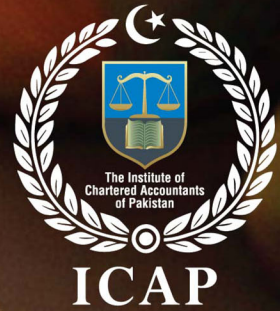


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BUSINESS LAW DYNAMICS

Study Text Vol. I



SHAPING FUTURE BUSINESS
AND FINANCE LEADERS

BUSINESS LAW DYNAMICS



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VOLUME - I

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INTRODUCTION TO THE LEGAL SYSTEM

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Introduction to the Law and its Types
- 2 The Process of the Legislation as per the Constitution
- 3 Objective Based Q&A

STICKY NOTES

AT A GLANCE

The purpose of studying law in Chartered Accountancy is to be aware of legal system and provisions as an accountant and to seek legal aid/assistance, where required, in order to evaluate the financial implications of a particular legal problem.

The sources of law in Pakistan are constitution, legislations, judicial precedents, customs and agreement. Two major branches of law are civil law and criminal law.

The Constitution of Pakistan contains preamble, twelve parts, two hundred and eighty articles and five schedules. Pakistan has a Federal Parliamentary System of government, with the President as the Head of State and an elected Prime Minister as Head of Government.

The legislation may be made by Parliament (Act of Parliament) or under the authority of Parliament as delegated legislation.

Act of Parliament is made by the National Assembly, the Senate and the President. In case of Money (Finance) Bills, the approval of the Senate is not required.

The Ordinance is promulgated by the President when deemed necessary by the President if the National Assembly and the Senate are not in session.

In delegated legislation, power is delegated by the Parliament to a minister or public body to make subordinate legislation for specified purposes.

1 INTRODUCTION TO THE LAW AND ITS TYPES

1.1 Definition of Law

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

Law is not stagnant. As circumstances and conditions in a society change, laws are also changed as per the requirements of the society.

The word law may have different meaning for different situations. It is often preceded by an adjective to give it a clearer meaning e.g. Civil Law, Criminal Law, Business Law etc.

1.2 Definition of Mercantile Law

Business Law is the part of civil law which deals with the rights and obligations of persons dealing with each other. It includes laws relating to contracts, partnership, sale of goods, negotiable instruments etc.

1.3 Why Chartered Accountants study law

The intention of studying law in Chartered Accountancy is not to become an expert lawyer dealing with complex legal issues.

The objective of studying law in Chartered Accountancy is to be aware when legal problems arise, be able to judge when outside assistance is required, evaluate the financial implications of law and also communicate with the lawyers.

1.4 Where to apply law in practical life

A general knowledge of some important legal principles and how they apply to certain problems will help in avoiding conflict with the people around us. Civil law involves the problems that impact on people's everyday life like debts, tenancy issues, sale of goods etc. One should know the law to which he is subject because generally ignorance of law is neither excuse nor defence.

1.5 Sources of law in Pakistan

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

The legal system is derived from English common law (including doctrine of equity) and is based on the Constitution of Pakistan 1973 as well as Islamic law (Sharia).. Thus we can say that in Pakistan the main sources of law are following:

1.5.1 Legislation

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

1.5.2 Precedent (case law)

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

1.5.3 Customs

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

1.5.4 Agreement

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

1.6 Civil law and criminal law

There are several branches of the law. Each deals with a different area of law and legal relationships. Two major branches of the law are civil law and criminal law.

