Types of Damages:



1. Ordinary Damages

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach.

The general rule for measuring damages, in case of breach of contract of sale, is the difference between contract price and market price at the date of breach.

2. Special Damages

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which the parties knew, when they made the contract, to be likely to result from the breach of it.

3. Remote and indirect loss

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

There may be 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.

LO # 02: Compensation where Penalty is Stipulated

Basic Rule

The parties to a contract may stipulate at the time of its formation that on the breach of the contract by either of them, a certain specified sum will be payable as damages. Such a sum may or may not be by way of penalty.

A sum is by way of penalty when it is extravagant and disproportionate to the damage likely to accrue as a result of the breach.

The Court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. Therefore, the amount fixed up at the time of contract, regardless of whether it is a penalty or not, determines only the maximum limit of liability in case of breach of contract.

Increased interest as penalty

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.



CHAPTER 10

Appointment and Authority of Agents



Mr. Zahid Qavi

Table of Contents

LO # 01: Appointment of Agents.....	55
LO # 02: Authority of Agents.....	55

LO # 01: Appointment of Agents

Agent:

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

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

All types of business may use agents. An agent is a person who acts on behalf of someone else (a ‘principal’) to arrange a transaction with a third party.

1. There is a legal relationship between the agent and the principal. This legal relationship is called ‘agency’.
2. The agent acts on behalf of the principal, by negotiating with a third party. Under normal circumstances, there is no legal agreement between the agent and the third party.
3. However, the agent may negotiate the terms of a contract between the principal and the third party. When the contract is made, it is between the principal and the third party.
4. An agent may act for a principal in arranging just one transaction. However, it is common in business for an agent to act regularly on behalf of a principal, arranging large numbers of different business transactions and contracts.

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. Such agent shall be responsible to his principal according to the provisions contained in the Contract Act, except when such person is minor or of unsound mind.

Consideration not necessary

No consideration is necessary to create an agency.

LO # 02: Authority of Agents

Legal issues with agency relationships

There are two main legal issues with agency arrangements when there may be some doubt about the validity of a contract that an agent makes with a third party on behalf of a principal.

1. A person (A) might claim to act on behalf of a principal (P), and a third party (T) might enter into an agreement believing the contract to be with P. However, P might deny that the person is in fact his agent.
2. A person (A) might be the agent of Principal (P) with authority to make certain agreements on behalf of P. However, the agent might make an agreement with a third party (T) and in doing so go beyond the limits of his authority as agent. The principal (P) might then refuse to accept the agreement as legally binding. An example of this is where a manager makes an agreement on



behalf of the company he works for, and the company refuses to honor the agreement on the grounds that the manager did not have the authority to make the agreement.

Authority of Agents

The principal is liable to third party when agent has authority, whether that authority is express or implied, or whether that authority is actual or apparent.

1. Express Authority

The authority of an agent may be expressed. An authority is said to be express when it is given by words spoken or written.

2. Implied Authority

The authority of an agent may be implied. An authority is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written, or the ordinary course of dealing, may be accounted for circumstances of the case.

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.

3. Apparent (ostensible) authority

The principal is liable to third party when third party has reasonable reason to believe that the agent has authority to act on behalf of principal, even though it might not be the actual case. Unless the third party has knowledge to the contrary, he is entitled to assume that an agent holding a particular position has all the powers that are normally given to a person in such a position.

4. 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.



CHAPTER 11

The Nature of Partnership



Mr. Zahid Qavi

Table of Contents

LO # 01: Introduction	58
LO # 02: Test of Partnership.....	58
LO # 03: Types of Partnership and Partners	61

LO # 01: Introduction**Partnership:**

"Partnership" is the relation between person who has agreed to share the profits of a business carried on all or any of them acting for all.

- Persons who have entered into partnership are individually called "**Partners**"
- Persons who have entered into partnership are collectively called "**Firm**"
- The name under which the business of partnership is carried on is called the "**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.
- "**Business**" includes every trade, occupation and profession.
- "**Third party**" used in relation to firm or to a partner therein mean any person who is not a partner in the firm.

LO # 02: Test of Partnership**Modes of determining existence of Partnership:**

In determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm regard shall be given to the real relationship between the parties as shown by all the relevant facts taken together i.e.

1. Association of two or more persons
2. Agreement
3. Carrying on business
4. Sharing of profits
5. Mutual agency

1. Association of two or more persons

The partnership is an association between two or more persons and all persons must be competent to contract. Thus, there can be no partnership consisting of a single individual. If the number gets reduced to one, for any reason, it ceases to be a partnership. The partnership Act does not say anything about the maximum number of partners. However, in company law the following maximum numbers are fixed:

- 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 maximum number may exceed 20.

If the number of partners exceeds the maximum number allowed then such partnership firm becomes an **illegal association**.

2. Agreement

A partnership is a contractual agreement between the partners. This agreement may be express (whether written or oral) or implied. The written agreement is known as '**Partnership Deed**'. In Pakistan partnership arises from contract and not from status such as, (Joint Family Business) operation of law inheritance, or succession.



A partnership deed usually sets out the following:

1. Firm name
2. Place or principal place of business of the firm
3. Names of any other places where the firm carries on business
4. The date when each partner joined the firm
5. Number of partners
6. Names in full and permanent addresses of partners
7. Duration of partnership (if any)
8. Purpose of the partnership
9. Rights and duties of the partners.
10. Amount of capital that each partner should put into the business, and keep in the business until the partner retires or the partnership is dissolved

In Pakistan, if the partnership agreement does not specify what the rights or duties of the partners should be in particular circumstances, the rules set out in the Partnership Act 1932 are assumed to apply. These are the '**Default rules**' in the absence of anything else.

This means that if a partnership exists but does not have a written agreement, it will be assumed (unless there is evidence to suggest otherwise) that the rules of the partnership agreement are those contained in the Partnership Act.

3. Carrying on business

To constitute a partnership, the parties must have agreed to carry on a business. Where there is no business to be done, there can be no question of 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. If the purpose is to carry on some charitable work it will not be a partnership.

