

BUSINESS LAW

B.Com II

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LAW OF CONTRACT

QUESTION # 1

What is Contract and what are the essentials/rules/conditions of a valid contract?

OR

“All contracts are agreements, but all agreements are not contracts”. Discuss in detail this statement.

Introduction

In simple words contract is an agreement between two or more parties to do or not to do something and such agreement is enforceable by law.

Definitions

Sec. 2(h) of Contract Act

“An agreement enforceable by law is a contract”

We can define a contract in an equation form as

$$\text{Contract} = \text{Agreement} + \text{Enforceability}$$

(a) Agreement

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

$$\text{Agreement} = \text{Promise} + \text{Consideration}$$

➤ Promise

When a person make a proposal (offer) to another and the second person accept the proposal it is called promise.

$$\text{Promise} = \text{Proposal} + \text{Acceptance}$$

➤ Consideration

Consideration means something in return. An agreement will be done if both parties give something and get something.

(b) Enforceability

If any of the party refuses to perform the contract and the other party can enforce in a court it is called enforceable by law. So we may conclude that

$$\text{Proposal} + \text{Acceptance} = \text{Promise}$$

$$\text{Promise} + \text{Consideration} = \text{Agreement}$$

$$\text{Agreement} + \text{Enforceability} = \text{Contract}$$

ESSENTIALS OF A VALID CONTRACT

1- Offer and Acceptance

For a valid contract, there must be a lawful offer by one party and against that offer there must be a lawful acceptance from the other party.

Example Mr. A offer to sell his house to Mr. B but Mr. B does not respond to him then there is no contract. If Mr. B shows his assent to purchase the house then it will be a contract.

2- Legal Relationship

The agreement must create legal relationship between parties. It arises when parties know that if one of them does not fulfill his share of promise, he shall be liable for the failure of contract.

Agreements of social and domestic nature do not create legal relations so there is no contract. Only commercial agreements are contracts because there is a legal relationship between the parties.

Example

A father promises to pay his son Rs. 5000 per month as pocket money. later on he refuses to pay. So, son can not recover the amount as it is a social agreement and does not create legal obligation.

3- Lawful Consideration

Consideration means something in return. In simple words consideration is the price paid by one party for the promise of the other party.

According to section 23 of Contract Act. 1872

The consideration of an agreement is lawful, if it is

- (i) Not forbidden by law
- (ii) Not fraudulent
- (iii) Not involve injury to the person or property of another
- (iv) Not immoral
- (v) Not opposed to public policy

Example A promises to obtain for B employment in the public service, and B promises to pay Rs. 100,000 to A. it is not a valid contract as consideration is unlawful.

4- Competent to contract

It is also essential for a valid contract that parties must be competent to contract. Every person is not competent to contract, the person who are competent to contract are those.

1. Who have attained the age of majority
2. Who are of sound mind
3. Who are not disqualified by law

EXAMPLE M, a person of unsound mind, enters into an agreement with S to sell his house for Rs. 200,000. It is not a valid contract as M is not competent to contract.

5- Free Consent

Free consent means that two persons must agree upon the same thing in the same sense. According to section 14, consent is free when it is not obtain by

- (i) Coercion
- (ii) Undue influence
- (iii) Fraud
- (iv) Misrepresentation

Example

A compels B to enter into a contract on gun point. It is not a valid contract as consent of B is not free. It is a case of coercion.

6- Lawful Object

The object of a contract must be lawful. According to Contract Act
“Every agreement of which the object or consideration is unlawful is void”

The object of a contract is lawful if it is not:

- (i) Forbidden by law
- (ii) Fraudulent
- (iii) Involves injury to the person or property of another
- (iv) Immoral
- (v) Opposed to public policy

Example

A promises to pay B Rs. 10,000 if B beats C. The agreement is illegal, as its object is unlawful.

7- Not expressly declared void

In order to make a valid contract, an agreement must not be one of those that are expressly declared void by law.

Following agreements are expressly declared to be void

- (a) Agreement in restraint of marriage
- (b) Agreement in restraint of legal proceedings
- (c) Agreement in restraint of trade
- (d) Agreement to do impossible act

Example

A is engaged to marry a girl B. An other young man C also wants to marry B. So C offers Rs. 5000 to A to leave the engagement and allow C to marry her. A accept this proposal. This will be void agreement because it is in restraint of marriage.

8- Certain and possibility of performance

The performance of a contract must be possible; otherwise it will not be a contract. According to Contract Act.

“An agreement to do an act impossible in itself is void”

Example

A agrees with B that he will break the stars. As the performance of this contract is not possible, so the agreement is not enforceable.

9- Writing and Registration

A contract may be oral or in writing. Written agreements are easy to prove in the court. But if a verbal agreement is proved in the court, it will not be considered invalid.

It is necessary that the agreement must be in writing, signed and attested by the witness and registered if required by law.

The contract of sale, mortgage, lease or gift of immovable property are required to be in writing and registered.

Example

A verbally promise to sell his book to Y for Rs 200. It is a valid contract because the law does not require it to be in writing.

A verbally promise to sell his house to B. It is not a valid contract because the law requires it to be in writing.

10- Certainty of terms

For the validity of the contract, it is necessary that the terms of the agreement must be clear and certain.

Example

A agrees to sell B 50 tins of oil and there is no indication as what oil is to be supplied, the agreement is void due to uncertainty.

QUESTION # 2

Define Contract. What are the different types of contract? (2011)

ANSWER

TYPE OF CONTRACTS

The various bases on which the contracts can be classified is discussed below:

CONTRACTS ON THE BASIS OF ENFORCEABILITY

On the basis of enforceability, the contracts may be classified as under:

(a) Valid Contract

A contract which satisfies all the condition, prescribed by law is a valid contract.

Example

A agrees to sell his car to B for Rs. 2 lac. If this agreement fulfills all the essentials of a contract, it is a valid contract.

(b) Void Contract

A contract which was valid when entered into but later on it becomes impossible to perform due to change of law or some other reasons.

Example

A' agrees to sell his horse to "B" for 50,000. This horse at time of agreement was in a village. It was settled that the transaction would be completed next day at village. "A" and "B" reached the village they found the horse dead. The performance of contract becomes impossible. This contract will be regarded as void.

(c) Voidable Contract

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

Example

X threatens to kill Y if he does not sell his house for Rs 1,00,000 to X. Y sells his house to X and receives payment. Here, Y's consent has been obtained by coercion and hence this contract is voidable at the option of Y.

(d) Unenforceable Contract

It is a contract which is actually valid but cannot be enforced because of some technical defect such as absence of writing, registration, requisite stamp, etc. Such contracts can be enforced if the technical defect involved is removed.

Example

A borrows Rs. 100,000 from B and makes a promissory note and one rupee stamp is pasted on promissory note. The agreement is unenforceable because promissory note is under-stamped.

CONTRACTS ON THE BASIS OF CREATION

On the basis of creation, the contracts may be classified as under:

(a) Express Contract

Express contract is one which is made by words spoken or written.

Example

X says to Y "Will you buy my car for Rs. 1, 00,000?" Y says to X "I am ready to buy your car for Rs. 1, 00,000." It is an express contract made orally.

(b) Implied Contract

An implied contract is one which is made otherwise than by words spoken or written. It is inferred from the conduct of a person or the circumstances of the particular case.

Example

M, a shoe shiner starts polishing the shoes of W in his presence, and W allows him to do so. It is an implied contract and W is liable to pay.

CONTRACTS ON THE BASIS OF EXECUTION

On the basis of execution, the contracts may be classified as under:

(a) Executed Contract

It is a contract where both the parties to the contract have performed their respective obligations under the contract.

Example

X offers to sell his car to Y for Rs 1, 00,000. Y accepts X's offer. X delivers the car to Y and Y pays Rs. 1, 00,000 to X. It is an executed contract.

(b) Executory Contract

It is a contract where both the parties to the contract have still to perform their respective obligations.

Example

X offers to sell his car to Y for Rs. 1, 00,000. Y accepts X's offer. If the car has not yet been delivered by X and the price has not yet been paid by Y, it is an executory contract.

An executory contract may be divided into following two kinds

(i) Unilateral Contract

A unilateral contract is one sided contract in which only one party has to perform his promise or obligation.

Example

A' promises to pay Rs. 1000 to anyone who finds his lost bag. B finds the bag and returns it to A. It is a unilateral contract which comes into existence when the bag is found.

(ii) Bilateral Contract

A Bilateral Contract is one in which both the parties have to perform their respective promises or obligations.

Example

A' promises to paint the picture for B and B' promises to pay Rs. 5000 to A. it is a bilateral contract.



QUESTION # 3

Define offer or proposal. Describe essentials / conditions / rules of a valid offer?

ANSWER

OFFER OR PROPOSAL

Proposal and offer both are used in the same sense and there is no difference in their meanings.

According to Contract Act:

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

Offer = Expression of willingness + Obtaining the assent of other

Example

‘A’ offers to sell his watch to ‘B’ for Rs. 100. ‘A’ is making an offer to ‘B’

Parties

- 1- Promisor / Offerer
- 2- Promisee / Offeree

1- Promisor

The person make the offer is called ‘promisor’ or ‘offerer’

2- Promisee

The person accepting the offer is called ‘promisee’ or ‘offeree’

In above example ‘A’ is offerer and ‘B’ is offeree.

TYPES OF OFFER

- 1- Express offer
- 2- Implied offer
- 3- Specific offer
- 4- General offer

ESSENTIALS OF A VALID OFFER

1- Definite & Clear

Offer should be certain, clear, understandable and simple. It may not create any confusion in the mind of the promisee.

Example

‘A’ has two motorcycles. ‘A’ offers ‘B’ to sell one motorcycle for Rs. 40,000. It creates confusion in the mind of ‘B’ that which motorcycle ‘A’ want to sell.

2- Legal Relationship

It is essential for a valid proposal that it must create the legal relationship otherwise it will not be a valid proposal.

Example

A invites B to dinner and B accepts this invitation. This is not a offer as it does not create the legal relationship so there is no agreement.

3- Communication

It is essential for a valid proposal that it must be communicated to other because without communication the acceptance of proposal is not possible. The offer may be communicated by words spoken or in writing.

Example

A wants to sell his car to B but he does not inform him. It is not an offer.

4- Possibility of acceptance

It is essential for a valid proposal that its acceptance must be possible otherwise it will not be a valid proposal.

Example

A offers Rs. 5000 to B for breaking stars. It is not a valid offer as its acceptance is not possible.

5- Different from invitation to offer

An offer is different from invitation to offer. In an invitation to offer the person making the invitation does not make an offer but only invite the other party to make an offer.

Example

X displays goods for an auction sale. It is not an offer. The offer will come from the buyer in the form of bid.

6- Express or Implied offer

An offer may be made either by words or by conduct. Law recognized both offer as valid.

Example

'A' says 'B' that he will sell his car to him for Rs. 400,000. As the offer is made in words therefore it is called an express offer.

A railway coolie carries the luggage of 'B' without being asked to do so. 'B' allows him to do so. It is an implied offer.

7- Specific or General Offer

When offer is made to general public, it is called general offer and when it is made to a specific person, it is called specific offer. Both offers are valid in eyes of law.

Example

‘A’ announces in a newspaper that he will give a reward of Rs. 1000 who will return his lost bicycle. It is a general offer.

‘A’ makes an offer to ‘B’ to sell his car for Rs. 500,000. It is a specific offer.

8- No Negative condition

An offer should not contain a condition the non-compliance of which may be assumed as acceptance.

Example

‘A’ offers ‘B’ to purchase his book for Rs. 100 and if he will not reply within a week, the offer would be presumed to have been accepted. It is not a valid offer because there is negative condition with it.

9- It may be subject to any condition

An offeror may attach any term and condition to offer. If the offeree does not fulfill the condition then the offeror can reject the acceptance.

Example

‘A’ asks ‘B’ to send the reply of his offer by telegram but ‘B’ reply by letter. Now ‘A’ can reject the offer.

10- Should not cross offer

Sometime two parties make similar offers to each other, without knowing each other’s offer, such offers are called cross offers. The acceptance of cross offers does not result in complete agreement.

Example

‘A’ writes a letter to ‘B’ for selling his car for Rs. 50,000. At the same time ‘B’ also write a letter to ‘A’ to buy A’s car. So there is no acceptance of each other’s offer.

Question # 4

Define Acceptance? Describe essentials/rules/conditions of a valid acceptance.

Answer

ACCEPTANCE

According to Contract Act 1872

“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”.

Example

‘A’ offers ‘B’ to sell his car for Rs. 300,000. ‘B’ gives the assent. Now we can say that proposal is accepted.

Parties

- 1- Promisor
- 2- Promisee

1- Promisor

The person making the proposal is called ‘Promisor’.

2- Promisee

The person to whom the proposal is made is called ‘Promisee’.

ESSENTIALS OR CONDITIONS OF A VALID ACCEPTANCE

Following are the essentials of a valid acceptance

1- Acceptance must be given by offeree

An offer can be accepted only by the person to whom it is made.