4. Sharing of Profits

The next essential element of partnership is that there must be an objective to make profit. The partners may agree to share profits in any manner they like. The sharing of profits is *prima facie* evidence and not conclusive evidence of partnership. Partners may share it equally or in any other proportion. Further, it is not necessary that the partners should agree to share losses. It must be noted that even though a partner may not share in the losses of the business, yet his liability towards outsiders shall be unlimited.

5. Mutual Agency

There must exist a mutual agency relationship among partners. Mutual Agency relationship means that each partner is both an agent and a principal. Each partner is an agent in the sense that he has the capacity to bind other partners by his acts done. Each partner is principal in the sense that he is bound by the acts of other partners.

Following two important features of the partnership need to be understood:

1. A partnership does not have a legal personality. Unlike a company, it is not a legal person. A third party entering into business transaction with a partnership does not have a contractual



agreement with the partnership; the contractual agreement is between the third party and all the partners as individuals.

2. Partners in a partnership do not have limited liability, and are personally liable for any liabilities of the partnership business that the partnership cannot pay.

Not a Partnership:

Joint or common interest in the property

The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such person's partners.

Difference Between partnership Firm and Co-ownership

<i>Difference</i>	<i>Partnership firm</i>	<i>Co-ownership</i>
<i>Formation</i>	It is created by an agreement alone.	Co-ownership is not necessarily a result of an agreement.
<i>Business</i>	In partnership carrying on business is 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.
<i>Number of persons</i>	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.
<i>Sharing of profit</i>	Sharing of profit is one of the essential elements.	It does not involve sharing of profit.
<i>Mutual agency</i>	A partner is an agent of the firm for the purpose of business of the firm.	Co-owners are not agents to one another.
<i>Transfer of interest</i>	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).

Sharing of Profits is not a Conclusive Evidence of Partnership

The receipts by a person of a share of the profits of a business, or of a payment contingent upon profits of business, does not of itself make him a partner with the persons carrying on the business.

In particular, the receipt of share of profit or payment contingent upon profit by following persons does not of itself make them a partner with the persons carrying on the business:

1. Lender of money to persons engaged or about to engage in any business
2. Servant or agent as remuneration
3. Widow or child of a deceased partner as annuity
4. A transferee of a partner's interest
5. A minor who is admitted to the benefits of an existing partnership



6. Previous owner or part owner as consideration for the sale of goodwill or share of it.

Loan from Banking Company

The Partnership Act, 1932 shall not apply to a relationship created by any agreement between a banking company and a person or group of persons providing for sharing of profit and losses arising from or relating to the provisions by a banking company of finance to such person or group of persons.

Partnership Not Created by Status

The relation of partnership arises from contract and not from status.

LO # 03: Types of Partnership and Partners

Types of Partnership

1. Partnership-at-will

Where no provision is made between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is called partnership at will. In such partnership there is no provision as to when the partnership will come to an end. Any partner is free to dissolve the partnership by giving a notice in writing to all other partners of his intention to dissolve the firm. The firm is dissolved as from the date mentioned in the notice as the date of dissolution or if no date is mentioned as from the date of the communication of the notice.

If freedom to dissolve the firm at will is curtailed by agreement, like if the agreement provides that the partnership can be dissolved by mutual consent of all the partners, only then will it not constitute a partnership at will.

2. Particular partnership

Where a partnership is created for any particular adventure or undertaking or for a specific time period it is called a particular partnership. Such partnership comes to an end on the completion of venture or on the expiry of the period.

If the partners decide to continue such a partnership even after the expiry of the specific period or completion of specific venture then it becomes partnership at will.

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

A sleeping partner is not known as such as a partner to third parties dealing with the firm. He may or may not take active part in the conduct of the business of the firm. He, like other partners, invests capital and shares in the profits of the business. He is equally liable along with other partners for all the debts of the firm, even though his existence is kept a secret from the outsiders dealing with the firm.

Note: A sleeping partner is not required to give public notice of his retirement and he is not liable for any act done by the firm after his retirement.

3. Nominal partner

A partner who does not contribute any capital or share in profits, but lends his name to the firm is called a nominal partner. He along with other partners is liable to the outsiders for all the debts of the firm.

4. Partner in profits only

A partner may agree that a partner shall get a share of the profits only and that he shall not be liable to contribute towards the losses. But for third parties he is liable for all the debts of the firm.

5. Sub-partner

When a partner agrees to share his profits derived from the firm with a stranger, that stranger is known as a sub partner. A sub-partner is in no way connected with the firm and cannot represent himself as a partner of the firm. He has no rights against the firm nor is he liable for the acts of the firm.

6. Partner by estoppel or holding out

Where a person:

- Holds himself out as a partner; or
- Allows others to do it

They are then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.



CHAPTER 12

Relations of Partners to one another



Mr. Zahid Qavi

Table of Contents

LO # 01: The Duties, Rights and Liabilities of Partners	65
LO # 02: The Property of the Firm	68

LO # 01: The Duties, Rights and Liabilities of Partners**General Duties of Partner:**

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

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

Partners are bound to carry on the business of the firm to the greatest common advantage.

2. Duty to be just and faithful

Partners are bound to be just and faithful to each other.

3. Duty to render true accounts

Partners are bound to render true accounts of the firm's transactions to any partner or his legal representative.

4. Duty to provide full information

Partners are bound to 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 (compensate) the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Rights and Duties by Contract:

Other than compulsory rights and duties specified by the Act, the mutual rights and duties of the partners of a firm may be determined by contract between the parties.

Such contract may be:

- a) Express; or
- b) Implied by a course of dealings.

Variation in Partnership Contract

The partnership contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealings.

Agreement in Restraint of Trade

The Contract Act, 1872 declares agreements in restraint of trade to be void. However, the Partnership Act, 1932 creates an exception to it i.e. partnership contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.



Rights and Duties Relating to the Conduct of the Business:**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. Duty to attend diligently to his duties

Every partner is bound to attend diligently to his duties in the conduct of the business.

3. Decision Making / Right to be consulted

Every partner has the right to be consulted before any matter is decided. Any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners in good faith but no change may be made in the nature of the business without the consent of all the partners.

4. Right to have access to the books

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

Mutual Rights and Liabilities:

These rights and liabilities are mutual and are also subject to contract between the partners i.e. these can be changed by contract amongst the partners:

1. Remuneration

A partner is not entitled to receive remuneration for taking part in the conduct of the business. It is, however, usual to allow some remuneration to the working partners provided there is a specific agreement to that effect.

2. Sharing Profits and Losses

In the absence of a contract to the contrary every partner has a right to share profits equally earned by the firm. 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.

3. Interest on Capital

No partner is allowed to receive any interest on capital as a general rule because a partner is not a creditor of the firm. Interest on capital is allowed only when agreed among the partners.

Where a partner is entitled to interest on the capital subscribed investment by him such interest will be payable out of the profits, earned by the firm.

4. Interest on Advance (Loan) from Partner

Where a partner makes for the purpose of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, he is entitled to interest on it at the rate of 6% per annum or as agreed upon.



5. Right to be indemnified

Every partner has a right to claim indemnity from the firm in respect of payments made or 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.

6. Duty to indemnify for willful neglect

Every partner is under a duty 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.

Personal Profits earned by the partners:**1. Duty to account for personal profits derived**

A partner must 'account to the firm' for any benefit obtained, without the consent of the other partners, from any transaction involving the partnership, the partnership property, the partnership name or the partnership's business connection. In other words, if a partner uses the partnership property, name or business connections to make a secret profit (a personal profit that the other partners do not know about), the other partners can claim those profits for the partnership.

2. Duty not to compete with the business of the firm

Similarly, 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 and Duties of Partners after a change in firm:

Subject to contract between the partners, the mutual rights and duties of the partners remain the same as they were immediately before the change in following situations:

1. Where a change occurs in the constitution of a firm e.g. introduction of new partner or retirement of a partner.
2. Where a firm constituted for a fixed term continues to carry on business after expiry of that term.
3. Where a firm constituted to carry out one or more adventures or undertakings carries out additional adventures or undertakings.



LO # 02: The Property of the Firm**Partnership Property:**

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

- All property originally brought into the common stock of the firm
- All rights or interest in the property originally so brought
- All property acquired, by purchase or otherwise, by or for the firm and all rights and interest in any property so acquired and
- Goodwill of the business of the firm

Unless any contrary intention appears, any property purchased with partnership money without other partners' consent will be deemed to be partnership property.

What is Goodwill?

Goodwill is an accounting concept meaning the value of an intangible asset which has a quantifiable value in a business. An example would be the reputation the firm enjoys with its customers. This reputation enables the firm to earn more than the normal profits earned by the business as a whole. Goodwill can be thought of as the value of the business as a whole less aggregate value of identifiable net assets.

Application of the property of the firm:

Subject to contract between the partners, it is the duty of every partner to use the property of the firm exclusively for the purposes of the business. No partner should use partnership property for his personal benefit.



CHAPTER 13

Relations of Partners to Third Parties



Mr. Zahid Qavi

Table of Contents

LO # 01: Authority and Liabilities of a Partner and the Firm	70
LO # 02: Holding Out.....	72
LO # 03: Rights of Transferee of a Partner's Interest.....	73
LO # 04: Minor admitted to the benefits of a Partnership	74

LO # 01: Authority and Liabilities of a Partner and the Firm**Authority of Partners:**

The authority of a partner means the capacity of a partner to bind the firm by his act. Since the partnership is not a legal person, a partner acts as an agent for the other partners. The authority of a partner may be actual or implied.

1. Actual Authority

The authority of each partner to take decisions for the business, and enter into transactions with other parties, may be specified in the partnership agreement. Since the partnership agreement is a contract, its terms are the terms of a contractual agreement between the partners.

2. Implied authority

The act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. This authority of partner to bind the firm is called 'implied authority'.

Implied authority arises only in relation to ordinary business of the firm; therefore, every partner within the scope of his implied authority may bind the firm by the following acts:

1. Buying and selling good, on behalf of the firm and giving valid receipts for them
2. Receiving payments of the debts due to the firm and giving valid receipts or discharge for them
3. Contracting debts and paying debts on behalf of the firm
4. Settling accounts with persons dealing with the firm
5. Employing servants for the partnership of the firm
6. Drawing cheque, accepting or endorsing bills of exchange and promissory notes in the name of the firm
7. Pledging movable property of the firm
8. Suing on behalf of the firm and defending suits in the name of the firm

Statutory restrictions on the implied authority of a partner

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.

The following acts are not included in the implied authority of a partner unless there is any usage or custom of trade:

1. **Arbitration:** Submit a dispute relating to the business of the firm to arbitration
2. **Bank account:** Open a banking account on behalf of the firm in his own name
3. **Compromise:** Compromise or relinquish any claim or portion of a claim by the firm
4. **Withdrawal of suit:** Withdraw a suit or proceeding filed on behalf of the firm
5. **Acceptance of liability:** Admit any liability in a suit or proceeding against the firm
6. **Acquisition:** Acquire immovable property on behalf of the firm
7. **Transfer:** Transfer immovable property belonging to the firm



8. **Partnership:** Enter into partnership on behalf of the firm.

Restriction of Implied Authority by Contract

The partners in a firm may, by contract between partners, restrict the implied authority of any partner. Such restriction shall be effective only if third party knows of the restriction or does not know or believe that partner to be a partner.

Extension of Implied Authority by Contract

The partners in a firm may, by contract between partners, restrict the implied authority of any partner. When a partner exceeds his authority, that is act outside his actual authority, the other partners may ratify such unauthorized act and thus 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.

Partner's Authority in an Emergency

A partner has authority, in an emergency; to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary care, in his own case acting under similar circumstances.

Mode of Exercising Authority

In order to bind a firm, an act done or instrument executed by a partner or other person on behalf of firm shall be done or executed in the firm name, or in the manner implying an intention to bind the firm.