Example

X offered to sell his house to Y. Z who was aware of such offer said that he is ready to buy X’s house. There is no contract with Z.

2- Reasonable time

If time limit is specified then the acceptance must be given within that period. If no time limit is mentioned, then acceptance must be given within a reasonable time.

Example

‘A’ offers ‘B’ to sell his house for Rs. 400,000 within a week. If ‘B’ replies within week then it is a valid acceptance. If ‘B’ replies after a week then it will be a invalid acceptance.

3- Absolute and unconditional

The acceptance must be absolute and unconditional. If there is variation in the acceptance, then it is not a valid acceptance but a counter proposal in itself.

Example

‘A’ offer to sell his house to ‘B’ for Rs. 500,000 and ‘B’ reply he can buy it for Rs. 400,000. There is no acceptance on the part of ‘B’.

4- Refusal of Acceptance

If an offer is once rejected by offeree then he can not accept it again unless it is renewed.

Example

‘A’ makes an offer to ‘B’ to sell his T.V for Rs. 3000. ‘B’ says Rs. 2000. After that ‘B’ cannot bind ‘A’ to sell the T.V even though he is ready to pay Rs. 3000 demanded by ‘A’.

5- Acceptance must be communicated to the Offeror

To form a contract, the acceptance must be communicated to the offeror in a clear manner by the offeree or his agent.

Example

‘A’ offers by letter to sell his house to ‘B’. ‘B’ expresses his intention to purchase it but does not reply to ‘A’. There is no acceptance.

6- Complete Acceptance

All the terms and conditions of the offer should be accepted by the acceptor. If any part of the offer is rejected then acceptance cannot be valid.

Example

A offers to sell his two cars for Rs. 600,000. B agrees to purchase one car. It is not a valid acceptance

7- Acceptance before Revocation of offer

Acceptance must be given before the offer is revoked (cancel) by reason of promisor’s death or insanity.

Example

‘A’ offer ‘B’ to sell his car for Rs. 400,000. Before ‘B’ acceptance ‘A’ died. Now the offer can not be accepted.

8- Acceptance after proposal

Acceptance can not be valid if acceptance is given before communication of offer.

Example

A is thinking to sell his watch to B but still not make an offer to B. It’s come to the knowledge of B and he writes a letter of acceptance to ‘A’. There is no acceptance because ‘A’ does not make an offer to B.

9- Acceptance in a prescribed manner

Acceptance must be given according to the particular manner prescribed in the offer. If acceptance is not given according to that then it can be rejected by the offeror.

Example

A offers to sell his car to B for Rs. 400,000 and says him for giving acceptance by telegram. B writes him a letter instead of telegram. A may reject it but he becomes bound to inform B that he has rejected it.

10- Acceptance may be Express or Implied

When an acceptance is given by words spoken or written it is called express acceptance. When it is given by conduct it is called implied acceptance.

Example

'A' wrote a letter to 'B' to sell his cycle for Rs. 2000, 'B' accepted his offer and sends a letter of acceptance to 'A'. It is an express acceptance.

A widow promise to settle some immovable property on her niece () stayed with her in her residence. The niece stayed in her residence till her death. Held, the niece was entitled to the property.

QUESTION # 5 (2010)

What is “Consideration”? Discuss its essentials/rules/conditions and elements. Also explain its exceptions.

ANSWER

CONSIDERATION

A consideration is what a promisor demands and receives for his promise. An agreement is enforceable only when both the parties get something and give something. The something given or obtained is called consideration.

According to Pollock

“Consideration is the price for which the promise of another is bought”.

Example

- (a) A agrees to sell his house for Rs. 10 lac to B. For A's promise the consideration is Rs. 10 lac. For B's promise consideration is house.
- (b) A promises to paint a picture of B and B promises to teach him for a month. The promise of one party is the consideration for the other party.

ESSENTIALS/RULES/CONDITIONS OF A VALID CONSIDERATION

1- It must move at the desire of the promisor

The first rule for consideration is that it must be at the desire of promisor. If any act is done without the desire of the promisor will not create a valid consideration. Similarly if any act performed at the desire of third party cannot be a consideration.

Example

A saves B's house from fire without asking by B. A cannot demand payment for his services because A performed this act voluntarily and not at the desire of B.

2- It may move from the Promisee or any other person

Consideration may move from the promisee or any other person. It means that the promisee himself or on the behalf of promisee any other person, if promisor has no objection can deliver consideration.

Example

'A' purchased a Car from B for Rs. 500,000. It is agreed that payment will be made by C to B. It will be a valid consideration.

3- It may be an Act, Abstinance or Promise

The consideration may be a positive act or a negative act. Sometimes a return promise also forms consideration.

(a) Act

A consideration may be an act, i.e. doing something. In this sense consideration is in positive form.

Example

A agrees to construct B's house for Rs. 10 Lac. B's promise to pay 10 Lac, is the consideration for A's promise of constructing the house.

(b) Abstinence

Abstinence means refraining from doing something. In this sense consideration is in negative form.

Example

'A' promise B not to sue him if he pays extra Rs. 5000. The abstinence of A is the consideration for B's payment.

(c) Promise

For a valid consideration, there must be a promise from both sides. It means that there must be a promise by one party against the promise of other party.

Example

A agrees to sell his horse to B for Rs. 30,000. B's promise to pay Rs. 30,000 is the consideration for A's promise. A's promise to sell the horse is the consideration for B's promise.

4- It may be Past, Present or Future

The consideration may be past, present or future

(a) Past Consideration

If the act has been done before a promise is made, it is called past consideration.

Example

A render some services to B at B's desire. Later on 'B' promise to compensate 'A'. It is a good consideration.

(b) Present Consideration

If the consideration is given or received at the time of making contract, it is called present consideration.

Example

'A' sells his motor cycle to 'B' for Rs. 50,000 and B at the same time pays the price. This is present consideration.

(c) Future Consideration

When both parties promise with each other to do something in future, it is called future consideration.

Example

'A' promises to deliver certain goods to 'B' after 10 days. B also promises to pay the price after 10 days. It is a case of future consideration.

5- Need not to be adequate

It is not necessary that consideration should be adequate to the promise. Only the presence of consideration is necessary but not its adequacy.

Example

A agrees to sell his house worth Rs. 10,00,000 for Rs. 200,000 only and his consent is free. The agreement is valid.

6- It must be real

The consideration must be real and certain. When any consideration is physically impossible, illegal or uncertain then it is not treated as a real consideration.

(a) Physically Impossible

'A' promises to put life into B's dead wife if B pays him Rs. 5000. A's promise is physically impossible. So it is not a valid consideration

(b) Legally impossible

'A' said to B to beat to C and against this A promises to pay Rs. 5000 to B. The consideration to beat C is illegal.

(c) Uncertain

'A' appoints B to do a certain work and promise to pay him a reasonable sum. Here sum is uncertain so it is not a valid consideration.

QUESTION # 6

Define Consideration. In what cases the object and consideration of an agreement are unlawful under the Contract Act. (2011)

ANSWER

CONSIDERATION

A consideration is what a promisor demands and receives for his promise. An agreement is enforceable only when both the parties get something and give something. The something given or obtained is called consideration.

According to Pollock

“Consideration is the price for which the promise of another is bought”.

Example

- (c) A agrees to sell his house for Rs. 10 lac to B. For A's promise the consideration is Rs. 10 lac. For B's promise consideration is house.
- (d) A promises to paint a picture of B and B promises to teach him for a month. The promise of one party is the consideration for the other party.

CASES IN WHICH OBJECT AND CONSIDERATION OF AN AGREEMENT ARE UNLAWFUL

For the valid agreement it is essential that the object and consideration of an agreement must be lawful. According to section 10 “An agreement is a contract only if it is made for a lawful consideration and with a lawful object”

If the consideration or object is unlawful the agreement is illegal and therefore void. Following are the 6 cases where the consideration or object of an agreement is deemed unlawful.

1. If it is forbidden by law
2. If it defeats the provision of any law
3. If it is fraudulent
4. If it involves injury to person or property of another
5. If it is regarded by the court as immoral
6. If it is opposed to public policy

1. If it is forbidden by law

If the consideration or object of an agreement is forbidden by law, the agreement is void.

Example

Agreement to sell above the price fixed by the government is illegal and void.

2. If it defeats the provision of any law

If the object or consideration of an agreement is of such a nature if permitted, it would defeat the provisions of any law.

Example

A' fails to pay his loan to HBFC. His house is sold for recovery of debt. By law, A is prohibited from purchasing his house. A asks B to purchase the house and transfer to him. The agreement is void as it defeats the object of law.

3. If it is fraudulent

If the object or consideration of an agreement is fraudulent, the agreement is unlawful and therefore void.

Example

X a clerk agrees to admit Z in the college without merit and permission from principal. Z agrees to pay him Rs. 5000. The agreement is void as it is a fraud.

4. If it involves injury to person or property of another

If the object or consideration may cause injury to person or property of another is illegal and also void. The word injury means criminal and wrongful harm.

Example

A' agrees to pay Rs. 10,000 to B if B fire the property of C. consideration and object of the agreement is unlawful so it is void.

5. If it is regarded by the court as immoral

If the object or consideration of an agreement is regarded by court as immoral, the agreement is unlawful and therefore, void.

Example

A married woman was given money to obtain divorce from her husband and then to marry the lender. The agreement is immoral and the lender could not recover the money.

6. If it is opposed to public policy

An agreement which is harmful for the welfare of the society or the state is said to be against the public policy. If the court regards the object or consideration of an agreement as opposed to public policy, the agreement is unlawful and void.

Example

The agreement to give money to induce a person to give false evidence is void.

QUESTION # 7

What is capacity to contract? What is the nature of agreement made by persons incompetent to contract? (2009, 10)

OR

What do you understand by capacity to contract? Explain the effect of an agreement made by a minor. (2012)

OR

What do you understand by contractual capacity?

CAPACITY OF PARTIES

According to contract Act parties entering into a contract must be competent to contract. According to section 11 of the contract act

“Every person is competent to contract who

- (i) is of age of majority according to law to which he is subject
- (ii) is of sound mind
- (iii) is not disqualified by any law to which he is subject

PERSONS NOT COMPETENT TO CONTRACT

Following persons are not competent to enter into a contract

- (i) Who is minor
- (ii) Who is of unsound mind
- (iii) Who is disqualified by any law to which he is subject

MINOR

A person, domiciled in Pakistan, who is under 18 years of age, is minor. Accordingly, every person who has completed the age of 18 years becomes a major.

NATURE OF MINOR'S AGREEMENT

1. Void Agreement

Agreement with a minor is void from the very beginning because a minor has no legal capacity to enter into a contract. A minor is not liable to perform any act though he promises to perform an act under an agreement. The logic for this rule is that a minor is not in a position to judge what is good for him. Therefore law protects him.

2. Minor and Ratification

An agreement made by minor cannot be ratified (confirm) by him on attaining the age of majority because an agreement which is void from beginning cannot be made valid by subsequent confirmation.

Example

M, a minor borrowed some money and issued a promissory note for it. After attaining majority M issued a second promissory note in settlement of the first note. It was held that the second promissory note was void.

3. Minor and Estoppel

The rule of estoppel does not apply to minor. If a minor represents fraudulently that he is of full age and induces another to enter into a contract with him, he is not bound by the contract.

Example

M, a minor fraudulently shows that he is of full age and contracts with N to sell his house. M refuses to perform the contract on the ground that he is a minor. N cannot sue M.

4. Minor as a Partner

A minor cannot become a partner of the firm. He can be admitted only in the benefits of the firm with the consent of all the partners. He cannot participate in the management of the firm. The minor's liability is limited up to his investment in the business.

5. Minor as an Agent

A minor can be an agent. If a minor works as an agent he can make his principal responsible to third parties for his acts.

Example

A appoints M, a minor as his agent to sell his house. M makes an agreement with B to sell A's house. The agreement is valid.

6. Minor as a member of Company

A minor is incompetent to contract, cannot become a shareholder of company unless shares are fully paid. It means incase of fully paid up shares a minor can become a shareholder of a company.

Example

'A' has fully paid shares in a company and he dies and leaves 'M' a minor as his legal representative. The company is bound to transfer the share to 'M'.

7. Joint Contract by Minor and Adult

Where a minor and an adult jointly enter into an agreement with another person, the minor is not liable but only adult would be liable.

Example

A minor and adult jointly agreed to pay some amount and draw a promissory note. The court held that adult was liable but not minor.

8. Surety for a minor

Where in a contract of guarantee, an adult stands surety for a minor, the adult is liable under the contract, but the minor is not answerable.

Example

M, a minor makes a contract with X. S stands surety for M. the contract is valid.

9. Minor may be a beneficiary

If an agreement is made for the benefit of a minor then the minor can take benefit of that agreement. A minor can enforce a promissory note which is prepared in his favour but he is not liable.

'A' promised to sell his house to M, a minor person. But later A refuses to sell the house to M. M can enforce the contract.