Liabilities of partner and Firms:

1. 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:

- Such admission or representation must relate to the affairs of the firm; and
- Such admission or representation must be made in the ordinary course of business

2. 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:

- Such notice must relate to the affairs of the firm
- Such notice must be given to an acting partner and not to a sleeping partner
- There must not be any fraud committed by the partner receiving the notice.

3. Joint and Several Liability

In order to make a partner liable for any act of the firm, the same must have been done while he was a partner. The liability of the partner is both joint and several, so that the creditor may compel any one or more of the partners to discharge the whole of the debts of the firm.



4. Liability of the firm for wrongful acts of a partner

Where by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, 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.

In case of fraud, although the firm is liable to the third party for loss caused to the third party by fraud committed by a partner but as between partners same must be borne by the partner committing the fraud and cannot be shared among all the partners.

5. Liability for Misapplication by Partners

The firm is liable to make good the loss where:

A partner acting within his apparent authority receives money or property from a third party and misapplies it; or

A firm in the course of its business receives money or property from a third party, and the same is misapplied by any of the partners while it is in the custody of the firm.

LO # 02: Holding Out**Partner by Holding Out**

A person who expressly or impliedly represents himself, or knowingly permits himself to be so represented to third party that he is a partner in a firm, is called partner by holding out.

If third party gives credit to the firm on the faith of such representation, the 'partner by holding out' shall be liable as if he is partner in the firm.

Direct and Indirect Representation:

It is immaterial that 'partner by holding out' does or does not know that the representation has reached the person so giving credit. It means that representation may be direct or indirect.

1. Direct Representation

A partner by holding out may have by words spoken or written or by his conduct represented himself to be a partner.

2. Indirect Representation

A partner by holding out may have knowingly permitted himself to be represented as a partner to the other person

Silence as Representation

Silence may also constitute holding out representation.



Knowledge of the Third Party

While applying the principle of holding out, the other person must have acted on the faith of such representation and gives credit to the firm. It does not matter whether the person representing himself or represented to be a partner does or does not know that the representation has reached the other person giving credit.

Application of Holding Out on Outgoing Partners

The principle of holding out also applies in case of retiring partner. However, it does not apply in case of deceased or insolvent partner.

LO # 03: Rights of Transferee of a Partner's Interest

Transfer of Interest

A partner may transfer his interest in the firm by sale, mortgage or charge fully or partially with the consent of all the partners.

Right of Transferee to Share of Profits

The transferee of a partner's interest is entitled to receive the share of the profits of the transferring partner.

Rights of Transferee on Dissolution

On the dissolution of the firm or on retirement of the transferring partner, the transferee is entitled to receive:

- The share of the assets of the firm to which the transferring partner is entitled.
- An account from the date of the dissolution for the purpose of ascertaining the share.

Restrictions on Transferee

The transferee of a partner's interest is not entitled to:

1. Status of a partner.
2. Interfere in the conduct of the business during the continuance of the firm
3. Require accounts.
4. Inspect the books of the firm.
5. Challenge the accounts of profits agreed to by the partners.
6. Sue for dissolution of the firm.



LO # 04: Minor admitted to the benefits of a Partnership

Since a minor is not capable of entering into a contract, a contract by or with a minor is void ab-initio i.e. from the beginning.

Since partnership is formed by a contract, a minor cannot enter into a partnership agreement but with the consent of all the partners for the time being a minor may be admitted to the benefits of existing partnership.

The benefits of partnership include benefits, which the minor would enjoy if he was a major.

1. Position of a minor before attaining majority:

Rights

The minor admitted to benefits of partnership has right:

- To such share of property and profits of the firm as agreed with the partners
- To have access to and inspect and copy any of the accounts (but not books of accounts) of the firm.

Limited liability

The minor admitted to benefits of partnership is not personally liable for the acts of firm, only his share in the firm is liable for such acts i.e. limited liability.

Disabilities

The minor admitted to benefits of partnership:

- Does not have status of a partner.
- May not sue partners for profit and property except after disconnecting his relation with the firm.
- Is not entitled to have access to books other than accounts.

2. Position of a minor on attaining majority:

Decision to Continue or Leave

On attaining majority, the minor partner has to decide within six months whether he shall continue in the firm or leave it.

These six months are counted from the date (whichever is later)

- of his attaining majority; or
- When he first comes to know that he had been admitted to the benefits of partnership.

The **burden of proving the fact** that such minor had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on such minor.

Within this period, he should give a public notice of his choice:

- To become; or
- Not to become a partner in the firm.



If he fails to give a public notice, he is deemed to have become a partner in the firm on the expiry of the **six months after obtaining majority**.

1. Elected to become a partner

Such minor, who decided to become a partner, shall be:

- Personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- Entitled to same share in the property and profits of the firm to which he was entitled as a minor.

2. Elected not to become a partner

Where such minor elects not to become a partner:

- His rights and liabilities as minor shall continue to the date of public notice.
- His share shall not be liable for any acts of the firm done after the date of public notice.
- He has right to sue the partners for his share of the property and profits in the firm.



CHAPTER 14

Negotiable Instruments



Mr. Zahid Qavi

Table of Contents

LO # 01: Introduction	77
LO # 02: Promissory Note	81
LO # 03: Bill of Exchange	82
LO # 04: Types of Negotiable Instruments.....	84

LO # 01: Introduction**Negotiable Instruments:**

A negotiable instrument means a:

- Promissory note
- Bill of exchange or
- Cheque

Payable either to order or to bearer.

The above definition reveals that when a promissory note, bill of exchange and cheque are issued it can be termed as **Negotiable Instruments**.

Characteristics of Negotiable Instruments:**1. Either payable to order or bearer**

A negotiable instrument may either be payable to or to the bearer.

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.

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 then it is called **payable to bearer**.

The term “**bearer**” means a person who by negotiation comes into possession of a negotiable instrument, which is payable to bearer.

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

The section 35 of State Bank of Pakistan Act, 1956 prohibits any person, other than a Bank or Federal Government, to issue:

- A promissory note payable to bearer.
- A bill of exchange payable to bearer on demand.

2. Easy Transferability

They are transferable from one person to another by mere delivery if payable to bearer and by endorsement and delivery if payable to order.