10. Position of Minors Parents

The parents of minor are not liable for agreement made by a minor. The parents can be held liable if the minor acts as an agent of the parents.

Example F sends his son M, a minor to buy goods from S. M buys goods from S. F is liable for payment.

11. Minor and Negotiable instruments

A minor can draw and endorse bill of exchange, promissory note and cheques. If other party dishonor the instrument minor can enforce it. If minor give acceptance and later refused to make payment the other party can not enforce it.

Example 'M' a minor draws a bill of exchange on A. A accepts the bill. M endorses it to C. The bill is valid.

12. Minor and necessaries

A minor is not liable for the necessaries supplied to him, only his property is liable. If minor has no property the supplier will lose the price of necessities.

13. Minor and Insolvency

A minor cannot be declared insolvent. Even for necessary supplied to him, he is not personally liable, only his property is liable.

14. Agreement by Guardian on Behalf of Minor

A contract made by guardian on the behalf of minor is binding on the minor. It can be enforced against the minor provided the contract is within the authority of the guardian and it is for the benefit of the minor.

Example A contract for the sale of property of minor by his guardian for the benefit of minor was held valid.

PERSONS OF UNSOUND MIND

For a valid contract, it is necessary that each party to the contract must have a sound mind.

Sound Mind

According to Contract Act

A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and also know the effect of agreement upon his interest.

Causes of Unsound Mind

Unsound mind may arise from idiocy, insanity, drunkenness, hypnotism and old age etc.

DISQUALIFIED PERSONS

Following are the persons who are disqualified from contracting.

1. Joint Stock Company

A company cannot enter into contracts outside the powers given to it by its Memorandum of Association or by the Provision of Company Ordinance.

Example

XYZ Company makes an agreement with A to sell some property which a Co. is not authorized by its memorandum of association, an agreement is void.

2. Alien Enemies

A contract with an alien enemy is illegal. But if alien enemy is resident in Pakistan and has a special license from the Government, he can make a contract within the country.

Example

A contract with 'X' a citizen of India without the permission of Govt. to buy certain goods. The agreement is illegal and void.

3. Insolvent

An insolvent cannot enter into a contract with anyone about the property, which will be in the control of official receiver.

Example

A an insolvent promises to sell his house to B. The agreement is void.

4. Convict

A convict is a person who has been imprisoned by a court of law. During the period of imprisonment he is incapable of entering into contract. He can make contract after the period of imprisonment.

Example

W during imprisonment enters into an agreement with S to sell his land. The agreement is void.

5. Ambassadors

One should be careful while making contract with ambassadors because they can sue others to enforce others to the contracts made with them but cannot be sued without prior sanction of the Govt. They are in privileged position.

PRINCIPLE OF ESTOPPEL

Estoppel in English law is defined as: “a principle of justice and of equity. It comes to this: when a man, by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so.”



QUESTION # 8

Explain in detail what is quasi or implied contract? Also explain its different kinds.

Or

Discuss in detail the position of quasi contracts. When the obligation of contracts are imposed by law?

ANSWER

A situation in which no offer and acceptance is made by the parties with their own consent and some rights and obligations are enforced (imposed) upon them by law, such enforcement of rights and obligations upon any or some persons by the law is called as a Quasi or Implied contract. The quasi contract is an exceptional kind of contact by which one party is bound by law to perform the obligation for something done or suffered by the other party even though he has not entered into a contract with his own consent. Though a quasi-contract is not created by the mutual consents of the parties, but the law treats it as a complete contract. Therefore, a suit for damages for the breach of contract can be filed in the case of quasi contract.

CONDITIONS UNDER WHICH QUASI CONTRACT ARISE or KINDS OF QUASI CONTRACT

A quasi or implied contract is raised under any of the following five circumstances.

1. Supply of Necessaries

According to contract Act “Where necessaries are supplied to a person who is incompetent to a contract or to someone whom he is legally bound to support, the supplier is entitled to recover the price from the property of the incompetent person.

The following points must be noted;

1. The person to whom the necessities are supplied is incapable of entering into a contract.
2. The things provided must be necessities and not luxuries.
3. Incompetent person's property is liable to pay only a reasonable price and not the contract price.
4. Only the property of incompetent person is liable. He is not personally liable
5. The incompetent person must not already have a sufficient supply of such necessities.

Example

A' supplies B, a minor with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.

2. Payment by an interested person

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

Example

1. Suppose Mr. A mortgages his property to acquire loan for five years. After the period of five years he is incapable to pay back the loan. Therefore, the lender advertises the property for sale. Mr. B tenant (renter) of such property, return the loan to prevent the sale of property. Now there is a quasi-contract between Mr. A and his tenant Mr. B.
2. Mr. A pays arrears of rent of his neighbor Mr. B to avoid a dispute between B and his landlord. Mr. A cannot recover from Mr. B as he has no interest in payment.

3. Acts Non-Gratuitously Performed

“Where a person lawfully does anything for another person or delivers anything to him, not intending to give as free gift, the person also enjoys the benefits thereof; the latter is bound to make compensation to the former”.

Example

A coolie takes the luggage at the railway station without being asked by the passenger to do so. If the passenger does not object to that, then he is bound to pay reasonably for the work done by coolie.

4. Finder of goods

If a person finds the goods belonging to another and takes them into his custody, he is entitled to recover compensation for the trouble in taking the care of goods and finding the owner of the goods.

Duties of Finder of Goods

- (a) He must try to find out the true owner of the goods.
- (b) He must not use the goods for his purpose.
- (c) He must return the goods to true owner.
- (d) He must take reasonable care of the goods.

Rights of Finder of Goods

- (a) He can retain possession of the goods against everybody except the true owner.
- (b) He can receive from the true owner all expenses incurred by him for preserving the goods or finding the true owner.
- (c) He can refuse to return the goods to the true owner until all expenses are paid to him.
- (d) He can sue the owner to recover any reward which the owner might have offered for the return of goods.

5. Payment under Mistake or Coercion

If a person pays money or anything delivered by mistake or under coercion, then the latter is bound to repay or redeliver the goods to the former.

Example

A paid some money to B by mistake which was due to C. A can recover his money from B.

QUESTION # 9 (2009)

What do you understand by performance of contract? State who can demand performance and who may perform contract?

PERFORMANCE OF CONTRACT

Performance means to do whatever is promised. When contract is performed by both the parties, the contract comes to an end.

PERFORMANCE OF A SINGLE PROMISE

A single promise is that in which there is one promisor and one promise.

WHO CAN DEMAND PERFORMANCE

In single promise the rules to demand performance are as under.

1. Promisee

It is only the promisee who can demand performance of the contract.

Example

'X' promises 'Y' to pay 'Z' Rs.5000. So only Y can demand performance but Z cannot. If Y does not pay the amount to Z then Z cannot take action against X.

2. Legal Representative

In case of death of the promisee, his legal representative can demand performance of a contract.

WHO MAY PERFORM

1. The Promisor Himself

If the contract involves the personal skill or taste, the promisor himself must perform the contract.

Example

X promised to build a palace for Y. X must perform the promise himself.

2. Promisor or His Agent

If the contract does not involve the personal skill or taste of the promisor then it may be performed by the promisor himself or his agent.

Example

'X' promises 'Y' to sell goods. Y may perform this promise himself or ask his agent for performance.

3. Legal Representative

After death of a promisor his legal representative will be liable to perform the contract if contract is of impersonal nature. If a contract involved personal skill then the legal representative is not bound to perform the contract.

Example

'X' promises to paint a picture for 'Y' at certain price. X dies before performance. As the contract involves the personal skill of X so X's heir are not liable for the contract.

4. The Third Person

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

Example

'A' borrowed Rs. 2 Lac form 'B' and promises his father 'C' will return the amount to 'B' and 'B' accept it. Now 'B' cannot demand from 'A'.

PERFORMANCE OF JOINT PROMISES

Two or more persons may enter into a joint agreement with one or more persons. In such cases the question arises who can demand performance and who is liable to pay. For example A, B and C jointly promise to pay Rs. 3000 to P, Q and R jointly. Following are the rules regarding performance in this case.

WHO CAN DEMAND PERFORMANCE

The rules to demand performance are as under.

1. Promisees

When a promise is made with several persons jointly then in the absence of any agreement to the contrary, all the promisees jointly can demand performance and a single promisee cannot demand performance.

Example

A borrows Rs. 2 Lac fro B and C. Only B and C can demand the performance jointly.

2. Legal Representatives

In case of death of any promisee, the legal representative of deceases person jointly with surviving promisees can demand performance. When all promisees are dead, the legal representatives of all jointly can demand performance.

WHO MAY PERFORM

The rules to perform the contract are as under.

1. All Promisor must jointly fulfill the promise

If two or more persons make a joint promise, then all such persons must jointly fulfill the promise. In the case of death of a promisor, his legal representatives must fulfill the promise jointly with other promisors.

2. Any one of joint promisors may be compel to perform

All joint promisors are required to perform the promise jointly but the promisee may compel any one of the joint promisor to perform the promise.

Example A, B and C jointly promise to pay D Rs. 6000. D may compel either A or B or C or All to pay him this amount.

3. Each promisor may compel for contribution

If one of the joint promisors is compelled to perform the whole contract, he can ask for equal contribution from the others.

Example

If A is compelled to pay the entire amount of Rs. 6000, he can ask to B and C for contribution of Rs. 2000 each.

4. Sharing of Loss by Default in Contribution

If any one of the joint promisors makes default in making contribution, then this loss must be contributed by all remaining joint promisors.

Example

A, B and C are under a joint promise to pay D, Rs. 3000. C is unable to pay anything and A is compelled to pay the whole. A is entitled to receive Rs. 1500 from B.

5. Effect of release of one joint Promisor

In case of a joint promise, if one of the joint promisors is released from his liability by the promisee, his liability to the promisee ceases but his liability to the other promisors to contribute does not cease.

Example

A, B and C are under a joint promise to pay Rs. 3000 to X. X releases C from liability. A & B remain liable to pay to X. C is not released from the liability to A & B. If X recovers from A & B, they can recover from C.

QUESTION # 10

What are the various ways in which a contract may be discharged? (2009, 10, 13)

DISCHARGE OF CONTRACT

A contract is said to be discharged or terminated when the rights and duties created by it come to an end. A contact may be discharged in any of the following ways.

1. DISCHARGE BY PERFORMANCE

When the parties to a contract perform their respective promises the contract is discharged. The performance may be

- (i) Actual or
- (ii) Attempted

(i) Actual Performance

When both of the parties to a contract perform their respective promises the contract is discharged by a actual performance.

EXAMPLE A delivers the goods to B and B pay the price. The contract is discharged by actual performance.

(ii) Attempted performance

When one of the parties to the contract offers to perform the contract according to terms of the contract but the other party does not accept it, it is called attempted performance or tender of performance. In case of offer of performance the promisor is then excused (release) from performance and becomes entitled to sue the promisee for breach.

Example 'A' agrees to sell his book to 'B' for Rs. 400. 'A' offers to deliver the book but 'B' does not accept it, there is offer of performance.

2. DISCHARGE BY AGREEMENT

A contract may also be discharge by the fresh agreement between the same parties. It may terminated by agreement in any of the following ways.

(a) Novation

Novation of contract means replacement of an existing contract by a new contract. The new contract may be between same parties or between new parties.

Examples A is indebted to B and B to C. By mutual agreement A's debt B and B's debt to C are cancelled and C accepts A as his debtor. There is novation.

(b) Alteration

If one or more of the terms of contract are changed it is called alteration of a contract. The difference between novation and alteration is that in novation there may be a change of parties but in alteration there is only a change in terms of contract.

Example A agrees to supply goods on 1st Jan. Later A and B agree to change the date of delivery to 1st Feb. It is alteration of contract.

(c) Rescission

The rescission means cancellation of contract by mutual consent. The cancellation of contract releases the parties from their obligations arising out of the contract.

Example

“A” promises to deliver certain goods to B on a certain date. Before the date of performance, A and B mutually agree that the contract will not be performed. The contract is rescinded.

(d) Remission

When promisee accept lessor amount or extend the time for performance, it is called remission of contract.

Example A owes B Rs. 5000. B agrees to accept Rs. 3000 in full satisfaction of his claim. The whole debt is discharged.

(e) Waiver

When a party gives up his right to the contract, the other party is released from his part of obligation. It is called waiver.

Example A employ B to construct a building for him. Later on A forbids him from doing so. The contract is terminated by waiver.

3. DISCHARGE BY IMPOSSIBILITY

(a) Initial Impossibility

An agreement to do an impossible act is void ab initio (from beginning).

Example

‘A’ promises to pay B Rs. 1000 if B breaks the stars for him. The agreement is void.

(b) Subsequent Impossibility

Sometimes, the performance of a contract is possible at the time of formation but afterward its performance becomes impossible or unlawful and as a result void. Such impossibility may be due to

- (i) Destruction of subject matter
- (ii) Death or personal incapacity
- (iii) Change of law
- (iv) Declaration of war

4. DISCHARGE BY LAPSE OF TIME

The Limitation Act 1908 prescribes time limits during which the contracts must be enforced. At the expiry of that time contract becomes unenforceable and as such it terminates.