3. Title of holder in due course

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

4. Transferee can sue in its own name.

Parties to negotiable instrument**1. Maker**

The person who makes a promissory note.

2. Payee

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

3. Drawer

The maker of a bill of exchange or cheque.

4. Drawee

The person on whom bill of exchange or cheque is drawn and who is directed to pay the amount.

5. Acceptor

A bill of exchange (other than a cheque) 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 duly signing it.

6. Holder

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

- He must be entitled to the possession of the instrument in his own name ("holder" does not include a beneficial owner claiming through a Benamidar); and
- 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.

7. Holder in due course

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

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



A person becomes holder in due course when he fulfills the following conditions:

Holder	He must be a holder i.e. He fulfills the essentials of a holder.
Holder for valuable Consideration	There must be a lawful and adequate consideration.
Before maturity	A person should receive the instrument before its maturity. In case of instrument payable on demand, he must have taken the instrument within a reasonable time of its issue.
Complete and regular	It is the duty of every person who takes a negotiable instrument to examine its form and contents thoroughly, for if it contains any material alteration which has not been confirmed by the drawer through his signature or it is incomplete like drawer name is missing or not properly stamped.
Holder in good faith	A person should take the instrument without any negligence on his part and in good faith without having any reason to believe that any defect existed in the title of the transferor. If there is any suspicion and he takes the instrument without making proper inquiries he cannot be said to be acting in good faith.

The term "**Material Alteration**" in relation to a promissory note, bill of exchange or cheque includes any alteration of that date, the sum payable, the time of payment, the place of payment, and where any such instrument has been accepted generally the addition of a place of payment without the acceptor's assent.

Difference between Holder and Holder in due course

The following are differences between holder and holder in due course:

Holder	Holder in due course
Meaning 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 bona fide 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.



8. Payment in due course

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

Apparent tenor means the period of time as expressed in the instrument, after which it is payable and payment in due course, results in discharge of a negotiable instrument.

Negotiation

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

The analysis of the definition reveals that negotiation takes place when the negotiable instrument is transferred from one person to another and the transfer is made in such a manner so as to make the transferee the holder of the negotiable instrument and it must be transferred free from defects.

Endorsement

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

The term Endorsement may be defined as signing one's name on the negotiable instrument for the purpose of transferring it to another person.

The following are **essentials of valid Endorsement**:

1. It must be on instrument itself, if no space is left on the back of the endorsement, further endorsements are signed on a slip of paper attached to the instrument called 'Allonge'.
2. It must be signed by the Endorser for the purpose of negotiation. Signature of the Endorser on the instrument 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 with the intention of passing the property in it.
5. Negotiation by Endorsement must be of the entire instrument. Endorsement for part of the amount is invalid.

Liability of Endorser

If an instrument is dishonored, every endorser is liable to pay to subsequent endorser or direct to holder.



LO # 02: Promissory Note

Definition of promissory note

A “promissory note” is an instrument in writing (not being a bank note or 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.

A promissory note is a written and signed promise to pay a certain sum of money to a specified person or his order.

Parties to a promissory Note

Following are the two main parties in a promissory note:

- Maker
- Payee

Specimen of a promissory note

September 15, 2021

Three months after date I promise to pay Ashraf (Payee) or to his order the sum of Rupees 10,000/- (Ten Thousand only) for value received.

To
Ashraf
Jail Road
Lahore

Sign: _____
Zahid
Garden Town
Lahore

Essential elements of a promissory note

1. It must be in writing

A promissory note has to be in writing. An oral promise to pay does not become a promissory note. The writing may be on any paper, on any book.

2. Promise to pay

There must be a promise or a clear undertaking to pay. A mere acknowledgement of indebtedness is not a promissory note, although it is valid as an agreement and may be sued upon as such.

3. Definite and unconditional

The promise must not depend upon the happening of some uncertain event. i.e. a contingency or the fulfillment of a condition. If an instrument contains a conditional promise to pay, it is not a valid promissory note and will not become valid and negotiable even after happening of the condition.

But a promise to pay is not conditional if the amount is made payable

- At a particular place or



- After a specified time or
- On the happening of an event which must happen, although the time of its happening may be uncertain.

4. Signed by maker

The promissory note should be duly authenticated by the signature of the maker. If the maker is illiterate, he may place his thumb mark.

5. Certain parties

The instrument points out with certainty as to who is the maker and who is the payee.

Where the maker and the payee cannot be identified with certainty, the instrument even if it contains an unconditional promise to pay is not a promissory note.

6. Sum payable must be certain

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

7. Sum payable must be legal tender

A promise to pay a certain amount of foreign currency or to deliver a certain quantity of goods is not a promissory note.

Liability of Maker

Maker is liable to pay the amount according to the tenor of the promissory note. In case of default, he is liable to compensate party to the note for the loss sustained because of his default.

LO # 03: Bill of Exchange

Definition

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.

Parties to a bill of exchange

Following are the two main parties in a Bill of Exchange:

- Drawer
- Drawee / Acceptor
- Payee



Specimen of a bill of exchange

September 15, 2021

Three months after date pay to Yaseen (**a Payee**) or to his order the sum of Rupees Ten Thousand, for value received.

Accepted: Ashraf	Sign: _____
To	Zahid (Drawer)
Ashraf (Drawee)	Garden Town
Jail Road	Lahore
Lahore	

Essential elements of a bill of exchange

1. It must be in writing

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

2. 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.

3. Definite and unconditional

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

4. Signed by drawer and drawee

The instrument must be signed by the maker i.e. drawer and subsequently by drawee (for acceptance).

5. Certain parties

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

Where the person intended can reasonably be ascertained from the bill of exchange, he is a certain person although he may be misnamed or designated by description only

6. 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.

7. 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.



Liabilities of Parties:
Liability of Drawer:

The drawer is liable on the bill of exchange as principal debtor until the drawee accept the bill.

Liability of Drawee:

The drawee is not liable until acceptance. On acceptance he becomes liable to pay holder on demand or on maturity.