Example

A took loan from B. The last date for the repayment of loan has expired but no suit was filed by B for 3 years. A is discharged from his liability.

5. DISCHARGE BY OPERATION OF LAW

A contract may be discharged by the operation of law in one of the following ways.

(a) By Death

If the performance of the contract depends upon the personal skill of the promisor and promisor dies, the contract is discharged.

(b) By Unauthorized alteration

If a party makes an unauthorized alteration without the knowledge and consent of the other party, the contract can be avoided by the other party.

(c) By Insolvency

Where a court declares a person as insolvent, such person is discharged from his liabilities incurred before his insolvency.

(d) By merger

Where the parties merge the inferior contract into a superior contract, the original contract (old contract) needs not to be performed.

EXAMPLE: A part time accountant is made a full time accountant; the contract of part time is discharged by merger.

6. DISCHARGE BY BREACH OF CONTRACT

Where one of the contracting parties does not perform his promise, it is called breach of contract. The injured party is discharged from performing his part of obligation. Breach of contract may be of two kinds.

(a) Actual Breach

It occurs when a party fails to perform a contract when the performance is due.

Example A agrees to deliver 100 kg sugar to B on March 10. But he does not deliver the sugar on that day. This is a actual breach of contract.

(b) Anticipatory Breach

An anticipatory breach of contract occurs before the time fixed for performance has arrived. It may happen in two ways.

(i) Expressed Breach

When a party expresses his intention not to perform the contract before the due date of performance has arrived, it is called express breach.

Example A agrees to sell his Car to B on 30 June. But before that date A inform B that he will not sell the Car to him.

(ii) Implied Breach

When a party does such act which makes the performance of the contract impossible is called implied breach.

Example

'A' promises to sell his Car to B on 30th June. But before that date A sell his Car to C.



QUESTION # 11

When a contract is said to be breached? Discuss the position of remedies available under such circumstances.

BREACH OF CONTRACT

Breach of contract means non performance of contract. When one party of the contract does not perform his part of obligation, it is called breach of contract.

REMEDIES FOR BREACH OF CONTRACT

The following remedies are available to the aggrieved party against the guilty party.

1. Suit for Rescission
2. Suit for Damages
3. Suit upon Quantum merit
4. Suit for Specific performance
5. Suit for injunction

1. SUIT FOR RESCISSION

Rescission means a right to cancel the contract and not to perform obligations. If one party of contract does not perform his part of obligation the other party has a right to sue for rescission of the contract. When the court grants rescission, the aggrieved party is free from his obligation and becomes entitled to compensation.

Example A contract to supply goods to B on 15 Jan. B agrees to pay the price on receipt of goods. A does not supply on due date. B is discharged from liability to pay. B can rescind and claim damages.

2. SUIT FOR DAMAGES

It is the monetary compensation awarded to the injured party for the loss caused to him due to the breach. The damages are of the following kinds:

(a) General Damages

General damages are a compensation awarded for direct loss caused by breach of contract. It is also called ordinary damages.

Example A contracts with B to sell and deliver 50 kg sugar @ Rs. 50 per kg on a particular date. On the due date he refuses to deliver because the price on that date increases to Rs. 60 per kg. B can claim damages @ Rs. 10 per kg.

(b) Special Damages

Special damages are a compensation awarded for indirect loss caused by breach of contract. Special damages are provided only in those circumstances where the promisee at the time of entering in the contract is known about the loss.

Example

A contracts C to buy 1 ton iron for Rs. 80,000. A also contracts to sell B 1 ton iron for Rs. 100,000. A informs C about the purpose of contract. C fails to supply. As a result, A cannot supply to B. C is liable for loss of profit which A would have earned from B.

(c) Exemplary Damages

Exemplary damages are awarded with a view to punish the guilty party for the breach and not to compensate the injured party for the loss suffered. Exemplary damages are awarded only in following cases:

- (i) For the promise to marry, the amount of damages will depend upon the extent of injury to the feeling of the party.
- (ii) For wrongful dishonor of cheque by a banker when there are sufficient funds in the account of customer. The rule is, the smaller the cheque dishonor, the greater the damage.

(d) Liquidated Damages

When parties to a contract fix the amount of damages for the breach of contract at the time of formation of contract, such damages are called liquidated damages.

Example A contracts to pay Rs. 20,000 as damages to B, if he fails to pay his Rs. 500,000 on a given day. A fails to pay on that day. B can recover damages not exceeding Rs. 20,000.

(e) Nominal Damages

When the aggrieved party has suffered no loss due to the breach the court may award him a nominal (small) amount as damages in recognition of his right.

3. SUIT UPON QUANTUM MERUIT

The term quantum meruit means payment in proportion to the work done. Where a person has done some work under a contract and the other party cancel the contract or an event happens, which makes the performance of the contract impossible; such party can claim remuneration for the work already done.

Example B contracts to build a three storey house for A. When one storey is constructed A prevents B from working more. B can get compensation for work done.

5. SUIT FOR SPECIFIC PERFORMANCE

Where damages are not adequate remedy, the court may order for specific performance and can compel the defaulter party to perform the contract.

Example A agrees to sell his plot of land to C who agrees to purchase it for erecting his mill there. Later on A commits breach and refuses to sell the plot. At the suit of C, A is asked by the court to carry out the contract.

6. SUIT FOR INJUNCTION

Injunction is an order of a court restraining a person from doing something which he promised not to do.

Example C, a singer, contracted with D to sing only for D's theatre for two years. During this period she also contracted to sing at another theatre. Held, C was restrained from doing so.

QUESTION # 12

What is a contract of guarantee? What are its special features? Also explain its different kinds.

ANSWER

CONTRACT OF GUARANTEE

In a contract of guarantee a person give assurance of a person to a person. According to Contract Act;

“A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default”.

Example

“A” requests “B” to lend Rs. 10,000 to “C” and give assurance that he will pay, if C fails to pay. There is a contract of guarantee.

Following are three parties to a contract of guarantee.

1. Surety

The person who gives the guarantee is called guarantor or surety.

2. Principal Debtor

The person for whom the guarantee is given is called principal debtor.

3. Creditor

The person to whom the guarantee is given is called the creditor.

ESSENTIAL FEATURES

1. Principal Contract

In a contract of guarantee there should be a principal contract. Contract between principal debtor and creditor is a principal contract. Guarantee is given to fulfill the principal contract.

In a contract of guarantee there are three contracts between

1. Creditor and principal debtor
2. Surety and Creditor
3. Surety and Principal debtor

2. Consideration

Consideration is an essential element of a valid contract of guarantee. It is not necessary that there must be direct consideration between the surety and the creditor. The consideration received by the principal debtor is sufficient for the surety.

Example

B requests A to sell goods on credit. A agrees if C will guarantee for the payment. C guarantees. C's promise to guarantee is the consideration for A's promise to sell the goods.

3. No Misrepresentation

In a contract of guarantee, surety is entitled to know the material facts (information or event that affect the decision) of the contract of guarantee. It is the duty of the creditor to disclose the material facts about the contract. If the consent of the surety will be obtained by misrepresentation, the surety will be discharged from the liability.

Example

A was invited to give a guarantee for the honesty of a servant. The employer had earlier dismissed him for dishonesty but not disclose this fact to the surety. The servant committed a fraud. Surety is not liable because the material fact was not disclosed to him at time of contract.

4. Writing not necessary

It is not necessary that contract of guarantee must be in writing. It may be oral or written.

KINDS OF GUARANTEE

1. Absolute Guarantee

An absolute guarantee is one by which the guarantor unconditionally promises the payment, in case of default of principal debtor.

Example

A given guarantee to C if B will not pay the debt he will pay it.

2. Conditional Guarantee

A conditional guarantee is one which is not enforceable immediately on the default of principal debtor, some contingency other than such event must happen.

Example

A given guarantee to C if B will not pay the debt he will pay it, if C does not make a suit within 10 days of default.

3. Special Guarantee

A guarantee which is given by surety to a specific person for the promise or debt of a principal debtor is called special guarantee.

Example

Ali gives guarantee to Ahmad if Aslam does not return the debt he will pay it. It is a special guarantee which is given to a specific person Ahmad.

4. General Guarantee

A guarantee which is offered by surety to general public in common for the promise or debt of a principal debtor is called general guarantee. In case of default surety will be answerable only to that person who gives loan to principal debtor.

Ali announced in a crowd if someone give loan to Aslam he will be answerable in case of default of Aslam.

5. Limited or Ordinary Guarantee

A guarantee which is given for a single transaction is called limited guarantee.

Example

B purchased a Bike from Suzuki Showroom. A gives guarantee to showroom for the payment in case of default of B. It is a limited guarantee because it is given for a single transaction.

6. Unlimited or Continuing Guarantee

A guarantee which is given for infinite transactions is called unlimited guarantee.

Example

A gives a guarantee of C to a shopkeeper B that whenever C makes purchases on credit basis he will be answerable in case of default.

7. Implied Guarantee

Implied guarantee is a guarantee which is not in words whether written or spoken. The conduct of the guarantor can show that guarantee has been given.

8. Express Guarantee

A guarantee which is given in words whether written or spoken is called express guarantee.

Example

“A’ requests to C to give loan to B on his behalf. It is express guarantee.

QUESTION # 13

Define Contract of Bailment and its essential feature. Write down its various kinds (2011)

ANSWER

BAILMENT

If a person transfer possession of goods to another person for some special purpose, on a condition that he will return the goods after accomplishment of purpose, it is called bailment.

According to contract act 1972

“A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them”.

Example

A' gives his cloth to B a tailor for making suit. The contract between A' and B is a bailment.

Parties to the Contract

- (a) Bailer
- (b) Bailee

(a) Bailer

The person delivering the goods is called bailer

(b) Bailee

The person to whom goods are delivered is called bailee

ESSENTIAL FEATURES OF BAILMENT

Following are the essential features of bailment.

1. Agreement

Agreement is the basic essential for the contract of bailment. Without agreement the bailment is not possible. Agreement may be oral or written.

2. Delivery of Goods

Second condition of bailment is that goods must be moveable and must be delivered to another person. If goods are immovable then contract will not be a contract of bailment.

3. Specific Purpose

Under bailment the goods are delivered for some specific purpose e.g. safe keeping or repair etc. if goods are delivered by mistake, there is no bailment.

4. Transfer of possession

Under the bailment only the possession is transferred. The right of ownership remains with the owner. If ownership is transferred then it cannot become the contract of bailment.

5. Specific Property

Under the bailment it is the duty of the bailee to return or dispose of the specific property that was bailed to him. If the bailee has the option of paying the money or of returning the different property, there is no bailment.

6. Bailor Interest

The bailor is usually the owner of the property, but the ownership by him is not required. It is sufficient that the bailor has the physical possession.

7. Number of parties

There are only two parties in contract of bailment such as bailor and bailee. The person who delivers the goods is called bailor and the person to whom goods are delivered is called bailee.

8. Change of Form

If the goods bailed are changed in form by the bailee, still then the contract is of bailment. Such as tailor has change the cloth into shirt.

9. Redelivery of goods

Under the bailment the goods are redelivered to the bailor or any other person according to his direction upon the fulfillment of the purpose.

10. Reward

Under bailment, any one party has a right to get reward but it depends upon the nature of contract.

KINDS OF BAILMENT

Bailment may be classified from the point of view of

- (a) Benefit to parties
- (b) Reward to parties

(A) BAILMENT FROM THE BENEFIT POINT OF VIEW

According to benefit, bailment can be grouped into three classes

(i) For the benefit of bailor

Sometimes the goods are delivered for the safe custody without any compensation to be paid.

Example

A delivered some ornaments for safe custody to B his neighbor, without any charges for that. It is a bailment for the bailor only.

(ii) For the benefit of bailee

Sometimes the goods are delivered only for exclusive benefit of the bailee.

Example

A borrows B's pen to use in the examination hall, the bailment is for the sole benefit of A, the bailee.

(iii) For the benefit of bailor and bailee

Bailment for the mutual benefit of bailor and bailee is the common types of bailment.

Example

A deliver his car to B' a mechanic for repair. It is for the benefit of bailor and bailee.

BAILMENT FROM REWARD POINT OF VIEW

Bailment may be classified into following two classes.

(i) Bailment without reward

It is a bailment in which neither party is entitle to any remuneration. It is also called gratuitous bailment.

Example

A lends his pen to B without any charge.

(ii) Bailment for Reward

It is a bailment in where the bailor or the bailee is entitled to remuneration. It is also called non-gratuitous bailment.

Example

Motorcar let out for hire.

QUESTION # 14

What is “Bailment”? Explain rights and duties of “Bailor” and “Bailee”. (2010)

ANSWER

Rights of Bailor / Duties of Bailee

Following are the Duties of Bailee

1- To Take Reasonable Care

It is the duty of Bailee to take care of goods bailed to him as a man of ordinary prudent. If there is any loss to the goods due to Bailee’s negligence, the Bailor is entitled to recover the loss from the Bailee.

Example

‘C’ delivered some cattle to H under a contract of bailment. Out of those some cattle were stolen without any default on the part of H. H did not inform either the owner or the police to recover them. Held H was liable for the loss.

2- Not to Make Unauthorized Use

It is the duty of Bailee to use the goods for only that purpose for which it is given. If Bailee used the goods for any other purpose the Bailor can terminate the contract at any time.

Example

‘A’ lends a Car to ‘B’ on the condition that only a license holder shall drive the Car. B allows his son to drive the Car to learn driving. ‘A’ can terminate the bailment.

3- To Compensate any Loss During Unauthorized Use

If the Bailee makes an unauthorized use of the goods bailed, he is liable to make compensate to the Bailor for any damage arising to the goods during such use.

Example

‘A’ delivers his car in Lahore to a mechanic ‘B’ for repair. After repairing the car B uses it for his travel to Sialkot where the car is stolen. B must compensate the loss.

4- Not to Mix Goods with his Own Goods

If the Bailee mixed the goods of Bailor with his own goods without the consent of Bailor and the goods can be separated; the Bailee is bound to bear the expenses of separation.

If it is impossible to separate the goods bailed, then it is the duty of Bailee to compensate the Bailor.

Example

‘A’ bails a specific quantity of superior quality flour to B. B without A’s consent mixes the flour with his own inferior quality flour. B must compensate A for the loss of his flour.

5- To Return the Goods

It is the duty of Bailee to return or delivered the goods according to Bailor's direction after the complication of purpose.

Example

'A' gives his car to 'B' a mechanic for repair. After repair the car must be returned to B.

6- To Compensate loss after Expiry of Bailment

If after the completion of purpose or expiry of time the goods are not returned, Bailee is responsible to the Bailor for any loss of goods from that time.

Example

A lends a horse to B for one week. On the due date B fails to return the horse and the next day the horse dies without any fault to B. B is liable to pay price of the horse to A.

7- To Return any Increase or Profit

The Bailee is bound to deliver to the Bailor, any increase or profit which may have accrued from the goods bailed.

Example

A leaves a cow in the custody of B to be take care of. The cow has a calf B bound to deliver the calf as well as cow to A.

Ordinary Prudent: Reasonable or Prudent man is a hypothetical person used as a legal standard especially to determine whether someone acted with negligence.

QUESTION # 15

What is a contract of agency? Explain the various modes by which an agency may be created. (2012)

How contract of agency is created and terminated? 2013)

AGENCY

Modern business is becoming difficult day by day. It is not possible for an individual to carry on the business singly. He must depend upon others for the smooth running of the business. He must delegate some of his powers to another. The person who delegates his power to another is called principal and the person to whom power is delegated is called agent and the relationship between principal and agent is called agency.

According to contract Act

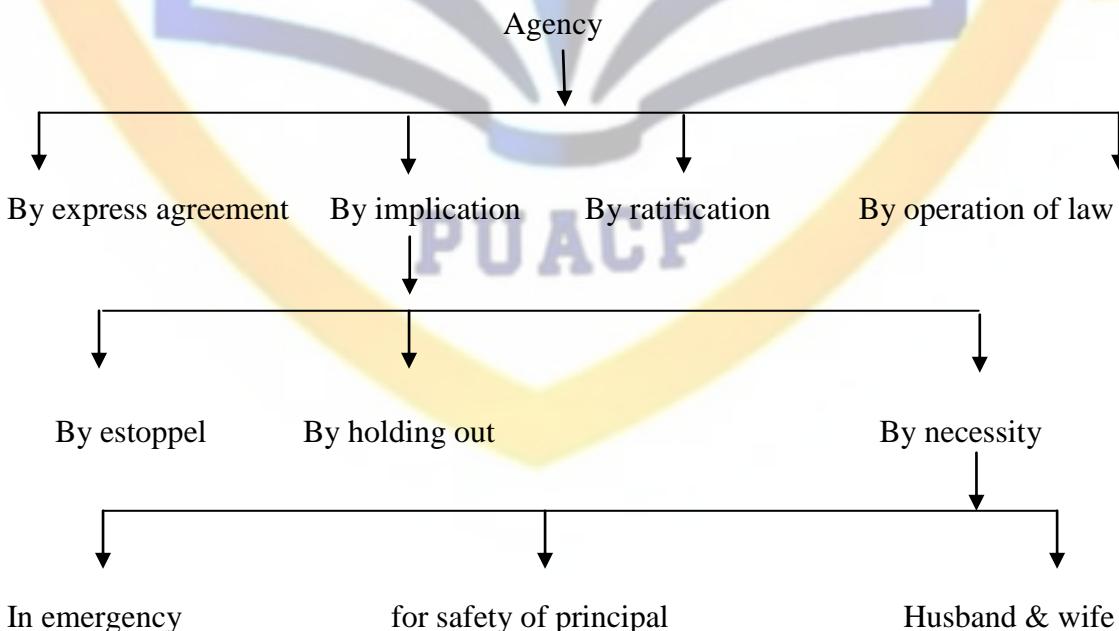
“Agency is a contract which creates the relationship of principal and agent”.

PARTIES TO CONTRACT**1. Principal**

The person who delegates his power to another is call principal.

2. Agent

The person to whom power is delegated is called agent.

METHODS OF CREATION OF AGENCY**1. Express agency**

An express agency may be created orally by words of mouth or in writing. Under this agreement the agent's authority is expressed clearly.

Example

A appoints B as his agent to sell his house. It is an express agency.

2. Implied agency:

It arises when there is no express agreement appointing a person as agent. An implied agency arises from conduct, situation or relationship of parties.

Example:

X & Y are brothers. X' lives in Lahore and Y' in Sialkot. Y with the knowledge of X gives his land on lease. He collects the rent and remits to X. Y is the implied agent of X.

An implied agency may be of the following types.

(i) Agency by estoppel:

When an agent has, without authority, done acts to third persons on behalf of his principal, the principal is bound by such acts if he has by his words or conduct induced such third persons to believe that such acts were within the scope of the agent's authority.

Example:

A tells B in the presence and within the hearing of C that he (A) is C's agent. C does not object to this statement and keeps quiet. Later on B enters into a contract with A' believing that A is C's agent. C is bound by this contract.

(ii) Agency by holding out:

It occurs due to some prior positive act on the part of the principal.

Example:

A' gives authority to B his servant to purchase the goods from C and he had been paying for all the goods bought from C. One day A gives cash to B for the purchase of goods. B bought the goods on credit instead of cash. A is liable to C for the purchases made by B.

(iii) Agency by necessity:

Necessity in certain cases forces a person to act as an agent of the other, even without his consent. In such a case, the law implies agency by necessity.

Example:

A sent 10 tons of fish by a truck to B. On the Way, the truck met with an accident. The fish were in danger of perishing so the truck driver sold the fish. The truck driver has become A's agent by necessity.

Generally the agency by necessity arises in the following cases.

- (i) Where the agent exceeds his authority, bonafide, in an emergency.
- (ii) Where the carrier of goods, does anything to protect the goods in an emergency
- (iii) Where a husband improperly leaves his wife without providing proper means for her substance.

3. Agency by Ratification

Where a person done an unauthorized act on the behalf of a person and the latter (principal) ratify (approves) the act, here agency is created by ratification.

Example

A buys 5 bags of wheat without the authority of B. B ratifies A's act. A becomes his agent.

4. Agency by Operation of Law

Under some cases agency may be created automatically by law, such as in partnership act, every partner is an agent of the firm and the act of a partner to carry on business of the firm binds the firm. Similarly, under companies act the directors are the agent of the company.

TERMINATION OF AGENCY

An agency may be terminated in any of the following ways

(1) By mutual agreement

An agency may be terminated by the mutual agreement between agent and principal.

(2) Revocation by Principal

Principal can revoke the authority of his agent at any time. So when principal revokes the authority of the agent, the agency is terminated.

(3) Revocation by Agent

Any agency can be terminated by the agent because a person cannot be compelled to work as agent. But the agent must give reasonable notice or revocation to principal.

(4) Completion of Business

An agency came to an end after the completion of business for which it was created.

(5) Expiry of time

If the agent is appointed for a fixed period, the agency comes to an end on the expiry of fixed period, even though the business of agency is not completed.

(6) Death of the Principal or Agent

An agency terminates automatically on death of the principal or the agent.

(7) Insanity of the Principal or Agent

An agency terminated automatically, when the principal or the agent becomes of an unsound mind.

(8) Destruction of the subject matter

An agency terminates on the destruction of the subject matter of the contract of the agency. For example, the agency was created for the sale of house and the house is destroyed by fire, the agency comes to an end.

(9) Change of Law

If a change in the law makes the agency or the performance of the authorized act illegal, the agent's authority is terminated when he comes to know of the change.

(10) Principal or Agent becomes Alien enemy

If the principal and agent are nationals of two different countries and a war breaks out between these two countries, the contract of agency is terminated.



QUESTION # 16

Discuss rights and duties of a Principal (2011)

ANSWER

AGENT

An agent is a person employed to do any act for another or to represent another in dealing with third party.

PRINCIPAL

The person for whom such act is done is called principal.

RIGHTS OF PRINCIPAL / DUTIES OF AGENT

Following are the rights of principal / duties of agent.

1. Give / Obey the instructions

Principal hire the services of agent. He has a right to give instructions under agreement. It is the duty of agent to obey the lawful instruction of the principal. If he fails to obey the instructions then he will be liable for any loss sustained by the principal.

2. Conduct of Business

Business should be conducted according to the directions of principal. But in absence of directions agent should conduct the business according the prevailing (normal) custom in business.

3. Return of Undue profit

Principal has a right to receive all the profit which is earned by using his business name and assets. So it is the duty of agent to return any undue profit to the principal. He can however deduct all moneys due to himself in respect of remuneration and other expenses.

4. Keeping of Accounts

It is the duty of the agent to maintain the true accounts regarding all the property or money belonging to the principal. He should also submit the accounts to principal on demand. He should keep the property and money of principal separate from his own.

5. Communication with principal

Principal has a right to receive all the information about business. So it is the duty of agent to give all the information to principal. In case of difficulty, he should also obtain the instructions from his principal. He should not keep anything secret from his principal.

6. Principal death case

If principal dies or becomes insane, it is the duty of the agent that he should save the goods as he was doing in the life of the principal.

7. Payment to Principal

Principal has a right to receive all the amounts relating to business from agent. So it is the duty of agent to pay all the sums after deducting remuneration of his services as soon as possible.

8. Delegation of Authority

Principal has a right to delegate any authority to his agent, but the agent must not delegate his authority to another person. He should perform his work of agency himself.

9. Recovery of Damages

Agent should follow the instructions of principal. If any loss occurred due to agent negligence he is liable for those losses. The principal has a right to recover all damages which are occurred due to agent negligence.

10. Indemnity to agent

If agent acted as a principal himself and not as agent, principal has a right to refuse to indemnify agent against losses suffered by the agent in such transaction.

DUTIES OF PRINCIPAL / RIGHTS OF AGENT

Following are the duties / right of agent.

1. Remuneration

Principal should pay to his agent remuneration according to agreement. In the absence of agreement, an agent has a right to receive the reasonable remuneration according to custom and usage.

2. Indemnity against consequences of lawful acts

Principal should indemnify the agent against the consequences of all lawful acts done by the agent in exercise of the authority conferred upon him.

3. Compensation for injury

If any injury caused to an agent by the negligence of the principal, principal should compensate the agent. But agent cannot get compensation if the injury results from his own negligence.

4. Expenses incurred by agent

Principal should pay to agent any expense incurred by him. Agent has a right to retain his principal's money against his claims, if any in respect of his remuneration, advances or reasonable expenses incurred by him in conducting the business of agency.

5. Stoppage of goods

An agent has a right to stop the goods in transit to the principal like unpaid seller, if he has bought goods with his own money and the principal has become insolvent.

LAW OF SALE OF GOODS

QUESTION # 17

Give points on which we can distinguish sale and agreement to sell.

ANSWER

CONTRACT OF SALE

According to Sale of Goods Act

“A contract whereby seller transfer or agrees to transfer property (ownership) in the goods to the buyer for a price”.

In other words, a contract of sale is a contract to transfer the ownership of goods from seller to buyer.

The contract of sale includes both sale and agreement to sell.

SALE

Where the property in goods has passed from the seller to the buyer, it is a sale.

Example

A purchases a Car for Rs. 500,000 and pays full amount. It is a sale.

AGREEMENT TO SALE

Where the passing of property in the goods is to take place at future date, it is called agreement to sell.

Example

A agrees to purchase B's Car for Rs. 500,000. The transfer of car will take place after one month. It is an agreement to sell.

DIFFERENCE BETWEEN SALE AND AGREEMENT TO SELL

1. Transfer of Property

- (a) In a **contract of sale** ownership in the goods is transferred from the seller to the buyer at the time when the contract is made.
- (b) In **agreement to sell** ownership in the goods is transferred at a future date.