Difference between promissory note and bill of exchange

Promissory note	Bill of exchange
The liability of the maker of a promissory note is primary and absolute	Acceptor does not honor the bill that the liability of the drawer arises as a surety.
Maker's position The maker of a promissory note stands in immediate relation with the payee.	The drawer of an accepted bill stands in immediate relation with the acceptor and not the payee.
Payable to bearer A promissory note cannot be drawn "payable to bearer".	A bill of exchange can be so drawn provided that it is not drawn "payable to bearer on demand"
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).

LO # 04: Types of Negotiable Instruments

Negotiable instruments can be classified in following ways:

1. Order instrument and bearer instrument
2. Inland instrument and foreign instrument
3. Demand instrument and time instrument

Order instrument

A promissory note, bill of exchange or cheque is payable to order if either of the following two conditions is fulfilled:

- Which is expressed to be so payable or
- Which is expressed to be payable to a particular person

And does not contain words

- which prohibit transfer or
- indicate an intention that it shall not be transferable

Note: An order instrument can be transferred by an endorsement on it and then its delivery.



Bearer instrument

A promissory note or bill of exchange or cheque is payable to bearer if either of the following two conditions is fulfilled:

- expressed to be so payable, or
- Last endorsement must be an endorsement in blank.

Note: A bearer instrument can be transferred by mere delivery

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.

Note: An inland instrument remains inland even if it has been indorsed in a foreign country.

Foreign instrument

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

Demand instrument

Instruments payable on demand means the instrument in which no time for payment is mentioned.

A cheque is always payable on demand. A promissory note or bill of exchange is payable on demand where:

- It is expressed to be so; or
- It is expressed to be payable "at sight" or "presentment" or "on demand"; or
- No time for payment is specified; or
- The bill or note accepted or indorsed after it is overdue, as regards to person accepting or indorsing it.

Note:

- 'At sight' and presentment means on demand.
- An instrument on demand is payable immediately.

Time instrument

An instrument payable after a fixed time or on a specified date is called "time instrument". A promissory note or bill of exchange is a time instrument when it is expressed to be payable.

- After a specified period
- On a specific day
- Certain date after sight
- On the happening of event which is certain to happen e.g. death.

Note: There can be a "time bill", "time note" but not a "time cheque" because the cheque cannot be expressed to be payable otherwise than on demand.



CHAPTER 15

Provisions Relating to Cheques



Mr. Zahid Qavi

Table of Contents

LO # 01: Cheque	87
LO # 02: Crossing of Cheque	88
LO # 03: Payment of Cheque	90

LO # 01: Cheque

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

A cheque is a bill of exchange but is different in following two characteristics:

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

Parties to a cheque

Following are the three main parties in a cheque:

1. Drawer

It is a person who draws a cheque i.e., the customer/ account-holder of a bank.

2. Drawee

It is a banker who is ordered to pay the amount of the cheque.

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

3. Payee

It is a person to whom the amount of cheque is payable.

Specimen of a cheque

ABC Bank Limited Main Branch, Karachi	Date: September 15, 20XX Cheque no: _____
--	--

Pay _____ OR Bearer

Rupees _____

Account no: _____

Title of account

Essential elements of a cheque

The essential elements of a cheque are as below:

1. It must be in writing
2. There must be an express order to pay and not a request to pay
3. The order must be definite and unconditional
4. It must be signed by the drawer
5. The three parties (drawer, drawee and payee) must be certain.
6. The order must be to pay a certain sum
7. The order must be to pay money only
8. It must always be drawn upon a specified banker



9. It must always be payable on demand

Cheque not operating as assignment of funds

A cheque, of itself, does not operate as an assignment of any part of the funds to the credit of the drawer with the banker.

Difference between cheque and bill of exchange

Cheque	Bill of Exchange
Drawee A cheque is always drawn on a banker.	A bill may be drawn on any person, including a banker.
Payable on demand A cheque can only be drawn payable on demand.	A bill may be drawn payable on demand or on the expiry of a certain period after date or sight.
Payable to bearer on demand A cheque drawn "payable to bearer on demand" is valid.	A bill drawn "payable to bearer on demand" is absolutely void (though can be made payable to the bearer later by endorsement in blank).
Acceptance A cheque does not require any acceptance by the drawee before payment can be demanded.	A bill requires acceptance by the drawee before he can be made liable upon it.
Stamp A cheque does not require any stamp.	A bill of exchange must be properly stamped.
Crossing A cheque may be crossed for the purpose of safety.	A bill of exchange cannot be crossed.
Stopping the payment The payment of a cheque may be countermanded by the drawer.	The payment of a bill cannot be countermanded by the drawer.

LO # 02: Crossing of Cheque

Types of crossing

1. General crossing

A cheque is said to be crossed generally where it bears across its face an addition of the words "and company" or any abbreviation of it between two parallel transverse lines, or of two parallel transverse lines simply

Effect of general crossing

When a cheque is crossed generally the banker on whom it is drawn shall not pay it otherwise than to a banker.



2. Special crossing

A cheque is said to be crossed especially where it bears across its face an addition of:

- Name of the banker
- Parallel lines are not necessary.

Effect of special crossing

When a cheque is crossed specifically the banker on whom it is drawn shall not pay it otherwise than to a banker to whom it is crossed or his agent for collection.

3. Restrictive crossing

Restrictive crossing may be added with general crossing by adding the words "A/c Payee" or "A/c Payee only".

Effect of restrictive crossing

Where a cheque is crossed as "account payee", it shall cease to be negotiable. Strictly speaking, the amount collected on the cheque must be credited only to the account of payee named in the cheque.

4. 'Not Negotiable' Crossing

The addition of the words not negotiable does not restrict the further transferability of the cheque. It only takes away the main feature of negotiability, which is transferability free from defects.

Effect of 'Not Negotiable' Crossing

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.



LO # 03: Payment of Cheque**1. Payment of cheque crossed especially more than once**

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

2. Payment of crossed cheque in due course

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.

3. 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.

However, a paying banker shall not be responsible if it pays the cheque in good faith and without negligence where a cheque is presented for payment which does not appear to be crossed or have had crossing which has been obliterated or altered.