2. Risk of loss

- (a) In a contract of sale if there is any loss it will be bear by buyer because ownership is transferred at a time of contract to buyer.
- (b) In agreement to sell the loss will be bear by seller because the ownership in the goods is still with the seller.

3. Breach of Contract by buyer

- (a) As property in the goods is transferred to the buyer, therefore if the buyer fails to pay the price, the seller can sue him for the price and for damages, even if the goods are still in possession of seller.
- (b) As property in the goods is still with the seller, therefore if the buyer fails to pay the price, the seller can sue him only for the recovery of the damages and not to recover the price, even if the goods are still in possession of the buyer.

4. Breach of contract by the Seller

- (a) If the seller refuse to deliver the goods, the buyer, being the owner of the goods, can sue him for recover the goods and for damages.
- (b) If the seller refuses to deliver the goods, the buyer can sue him only to recover damages for the breach of contract.

5. Insolvency of the Buyer

- (a) In case of sale, if the buyer is insolvent then seller can use his right of lien or stoppage.
- (b) In Agreement to sell, the seller can refuse to deliver the goods to the buyer if price is not paid.

6. Insolvency of Seller

- (a) If the seller, who is in possession of the goods after the sale, becomes insolvent, the buyer can recover the goods from the official receiver of the seller because ownership of the goods has passes to the buyer.
- (b) If the seller, who is in possession of the goods after an agreement to sell, becomes insolvent, the buyer cannot recover the goods from the official receiver of the seller, because ownership of the goods is still with the seller.

7. Right of Resale

- (a) In case of sale, because ownership of the goods has passed to the buyer, therefore, seller cannot resell the goods.
- (b) In case of an agreement to sell, as the ownership of the goods is still with the seller, he can resell the goods.

8. Nature of Contract

- (a) Sale is an executed contract
- (b) Agreement to sell is an executor contract

QUESTION # 18

Define contract of sale? Explain rights of an unpaid seller? (2010)

OR

Who is an unpaid seller? What are the rights of an unpaid seller against goods and buyer? (2012, 13)

ANSWER

CONTRACT OF SALE

According to Sale of Goods Act

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Where the passing of property in the goods is to take place at future date, it is called agreement to sell.

Example

A agrees to purchase B's Car for Rs. 500,000. The transfer of car will take place after one month. It is an agreement to sell.

UNPAID SELLER

“The seller of goods is deemed to be an unpaid seller:

- (a) When whole of the price has not been paid or tendered:
- (b) When a bill of exchange or other negotiable instrument has been received as Conditional payment and the same have been dishonored.

RIGHTS OF UNPAID SELLER

Rights of unpaid seller can be classified into two groups:

1. Rights against the goods
 - (a) Right of lien
 - (b) Right of stoppage of goods in transit
 - (c) Right of Resale

2. Rights against the seller
 - (a) Suit for Price
 - (b) Suit for Damages
 - (c) Suit for Interest
 - (d) Suit for special damages

1. RIGHTS AGAINST THE GOODS

An unpaid seller has the following rights against the goods

(a) Right of Lien

In following cases unpaid seller of the goods who is in possession of goods is entitled to retain the possession of the goods and to refuse to deliver them to the buyer until payment is made

- (i) Where the goods have been sold without any stipulation as to credit.
- (ii) Where the goods have been sold on credit but the term of credit has expired.
- (iii) Where the buyer becomes insolvent.

Where an unpaid seller has made part delivery of the goods he may exercise his lien on the remainder.

(b) Right of Stoppage of goods in transit

The unpaid seller who has parceled the goods has the right of stopping them in transit. He may regain possession of the goods and retain them until payment is made to him if

- (i) The goods are in transit and
- (ii) The buyer becomes insolvent.

Goods are deemed to be in transit from the time when they are delivered to a carrier for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them.

The transit ends and the right of stoppage in transit also comes to an end when:

- (i) The buyer or his agent takes delivery of the goods after their arrival at the appointed destination.
- (ii) The buyer or his agent takes delivery of the goods before their arrival at the appointed destination.
- (iii) The buyer or his agent requested the carrier to carry the goods to new destination after the arrival at the appointed destination.
- (iv) The carrier wrongfully refuses to deliver the goods to the buyer or his agent.
- (v) Part delivery of the goods has been made to the buyer with the intention to deliver whole of the goods.

The unpaid seller may exercise the right of stoppage in transit either:

- (i) By taking actual possession of the goods; or
- (ii) By giving notice of his claim to the carrier in whose possession the goods are.

(C). Right of Resale

An unpaid seller has a right to resell the goods in the following cases.

- (i) Where the goods are of perishable nature
- (ii) Where he gives notice to the buyer of his intention to resell the goods and the buyer still fails to make the payment within a reasonable time.
- (iii) Where there is an express provision regarding such right in the contract of sale.

If on the resale there is a loss to the unpaid seller, he can recover such loss from the buyer but if there is a profit on such resale he is entitled to retain it with himself.

2. RIGHT OF UNPAID SELLER AGAINST BUYER

In addition to his rights against the goods an unpaid seller has the following right against the buyer.

(a) Suit for Price

Where under a contract of sale the buyer wrongly refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(b) Suit for Damages

Where the buyer wrongfully refuses to accept and pay for the goods, the seller may sue for the damages for non-acceptance

(c) Suit for Interest

The unpaid seller can recover from the buyer, interest at a reasonable rate on the unpaid price, from the time it was due till it is actually paid.

(d) Suit for Special Damages

The unpaid seller can sue the buyer for special damages, if the buyer was informed of such loss at the time when the contract of sale was made.

QUESTION # 19

Explain briefly the express and implied conditions and warranties. Also discuss doctrine of caveat emptor. (2009)

OR

What are implied Conditions and Warranties? (2011)

ANSWER

CONDITIONS

Condition is a stipulation (requirement) essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated (rejected).

Example

A contracts to deliver 100 Pak fans to B. But A delivers Climax fans. It is breach of condition. B can reject or accept them and claim damages.

WARRANTY

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to right to reject the goods and treat the contract as repudiated.

A promises to deliver to B 100 washing machines at his showroom. But A delivers them at his home. It is a breach of warranty. B can claim damages only.

EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES

Conditions and warranties may be express or implied.

Express Conditions and Warranties

Conditions and warranties which are included in contract are called express.

Implied Conditions and Warranties

Conditions and warranties which are not included in the contract but the law presume their existence in the contract is called implied.

IMPLIED CONDITIONS

Following are the conditions which are presumed by law in a contact of sale of goods.

1. Sale by Description

In a contract of sale of goods by description, it is an implied condition that the goods shall correspond with the description. If the goods are not according to the description, the buyer can reject the goods.

Example

A advertised a car for sale as "Corolla, 2010 Model. B after buying the car, found it of an earlier model. B could return the car.

2. Sale by Sample

In case of sale by sample, the goods must be supplied according to a sample agreed upon. In this case the following are implied conditions.

- (a) The bulk shall correspond with the sample in quality
- (b) The buyer shall have reasonable opportunity of comparing the bulk with the sample.
- (c) The goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

3. Sale by Sample as Well as by Description

When the goods are sold by sample as well as by description, there is an implied condition that the bulk of the goods shall correspond with the sample and the description. If the goods supplied correspond only with the sample and not with the description or vice versa, the buyer can reject the goods.

4. Condition as to Fitness

Where the buyer informs to the seller about the particular purpose for which the goods are required, there is an implied condition that the goods shall be reasonable fit for such purpose. This condition applies if the following requirements are satisfied.

- (a) The buyer should inform the seller about the purpose of goods.
- (b) The buyer should rely on the seller's skill or judgment.
- (c) The seller's business must be to sell goods of that type.

5. Condition as to Merchantability

The term merchantable means that the goods must be fit for the ordinary purpose for which such goods are used. This condition applies if the following requirements are satisfied.

- (a) The goods must be bought by description
- (b) The goods must be bought from seller who deals in such goods.

6. Condition as to wholesomeness

Wholesomeness means beneficial for health. This condition applies only in contract of sale of eatables and provisions. In such cases goods supplied must be merchantable and wholesome.

7. Condition as to Title

It is implied condition that in a sale the seller has a right to sell goods, and in an agreement to sell, he will have a right to sell the goods at the time when the ownership is to pass. If the seller's title proves to be defective, the buyer can reject the goods and recover his price.

8. Condition by Custom

An implied condition as to fitness for a particular purpose may be annexed by the usage of trade.

IMPLIED WARRANTIES

Following are the warranties which are presumed by law in contract of sale of goods.

1. Quiet Possession

It is an implied warranty to the buyer that he shall have the possession and enjoyment of the goods sold to him without disturbance of the seller or any other person.

Example

M purchase a second hand typewriter from B. M spent some money on its repair and used it for some months. The typewriter was found to be stolen and M had to return it to true owner. M could recover damages and price.

2. Freedom from Encumbrances

It is implied warranty on the part of seller that the goods shall be free from encumbrance in favour of any third party.

Example

A pledge his car with B and promises to give its possession the next day. A sells his car to X. B asks X about the pledge affair. X pays the amount of pledge to B. X can recover compensation from A.

3. Disclosure of Dangerous Goods

The implied warranty on the part of the seller is that if the goods are of dangerous nature he will warn the ignorant buyer about the probable danger.

Example

C purchased a tin of disinfectant powder from A. A knew that if tin not opened with special care, it may be dangerous, but told nothing to C. C opened the tin in the normal way and as a result the powder flied into his eyes and caused injury. A will be liable for damages to C.

DOCTRINE OF CAVEAT EMPTOR

Caveat emptor means “let the buyer beware”. According to this principle it is the duty of the buyer to be careful while purchasing goods of his requirement. The buyer must examine the goods thoroughly. He should also see that the goods are suitable for his purpose. If the goods do not suit his purpose, the buyer cannot hold the seller liable for the same.

According to law it is the duty of seller to inform the buyer of any defect, in the goods sold at the time of contract, except, in a case where the defect is obviously known to the buyer.

LAW OF NEGOTIABLE INSTRUMENT

QUESTION # 20 (2011, 12, 13)

Define Cheque, Bill of Exchange and Promissory note. Draw specimens. Make a difference among these instruments.

ANSWER

BILL OF EXCHANGE

“A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person, to pay a certain sum of money only to or to the order of, a certain person or to the bearer of the instrument”.

SPECIMEN OF BILL OF EXCHANGE

Rs. 20,000 Lahore	March 10, 2007	Three months after date, pay to Mr. Ali or order, rupees twenty thousands only for value received.	Sd/- Mr. Ali (Drawer)	Accepted sd/- Mr. Imran (Drawee)	Revenue Stamp
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PARTIES TO BILL OF EXCHANGE

Following are the three parties to a bill of exchange

(1) Drawer

The person who makes the bill is called the drawer or the creditor.

(2) Drawee

The person who is directed to pay is called the drawee or the debtor.

(3) Payee

The person to whom the payment is to be made is called payee.

PROMISSORY NOTE

“A promissory note is an instrument in writing, 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”.

SPECIMEN OF PROMISSORY NOTE

Rs. 50,000 Lahore	March 10, 2007	Sixty days after date, I promise to pay Mr. Ahmad or order the sum of rupees fifty thousand only for value received.	
Sd/- Mr. Abid Hussain (Maker)	Revenue Stamp		

PARTIES TO A PROMISSORY NOTE

Following are parties to a promissory note

1- Maker

The person who makes the promissory note is called maker or debtor.

2- Payee

The person with whom the promise is made is called payee.

CHEQUE

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

SPECIMEN OF CHEQUE

BANK ALFALAH LIMITED SIALKOT BRANCH	Cheque No. 2222222
Date _____	
Pay _____	or Bearer
PKR	
Pak Rupees _____	
Imran Ali 0244 100375162	

PARTIES TO A CHEQUE

Following are the three parties to a cheque:

(1) Drawer

The person who draws the cheque is called drawer.

(2) Drawee

The bank on which the cheque is drawn is known as drawee

(3) Payee

The person to whom the cheque is made payable is called payee

QUESTION # 21

What are types of cheque? Explain the term crossing of a cheque and also explain the types of crossing. (2010)

TYPES OF CHEQUES

Following are the main types of cheque

1. Open Cheque
2. Cross Cheque

1. OPEN CHEQUE

An open cheque is that which is paid at the counter of the bank on the presentation. There is no need of bank account for its presentation. It has further two types.

(a) Bearer Cheque

If no name is mentioned on the face of cheque it is called bearer cheque. Holder of the cheque is entitled for its encashment. Authenticity of the holder is not necessary at time of payment.

(b) Order Cheque

If the name of a specific person is written on the face of the cheque and word bearer is crossed it is called order cheque. It is paid after getting identification of the holder of the cheque. This cheque is also payable at the counter of the bank.

2. Crossed Cheque

If two transverse parallel lines are drawn on the left upper corner of the cheque, it is called crossed cheque. In case of cross cheque bank credits the amount to the account of the payee of the cheque instead of giving him cash. For the encashment of this cheque bank account of payee is necessary.

During the process of circulation, a cheque may be lost or stolen .Under these circumstances the cheque may go into wrong hands. Crossing is a popular device for protecting the drawer and payee of a cheque.

TYPES OF CROSSING

There are two types of crossing

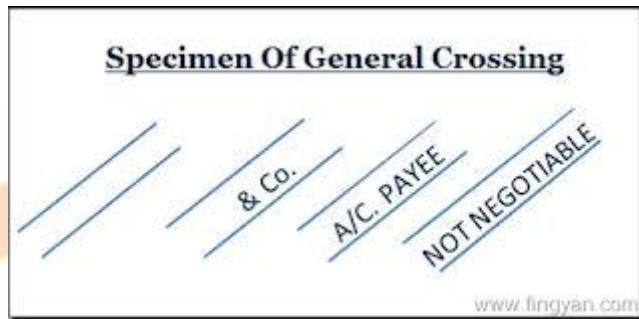
1. General Crossing
2. Special Crossing

1. General Crossing

A cheque is said to be crossed generally when it bears across its face any of the following:

- Two transverse parallel lines.
- Two transverse parallel lines with the word “& Company” or “& Co”.

- Two transverse parallel lines with the words “Not Negotiable”.
- Two transverse parallel lines with the words “Account Payee Only”.



2. Special Crossing

It is a cheque in which the name of the bank is written between the two parallel lines and hence it can be paid to that specific banker only. Inclusion of the name of a banker is essential in special crossing. Special Crossing can never be converted to General Crossing. In Special Crossing paying banker to honor the cheque only when it is presented through the bank mentioned in the crossing and no other bank.

The special crossing can be made as follows:

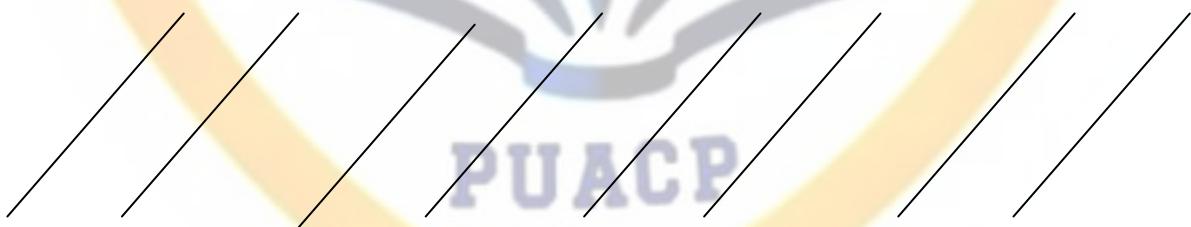
Crossing contain the name of banker

Crossing containing the words “not negotiable” in addition to the name of banker

Crossing containing the words “account payee” in addition to the name of banker

Crossing containing the words “account payee and not negotiable” in addition to the name of a banker.

SPECIMEN OF SPECIAL CROSSING



LAW OF CARRIAGE OF GOODS

QUESTION # 22

What is common carrier? Discuss its important element's, rights and duties. (2012, 13)

Common Carrier

The Carriers Act, 1865 defines a Common Carrier as “any individual, firm or company other than the government engaged in the business of transporting for hire, goods from place to place, by land or inland navigation, for all persons indiscriminately.”

Features / Elements of Common Carrier

The following are the features of common carrier.

1. Common Carrier

A common carrier may be an individual, a firm or a company, excluding Government.

2. For Hire

A common carrier is one who is engaged in the business of transporting goods for hire.

3. Regular Business

A common carrier carries goods as a regular business to earn money.

4. Inland Navigation

The carriage must be made by land or inland navigation. This act does not apply to carriage by sea.

5. All person indiscriminately

A common carrier is bound to carry the goods of any person who offers his goods for carriage and pays for the service, without any discrimination.

RIGHTS OF COMMON CARRIER

The following are the rights of common carrier.

1. Right to get remuneration

A common carrier is entitled to the agreed charges. He can demand payment of hire in advance and if he is not paid, he may refuse to carry.

2. Right to Retain

He has a right to retain the goods and refuse delivery thereof until his charges of hire are paid.

3. Right to Recover Expenses

If the carrier incurred any expense to save the goods from loss, he can recover such expenses from the owner.

4. Right to Recover Damages

He can recover damages from the consignor if the goods are of dangerous nature or not properly packed and the carrier suffers injury therefrom.

5. Right to Sell

On refusal to accept delivery of the goods by the consignee, carrier can even sell the goods if the same are of perishable nature or store them in a warehouse if the condition of the goods may so allow. In that case he can recover warehouse expenses etc. from the consignor.

6. Right to give concession

He has a right to give some concession to any person. However, he cannot charge an unreasonable payment from any customer.

7. Right to Refuse to Carry Goods

He can refuse to carry the dangerous nature of goods. He can also refuse to carry goods which he does not normally carry.

8. Right to limit his liability

A common carrier has a right to limit his liability by entering into a special contract under certain circumstances.

DUTIES OF COMMON CARRIER

The following are the duties of a common carrier.

1. Duty to Receive Goods

A common carrier is bound to receive for carriage all goods offered, provided he has convenience to carry them, and the goods are of a proper kind.

2. Duty to Carry Goods

A common carrier is bound to carry goods of all persons who employ him for the carriage of goods. He can refuse to carry the goods under certain circumstances.

3. Duty to Follow Route

It is the duty of common carrier to carry the goods by his usual route. He can, however, deviate from the ordinary route if that become necessary for the safe carriage of goods.

4. Duty to Deliver the Goods

The carrier must deliver the goods at the agreed time or where, no time is fixed, within a reasonable time. He is not responsible for causes of delay beyond his control.

5. Duty to Deliver at Proper Place

He must deliver the goods to the consignee. He is not bound to deliver the goods at the house of the consignee unless an agreement to that effect has been made.

6. Duty to Deliver to Right Person

It is the duty of a common carrier to use reasonable care to deliver the goods to right person in accordance with the usual course of business.

7. Duty to Obey Instruction

When the goods are in transit, the carrier is bound to obey the instructions of the consignor as to alteration of delivery.



QUESTION # 23

What is common carrier? Briefly illustrate the rights, duties and liabilities of Railway as a common carrier. (2009)

OR

Discuss liabilities of railway as a carrier of goods. (2011)

ANSWER

Common Carrier

The Carriers Act, 1865 defines a Common Carrier as “any individual, firm or company other than the government engaged in the business of transporting for hire, goods from place to place, by land or inland navigation, for all persons indiscriminately.”

RIGHTS OF RAILWAY AS COMMON CARRIER

Following are the rights of railway as common carrier.

1. Right to get remuneration

A common carrier is entitled to the agreed charges. He can demand payment of hire in advance and if he is not paid, he may refuse to carry.

2. Right to Retain

He has a right to retain the goods and refuse delivery thereof until his charges of hire are paid.

3. Right to Recover Expenses

If the carrier incurred any expense to save the goods from loss, he can recover such expenses from the owner.

4. Right to Recover Damages

He can recover damages from the consignor if the goods are of dangerous nature or not properly packed and the carrier suffers injury therefrom.

5. Right to Sell

On refusal to accept delivery of the goods by the consignee, carrier can even sell the goods if the same are of perishable nature or store them in a warehouse if the condition of the goods may so allow. In that case he can recover warehouse expenses etc. from the consignor.

6. Right to give concession

He has a right to give some concession to any person. However, he cannot charge an unreasonable payment from any customer.

7. Right to Refuse to Carry Goods

He can refuse to carry the dangerous nature of goods. He can also refuse to carry goods which he does not normally carry.

8. Right to limit his liability

A common carrier has a right to limit his liability by entering into a special contract under certain circumstances.

DUTIES OF RAILWAY ADMINISTRATION

The following are the duties of railway administration.

1. Duty to Provide Facilities

It is the duty of railway administration to provide all reasonable facilities for the receiving, forwarding and delivering of traffic without unreasonable delay.

2. Duty to Treat Equally

It is the duty of railway administration not to give any undue preference to, or in favour of, any particular person.

3. Duty to follow Directions

It is the duty of railway administration to follow directions of Federal Government for transport of goods in the public interest. The railway is bound to carry goods of every person who pays freight and follow the regulations regarding packing etc.

LIABILITIES OF RAILWAY AS COMMON CARRIER

Following are the liabilities of railway as common carrier.

1 liability at Railway's Risk

If the consignment is at 'railway's risk' the railway is responsible for any loss, destruction in transit arising from any cause except.

- (a) Act of God
- (b) Act of War
- (c) Restrictions imposed by Government
- (d) Loss due to consigner or consignee negligence
- (e) Natural wastage in the weight of goods
- (f) Hidden defects in the goods

2. Liability at 'Owner's Risk'

If the goods are carried by the railway at 'owner's risk' it is not liable for any loss, or damage of goods unless it is due to negligence of railway.

3. Liability for Delay

A railway is not responsible for loss, destruction or damage of animals or goods caused by delay unless it is due to negligence of railway.

4. Liability for Wrong Delivery

If due to railway negligence goods or animals are delivered to wrong person then railway is liable for this loss.

5. Liability as a Carrier of Animals

According to Railway Act, 1995 in case of animals, the liability of railway for loss shall not exceed Rs. 50,000 per elephant, Rs. 10,000 per horse, Rs. 15000 per mule or

horned cattle or camel, Rs. 1000 per dog, donkey, goat, pig, sheep or other animals or bird.

6. Liability in Carriage of Passenger's Luggage

A railway is not liable for the personal luggage of a passenger which has not been booked and which the passenger takes with him at his own risk.

7. Liability in Article of Special Value

When the valuable articles are contained in any parcel and the value of such articles exceed Rs. 10,000 the railway shall not be responsible for the loss, destruction etc. unless the person delivering has declared the value and contents in the forwarding note and has paid a higher freight.

8. Liability in case of Accident of Passenger

If a passenger dies or injured as a result of railway accident, the railway shall be liable to pay Rs. 100,000 to the heirs of the deceased and Rs. 10,000 to the injured passenger.

9. Liability in Case of Accident of a Person other than Passenger

If a person other than passenger dies or injured as a result of railway accident, the railway shall be liable to pay Rs. 100,000 to the heirs of the deceased and Rs. 10,000 to the injured person, if the accident is proved to have occurred due to the negligence of railway.

10. Liability in case of Goods Falsely Described

A railway shall not be responsible for the loss or destruction of any goods which have been falsely declared.

QUESTION # 24

Differentiate between. (2010)

- (a) Common carrier and Private carrier
- (b) Bill of Lading and charter Party

ANSWER

COMMON CARRIER

A common carrier is a person, an association or body of persons other than government, engaged in the business of transporting goods for hire from place to place by land or in land navigation for any one indiscriminately.

PRIVATE CARRIER

Private carrier is a person who carries the goods occasionally. He does not carry goods from place o place for reward as a regular business. He carries under special agreements, the goods of those persons with whom he has special terms. He can accept or reject your offer for carriage of goods. He is not governed by the common carrier act 1865. He is therefore, governed by the contract act 1872.

DIFFERENCE BETWEEN COMMON AND PRIVATE CARRIER

1. Legislation

- (a) The Carrier's Act 1865 applies to a common carrier
- (b) The Contract Act 1872 applies to a private carrier.

2. Regular Business

- (a) A common carrier carries goods as a regular business to earn money.
- (b) A private carrier carries goods occasionally and not as a regular business.

3. Discrimination

- (a) A common carrier offers his services to all persons indiscriminately.
- (b) A private carrier restricts his offer only to those persons with whom he has special contracts.

4. Rejection of Offer

- (a) A common carrier cannot reject an offer for carriage of goods except in those circumstances, which are covered by exception.
- (b) A private carrier reserves to himself the right to reject any offer for carriage of goods.

5. Damages

- (a) If a common carrier rejects an offer for carriage of goods on any ground, other than one covered by the exceptions, he can be sued for damages.
- (b) As a private carrier reserves his right to reject an offer, therefore, he cannot be sued for damages if he rejects an offer for carriage of goods.

6. Nature of Business

- (a) A common carrier can carry the goods only
- (b) Private carrier is not bound to carry the goods only.

7. Schedule Services

- (a) A common carrier provides a declared schedule services to all the persons.
- (b) A private carrier does not provide the declared schedule services because it carries the goods occasionally.

8. Effects on Business

- (a) Business of common carrier affected with the public interest as well as with the rules and regulations of federal government.
- (b) A private carrier is not so affected.

CHARTER PARTY

Charter party is a written contract by which shipper hire the whole ship or its some part to carry goods from one port to another.

BILL OF LADING

Bill of lading is a document issued by shipping that goods have been received for carriage and now they are responsible for safe arrival of these goods to the consignee.

DIFFERENCE BETWEEN CHARTER PARTY AND BILL OF LADING

1. Nature

- (a) A charter party is a contract to hire the entire ship or a part of it for the purpose of carriage of goods.
- (b) It is an acknowledgement of the receipt of goods and a contract to carry and deliver the goods according to the specific terms at the agreed port.