4. Protection to the banker in case of defective title

A collecting/receiving 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, the collecting banker would be protected and would not be held liable in conversion to the true owner, provided it proves that it acted in good faith and without negligence.

This protection to the receiving banker is available even if it credits customer's account with the amount of the cheque before receiving payment thereof.

5. 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.



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

Rules applicable to bank draft

The rules relating to payment of cheque are also relevant to bank draft as if the draft were a cheque. A bank draft is an order issued by one bank on another bank or on its own branch instructing it to pay a specified sum of money to a specified person or his order.

A bank draft is an instrument similar to cheque with following distinctions:

- It can be drawn only by a bank on another bank or on its own branch and not by an individual as in the case of a cheque.
- It cannot be made payable to bearer.
- Its payment cannot be stopped as easily as that of a cheque.



CHAPTER 16

Anti-Money Laundering and Electronic Payments



Mr. Zahid Qavi

Table of Contents

LO # 01: Anti – Money Laundering	93
LO # 02: Electronic Payments	94

LO # 01: Anti – Money Laundering**What is money laundering?**

Money laundering is the illegal process of making amounts of money generated by a criminal activity, such as drug trafficking, terrorist funding or tax evasion; appear to have come from a legitimate source. The money from the criminal activity is considered dirty, and the process "launder" it to make it look clean.

Role of Financial Institutions:

Most important requirement of Anti-money Laundering laws is that financial institutions should monitor customer's transactions and report large transactions, and suspicious transactions to regulators.

"Financial institution" includes any person carrying on any one or more of the following activities, namely:

1. acceptance of deposits and other repayable funds from the public;
2. lending in whatsoever form;
3. financial leasing;
4. money or value transfer;
5. issuing and managing means of payments including but not limited to credit and debit cards, cheques, traveler's cheques, money orders, bank drafts and electronic money;
6. financial guarantees and commitments; and
7. trading in:
 - a) money market instruments;
 - b) foreign exchange;
 - c) exchange, interest rate and index instruments;
 - d) transferable securities;
 - e) commodity futures trading;
 - f) participation in shares issues and the provision of services related to such issues;
 - g) individual and collective portfolio management;
 - h) safekeeping and administration of cash or liquid securities on behalf of other persons;
 - i) investing, administering or managing funds or money on behalf of other persons;
 - j) insurance business transactions;
 - k) money and currency changing; and
 - l) Carrying out business as intermediary.

Example includes Banks, Master Card, Jazz Cash, Easy Paisa, and Western Union.

Offence of Money Laundering

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

- Acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime;
- 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



- 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
- Participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the above 3 acts
- The knowledge, intent or purpose required as an element of an offence set forth here may be taken from factual circumstances in accordance with Qanun-e-Shahadat 1984.
- In order to prove an offence of money laundering, the conviction of an accused for the respective predicate offence shall not be required.

Punishment for Money Laundering

General Provision

Whoever commits the offence of money laundering shall be:

- a) punished with rigorous imprisonment for a term which shall not be less than one year but may extend up to ten years; and
- b) liable to fine which may extend up to PRs. 25 million; and
- c) liable to forfeiture of property involved in money laundering or property of corresponding value

Special Provision as to Legal Persons

In case of a legal person (e.g. a company), the fine may extend up to PRs. 100 million.

Any director, officer or employee of such legal person who is found guilty shall also be punishable as provided in general provision above.

LO # 02: Electronic Payments

Now a days, individuals and business organizations frequently use payment system (PS), and Electronic Fund Transfer (EFT)

1. Electronic Fund Transfer (EFT)

“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

“Electronic Fund” or “Electronic Money”

“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 an electronic device that may be used for making payments or
- As may be prescribed by the State Bank.

2. Designated Payment System (DPS)

The State Bank may designate a PS as a DPS by a written order, if necessary, in the public interest.

The State Bank may inspect the premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions relating to the PS, in considering whether to designate it as DPS.

Revocation of Designation of Payment System

The State Bank may revoke the designation of a DPS if it is satisfied that:

- a) the DPS has ceased to operate effectively as a PS;
- b) the operator of the designated system has knowingly furnished information or documents to the State Bank in connection with the designation of the PS which is or are false or misleading in any material particular;
- c) the operator or settlement institution of the DPS is in the course of being wound up or otherwise dissolved, whether in Pakistan or elsewhere;
- d) any of the terms and conditions of the designation or requirements of the Act has been contravened; or
- e) The State Bank considers that it is in the public interest to revoke the designation.

The State Bank shall not revoke a designation without giving the operator of the DPS an opportunity to be heard.

However, the State Bank may suspend the designation of a PS without notice pending the final order, if an immediate systemic risk is involved.



Operational Arrangements

An Operator of a DPS shall establish the following operational arrangements:

- a) rules and procedures setting out the rights and liabilities of the operator and the participant and the financial risks the participants may incur;
- b) 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;
- c) criteria for participation in the DPS; and
- d) Measures to ensure the safety, security and operational reliability of the DPS including contingency arrangements.



CHAPTER 17

Data Protection and Electronic Crimes



Mr. Zahid Qavi

Table of Contents

LO # 01: Data Protection Law	98
LO # 02: Prevention of Electronic Crimes	99

LO # 01: Data Protection Law**Introduction:**

- Legislation on personal data protection in Pakistan is in draft stage
- The Bill (Personal Data Protection Bill, 2020) is yet to be passed by Parliament.
- Consultation draft of the Bill is available at website of Ministry of IT and Telecommunication.
- The Bill proposes establishment of Personal Data Protection Authority of Pakistan
 - To protect personal data from any loss or misuse
 - To promote awareness of data protection and deal with complaints.
- Prevention of Electronics Crimes Act, 2016 also contains provisions about data protection.
- Payment Systems and Electronic Fund Transfers Act, 2007 provides for secrecy of customer information held by financial institutions, and violation is punishable
- Telecom Consumer Protection Regulations, 2009 give the subscribers a right to lodge complaints for any '**illegal practices**' by telecom operators.
 - The complaint is lodged to the Pakistan Telecommunication Authority.
 - '**Illegal practices**' includes, among other things, illegal use of personal data of subscribers.