2. Legislation

- (a) There is no specific legislation governing charter parties
- (b) The Bill of Lading Act 1865 and the Carriage of Goods by Sea Act 1925 apply to bill of lading.

3. Document of Title

- (a) A charter party is not a document of title to any goods
- (b) A bill of lading is document of title to goods mentioned in it.

4. Negotiability

- (a) A charter party is not negotiable
- (b) A bill of lading is negotiable by endorsement and delivery.

5. Specified Destination

- (a) A charter party may be for a specified destination or it may be for a specified period of time.
- (b) A bill of lading is always for a specified destination

6. In Sets

- (a) A charter party is not drawn in sets
- (b) A bill of lading is drawn in three sets.



LAW OF LABOUR

QUESTION # 25

Discuss in detail the procedure of “Registration of Trade Union”. **OR**
What are the requirements of application for registration of a Trade Union?

TRADE UNION

An individual worker bargaining power is very poor as compared to the employer. In a collective bargaining trade union proves itself very strong. Trade union ensures the better conditions of work in the industry. It can bargain about the working hours, holidays, bonus, health, medical, education and residential facilities for the workers. It also guides the workers about their rights and duties. Trade Unions also use the weapon of strikes to achieve their goals.

Under section 2 of the Industrial Relation Ordinance 2002, a trade union is defined as:

”Trade union means any combination of workmen or employers formed primarily for the purpose of regulation of the relations between workmen and employers, or workmen and workmen, or employers and employers, or for imposing restrictive conditions on the conduct of any trade or business and includes a federation of two or more trade union.

According to Webb

It is a continuous association of wage earners for the purpose of maintaining or improving the conditions of their employment.

REQUIREMENTS OF REGISTRATION

Following are the requirements of registration of Trade Union.

1. Application

For the purpose of registration of trade union, it is required to submit an application for registration. Such application must be signed by the president and secretary of trade union.

The application should contain the following information:

- (a). The name, occupations and addresses of members making application.
- (b). The name of the trade union and address of its head office.
- (c). The names, addresses, ages and occupations of the officers of the trade union.

2. Constitution

A trade union can be registered if its constitution provides the information about the following matters:

(a). Name and address

The name and complete address of trade union are written in constitution.

(b). Objects

The object for which a trade union is established is also mentioned in the constitution.

(c). Use of funds

All purposes for which the funds of the trade union will be used after its registration should be mentioned.

(d). Executive Body Members

The number of persons who will form the executive body of the trade union is also mentioned in the constitution. The members should be according to prescribed limit of act and at least 75% must be from the persons who are actually employed in the establishment for which trade union has been constituted or formed.

(e). Benefit to Members

The constitution must include all those conditions according to which one member is entitled to benefit.

(f). Fines to members

All conditions under which a member will be fined and his membership will be cancelled should be mentioned in the constitution.

(g). List of Members

The list of members of the trade union should be maintained and provided with the application for registration.

(h). Inspection facilities

All facilities which shall be provided to the members and officers of trade union for the inspection of accounts are mentioned in the constitution.

(i). Safety of funds

The constitution of the trade union should provide the guarantee for the safe custody of the funds.

(j). Audit of funds

The books of accounts and funds should be audited annually. The constitution should provide the manner of audit.

(k). Dissolution

The manner of dissolution of trade union is also mentioned in the constitution.

(l). Election of officers

The procedure of the election of the officers of the trade union is clearly mentioned in the constitution.

(m). Change in Constitution

The procedure by which the constitution will be changed is also mentioned in the constitution.

(n). Meetings

The procedure by which the meetings of executive body and general body of the trade union will be held is also mentioned in the constitution.

(o). Procedure of no confidence

The procedure of expressing no confidence in any officer is also mentioned in the constitution.

ISSUANCE OF CERTIFICATE

If the registrar is satisfied that all the requirements for the registration have been fulfilled, he issues the certificate of registration within fifteen days from the date of receipt of application. Now the trade union is considered registered.

CANCELLATION OF REGISTRATION

The registrar or labour court may cancel the registration of the trade union on following grounds.

(a) Contravention of Ordinance

If the trade union contravenes any provision of the ordinance, the labour court may cancel its registration.

(b) Contravention of an officer

If the trade union contravenes any provision of its own constitution, the labor court may cancel its registration.

(c) Disqualification of an officer

The labour court may cancel the registration if any person who is disqualified by this ordinance to be an officer of the trade union but he is elected as an officer.

(d) Cancellation by Registrar

The registrar cancels the registration of the trade union if it has been dissolved itself.

QUESTION # 26

Define the collective bargaining agent. How it is appointed? What are its rights and duties according to industrial relations ordinance?

ANSWER

COLLECTIVE BARGAINING AGENT

Generally a bargaining power of the employees is very poor as compared to employers. So they adopt the way of collective bargaining to obtain the proper reward of their services. So for this purpose trade unions are organized. Trade unions do the bargaining with the employers on behalf of the worker. Trade unions perform the duty of an agent in the matters of collective bargaining for the workers.

Appointment

The collective bargaining agent is appointed in the different ways.

(1). Single Trade Union Case

In the establishment if there is only one registered union and the member of such union are not less than 1/3 of the total employees. The registrar can certify that trade union as to be collective bargaining Agent, on receiving the application of such trade union.

(2). More Than One Trade Union

Where there are more than one registered trade unions in any establishment, the Registrar shall on an application from any trade union, hold within 15 days a secret ballot to determine a collective bargaining agent. The number of members of each trade union is not less than 1/3 of the total employees.

The Registrar may, in the case of a large establishment having its branches in more than one town, hold the secret ballot within 30 days from the making of the application.

PROCEDURE OF ELECTION

The procedure for determination of collective bargaining agent is as under.

1. Notice to Union

On receipt of an application the Registrar shall by notice in writing call upon every registered trade union in the establishment to which the application relates.

- (a) To indicate whether it desires to be a contestant in the secret ballot to be held for determining the CBA.
- (b) To submit within the time specified in a notice, a list of its members showing their age, department, place in which he is employed, ticket number, date of becoming a member.

(c) To submit a list of its affiliated trade union together with a list of members of each trade union showing in respect of each such member the said particulars, if the trade union is federation of trade union.

2. List of Workers

Every employer shall within 15 days, submit a list of all workers employed in the establishment whose period of employment is not less than 3 months showing in respect of each workman his parentage (background), age, department, place in which he is employed, ticket number and date of employment. However, a separate list of workers whose period of employment is less than 3 months showing the said particulars of each workman will be submitted.

3. Verification

Every employer shall provide facilities to the Registrar for verification of the list submitted by him and the trade union.

4. List of Voters

The Registrar shall, prepare a list of voters who are members of any contesting trade union. He shall send a certified copy of list of voters each of contesting trade union at least 4 days prior to the date of poll.

5. Entitlement to Vote

Every workman who is a member of any of the contesting trade union and whose name appears in the list of voters shall be entitled to vote.

6. Facilities for polling

Every employer shall provide facilities in his establishment for the conduct of the poll. He shall not interfere and influence the voting. No person shall campaign for vote within an area of 100 yards of the polling station.

7. Conduct of Poll

For the purpose of conducting a poll, the Registrar shall:

- (a) Fix the date of the poll and intimate to the contesting trade unions and to every employer 4 days prior to such date.
- (b) Seal the ballot boxes in the presence of the representatives of the contesting trade union to receive the ballot papers.
- (c) Conduct the poll at the polling station at which the representatives of the union shall have the rights to be present.
- (d) Open the ballot boxes and count the votes after the conclusion of the poll and in the presence of the representatives of the trade unions.
- (e) Certify the trade union which has received the highest number of votes to be the collective bargaining agent.

RIGHTS AND DUTIES OF COLLECTIVE BARGAINING AGENT

Following are the important rights and duties of collective bargaining agent

1. Rights Of Strike

Under rules bargaining agent can declare the strike or may issue the notice of strike.

2. Workmen Representative

It is the right of the collective bargaining agent to nominate the representative of workmen on the workers participation fund, or on the Board of Trustee or provident fund.

3. Represent The Proceeding

In any proceeding regarding the workmen, a collective bargaining agent can represent all or any of the worker.

4. Auditors Appointment

To audit the accounts of the company from workers point of view the collective bargaining agent may appoint the auditor.

5. Shop Steward Nomination

To provide link between management and workers, the collective bargaining agent may nominate the shop steward.

6. Right Of Collective Bargaining

It is the right of collective bargaining agent to undertake the collective bargaining with the employer with respect to the matters connected with the employment.

QUESTION # 27

What are the powers and function of national industrial relation commission? Discuss in detail. (2009, 10, 12, 13)

ANSWER

NATIONAL INDUSTRIAL RELATION COMMISSION

Commission is a body of persons to run and implement the procedures of industrial relations ordinance 2002. The Federal Government shall constitute a National Industrial Relations Commission consisting of eight members including its chairman. The Federal Government shall appoint the chairman and its members. The Federal Government shall determine the qualification and terms and conditions of service for appointment as chairman and member of the commission.

Powers and Functions of the Commission

Following are the functions and powers of the Commission:

1. To settle an industrial dispute that is of national importance referred by the federal government.
2. To register industry wise trade union, federation of trade unions and federations at the national level.
3. To carry out ratings of the trade unions and federations registered by it in terms of their standing and character.
4. To determine the collective bargaining agents amongst industry wise Trade unions and federations at the national level.
5. To advise Government, Trade unions and federations in respect to the education of workers in essentials of the Trade unionism.
6. To educate the workers in respect of their rights and obligations and to secure the provision of facilities.
7. To promote healthy Trade unionism in establishments within a province and federations of Trade unions.
8. To facilitate the formation of federations at national level.
9. To deal with cases of unfair practices on the part of the employer, workmen.
10. To deal with cases of unfair practices on the part of collective bargaining agent and Trade unions or their agents.
11. To take measures to prevent an employer or workmen from committing an unfair labour practice.
12. To try offences in respect of matters to any of its functions.
13. The commission shall have power to punish any person who obstructs its processes or disobeys its orders and directions.
14. The commission may initiate prosecution, trial, action or proceedings with regard to any matter relating to its functions.
15. The commission for the purpose of an investigation or inquiry may authorize its chairman or any member to enter any building, factory etc. and inspect, interrogate and report.
16. The commission may on the application of the party or on its own motion, withdraw any case of unfair labour practice from the labour courts.

Finality of Order

The order passed by or any of its Benches shall not be called in question in any court, and such orders, decisions, judgment or sentence passed by the Commission shall be final.

QUESTION # 28

Describe the unfair labor practices on the part of employers and workmen. (2011)

OR

What acts of employers and workmen have been declared as unfair labor practices under the industrial relations ordinance?

ANSWER

UNFAIR LABOUR PRACTICE

These practices may be committed by both the parties employer and employees. The act also prescribes penalties on the party which commits the unfair practice.

UNFAIR PRACTICE ON THE PART OF EMPLOYER

Following practices considered unfair labour practices.

1. Imposing Any Condition

If in the contract of employment this condition is imposed that worker will not join the trade union or he will leave the membership of a trade union. It is an unfair labour practice.

2. Persuasion For Trade Union

If any employer discharges or threatens any worker that he was persuading other worker for the membership or office ship of the trade union, is a unfair labour practice.

3. Participation In Union Activities

If any employer discharges, injuries or transfers the worker on this ground that he was participating in the promotion or other activities of trade union. It is also an unfair labour practice.

4. To Prevent By Offer

If an employer induces to prevent any worker becoming member or officer of the trade union by offering any advantage or providing any advantage is also an unfair practice.

5. Compelling For Settlement

If employer compels or attempts to compel any representative of the trade union for the settlement is also unfair practice.

6. Interference In Election

In the election of trade unions if employer interferes or in any way influences the vote for particular candidate is also unfair practice.

7. Discrimination

In case of promotion or employment if employer discriminates between the trade union officer and worker is also unfair practice.

8. Close Down Of Work

If the employer closes down the whole establishment against the standing orders of industrial and commercial employment ordinance 1968, it is also unfair labour practice on the part of the employer.

UNFAIR LABOUR PRACTICES ON THE PART OF THE WORKERS

Following are the important unfair labour practices on the part of workers or their representatives :

1. Persuasion During Working Hours

If any worker or member of trade union persuades during the working hours, a workman joins or not to join the trade union is an unfair labour practice.

2. Intimation

If any worker intimates other person to join or not to join, the trade union, or not to continue or to cease the membership of the trade union is also unfair labour practice.

3. To Compel The Employer

If any worker or on the behalf of the workers any person accepts the demand is also unfair labour practice.

4. Illegal Strike

If any one supports the illegal strike or instigates others for illegal strike, it is an unfair labour practice on the part of the workers.

5. Go-Slow

If a worker reduces the speed of his work and causes damage to the employer it is also unfair practice.

6. Prevention By Temptation

Sometimes any worker is offered any advantage to prevent from becoming the member of the trade union. Such type of offer or grant by a worker to other person is also unfair labour practice