Data subject

Means a natural person who is the subject of the personal data

Personal data

Means any information that relates directly or indirectly to a data subject, who is identified or identifiable from that information or from that and other information in the possession of a data controller, including any sensitive personal data. Provided that anonymized, encrypted or pseudonymized data which is incapable of identifying an individual is not personal data.

Sensitive Personal Data

Means and includes data relating to access control (username and/or password), financial information such as bank account, credit card, debit card, or other payment instruments, and, passports, biometric data, and physical, psychological, and mental health conditions, medical records, and any detail pertaining to an individual's ethnicity, religious beliefs, or any other information for the purposes of this Act and rules made thereunder.

Consent

Of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the collecting, obtaining and processing of personal data relating to him or her.



Key Principles for Personal Data Processing:

The key principles applicable to personal data processing are:

1. Lawfulness, fairness and transparency
2. Purpose limitation
3. Data minimization (adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed)
4. Accuracy
5. Storage limitation
6. Integrity and confidentiality (security)
7. Accountability

Right of Individuals regarding proceeding of Personal Data:

An individual has following rights in relation to processing of their personal data:

1. Right to be informed
2. Right of access to data (including right to get copies of data)
3. Right to rectification of errors
4. Right to be forgotten / Right of erasure
5. Right to object to processing and marketing
6. Right to restrict processing
7. Right to data portability
8. Right to withdraw consent
9. Right to complain to the relevant data protection authority

LO # 02: Prevention of Electronic Crimes**Definitions:****Unauthorized access**

"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.

Access to Data

"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.

Access to information system

"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.

Data Damage

"Data damage" means alteration, deletion, deterioration, and erasure, and relocation, suppression of data or making data temporarily or permanently unavailable.



Critical infrastructure

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

- 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
- Significant impact on national security, national defense, or the functioning of the state.

The Government may also designate any private or Government infrastructure in accordance with the above objectives, as critical infrastructure.

Offences and Punishments

Offence	Punishment
Unauthorized access to information system or data	Imprisonment up to 3 months; and/or fine up to PRs. 50,000
Unauthorized copying or transmission of data	Imprisonment up to 6 months; and/or Fine up to PRs. 100,000
Interference with information system or data	Imprisonment up to 2 years; and/or fine up to PRs. 500,000
Unauthorized access to critical infrastructure information system or data	Imprisonment up to 3 years; and/or Fine up to PRs. 1,000,000
Unauthorized copying or transmission of critical infrastructure data	Imprisonment up to 5 years; and/or Fine up to PRs. 5,000,000
Interference with critical infrastructure information system or data	Imprisonment up to 7 years; and/or Fine up to PRs. 10,000,000
Glorification of an offense 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.	Imprisonment up to 7 years; and/or Fine up to PRs. 10,000,000



CHAPTER 18

Competition Act and Arbitration Act



Mr. Zahid Qavi

Table of Contents

LO # 01: Competition Act, 2010.....	102
LO # 02: Arbitration Act, 1940	104

LO # 01: Competition Act, 2010**Introduction**

Its objective "to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anticompetitive behavior and to provide for the establishment of the Competition Commission of Pakistan to maintain and enhance competition"

Definitions:**Goods**

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

Retailer

"Retailer", in relation to the sale of any goods, means a person who sells the goods to any other person other than for resale.

Wholesaler

"Wholesaler" in relation to the sale of any goods, means a person who purchases goods and sells them to any other person for resale.

Relevant market

"Relevant market" means the market which shall be determined by CCP with reference to a product market and a geographic market.

A product market comprises of 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.

Prohibitions under the Competition Act**1. Abuse of dominant position**

No person shall abuse dominant position.

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.

The expression "practices" referred to as above 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 or services;
- d) Making 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 the contracts;
- e) Applying dissimilar conditions to equivalent transactions on other parties, placing them at a competitive disadvantage;
- f) Predatory pricing driving competitors out of a market, prevent new entry, and monopolize the market;
- g) Boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provision of any service; or
- h) Refusing to deal.

2. Prohibited agreements

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 unless exempted in accordance with the provision of the Act.

Any agreement entered into in contravention of the above provision shall be void.

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 the 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; or
- e) Collusive tendering or bidding for sale, purchase or procurement of any goods or service.
- 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.

Deceptive marketing practices

No undertaking shall enter into deceptive marketing practices.

The deceptive marketing practices shall be deemed to have been resorted to or continued of an Undertaking resort 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

LO # 02: Arbitration Act, 1940

Introduction

Arbitration is a method, through which, parties resolve their disputes outside the court of law by avoiding technicalities of procedural law. It is one of the modes of Alternate Dispute Resolution. There are limited rights of review and appeal of arbitration awards.

Definitions

Arbitration agreement

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

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 representative character, the person on whom the estate devolves on the death of the party so acting.

Reference

Means reference to arbitration

Note: An umpire is a third-party appointed by the arbitrators to settle differences between the arbitrators.

Provisions implied in arbitration agreement

An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the following provisions (set out in First Schedule of the Act):

- a) Unless otherwise expressly provided, the reference shall be to a sole arbitrator.
- b) If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.
- c) The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.



- d) If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.
- e) The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow.
- f) The parties to the reference and all persons claiming under them shall subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts writings and documents within their possession or power respectively, which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators, or umpire may require.
- g) The award shall be final and binding on the parties and persons claiming under them respectively.
- h) The cost of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to, and by whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

Powers of arbitrator

The arbitrators or umpire shall, unless a different intention is expressed in the agreement, have power to:

- a) Administer oath to the parties and witnesses appearing;
- b) State a special case for the opinion of the Court on any question of law involved, or states the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;
- c) Make the award conditional or in the alternative;
- d) Correct in an award any clerical mistake or error arising from any accidental slip or omission;
- e) Administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

Appointment of Arbitrator by Third Party

The parties to an arbitration agreement may agree that any reference under the agreement shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

Parties can apply for arbitration during a suit:

Where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply in writing to the Court for an order or reference.