DIFFERENCE		Civil Law	Criminal Law
1.	Definition and explanation	Civil law sets out the rights and duties of persons as between themselves. The person whose rights have been affected can claim a remedy from the wrongdoer. A violation of the civil law is a tort (a wrongdoing), but is not a crime. A civil case might therefore be identified as: Tanveer v Khatri where a case is brought to the civil court by Tanveer (the 'plaintiff') who is making a claim against Khatri (the defendant).	Criminal law is concerned with conduct that is considered so undesirable that the State punishes persons who transgress. Legal action may be brought by the State against individuals who are accused of being in breach of the criminal law. It is the responsibility of the State (and not private individuals) to bring these legal actions, in criminal trials. A criminal case might therefore be identified as: State v Khatri where a case is brought to the criminal court by the State against Khatri (the "accused").
2.	Purpose	The purpose is to provide a means whereby an injured party can obtain compensation.	The purpose is to regulate the society by the threat of punishment.
3.	Harm caused	The claimant sues the defendant for harm caused or losses suffered.	The State (Government) prosecutes the accused (the defendant) whether or not the harm was caused.
4.	Burden of proof	If the claimant can prove the wrong on the balance of probabilities, his litigation is successful and the defendant is held liable.	If the state can prove the offence beyond all reasonable doubt, the prosecution is successful and the guilty is convicted.
5.	Remedy	The civil court may order the defendant to pay damages or it might order some other remedy such as specific performance or injunction.	The criminal court may sentence the guilty to a fine or it might impose some other convictions such as imprisonment or death sentence.

► Example 01: Civil laws

- property disputes (Transfer of property Act)
- work-related disputes (employment law)
- accusations of negligence (negligent behaviour) (Tort)
- claims by consumers against manufacturers or service providers
- commercial disputes between business entities (commercial law)
- copyright disputes
- claims of defamation of character (Tort)
- disputes about an alleged breach of contract (Contract Act, 1872)

► *Example 02: Criminal laws*

- Pakistan Penal Code
- Anti-Money Laundering Act
- Prevention of Electronics Crimes Act

Application on business

Many of the legal aspects of commercial and business law are aspects of the civil law, but the criminal law may also apply. For example, fraud and money laundering are criminal activities that may occur in business.

It is also important to remember that the same action may be in breach of the criminal law and also a tort in civil law. In such a situation, the action may give rise to:

- criminal prosecution by the State; and
- civil action by a private person, claiming a remedy such as damages.

► *Example 03:*

Suppose that a train company operates a train service, and there is a major accident involving loss of life and injury to passengers. The State may claim that the train company or its senior managers are guilty of a breach of the criminal law and bring a case in the criminal court.

Individuals who have been injured in the crash and individuals who have lost a relative killed in the crash may bring civil actions against the train company, demanding compensation.

Business managers must therefore be aware of both the criminal law and civil law implications of their activities.

1.7 Basic structure of Constitution of Islamic Republic of Pakistan

Introduction

The Constitution of the Islamic Republic of Pakistan was approved by the Parliament on April 10, 1973 and ratified on August 14, 1973. The Constitution is the supreme law and sets the governing principles of the country and contains the articles covering fundamental rights, state's structure, political system, mandate of different levels of government, mandate and separate powers of cabinets, judiciary etc. The Parliament cannot make any laws which is against the Constitution.

The Constitution contains preamble, twelve parts, two hundred eighty articles and five schedules briefly introduced as follows:

Preamble

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

Part I – Introductory [Articles 1–6]

It identifies the country as Islamic Republic of Pakistan comprises of territories being four Provinces, the Islamabad Capital Territory and such states and territories as are or may be included in Pakistan, whether by accession or otherwise. It also includes provisions such as elimination of all sorts of exploitation, rights of individuals to be dealt in accordance with the law, loyalty to the state and abiding by the Constitution and the defining high treason along with its punishment.

Part II – Fundamental Rights and Principles of Policy [Articles 7–40]

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

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

Part III – The Federation of Pakistan [Articles 41–100]

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

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

Part IV – Provinces [Articles 101–140A]

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

Part V – Relations between Federation and Provinces [Articles 141–159]

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

Part VI – Finance, Property, Contracts and Suits [Articles 160–174]

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

Part VII – The Judiciary [Articles 175–212]

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

Part VIII – Elections [Articles 213–226]

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

Part IX – Islamic Provisions [Articles 227–231]

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

Part X – Emergency Provisions [Articles 232–237]

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

Part XI – Amendment of Constitution [Articles 238–239]

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

Part XII – Miscellaneous [Articles 240–280]

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

Schedules

First Schedule	Laws exempted from the operation of Article 8(1) and (2),
Second Schedule	Election of President
Third Schedule	Oaths of Office
Fourth Schedule	Legislative Lists
Fifth Schedule	Remuneration and Terms and Conditions of Service of Judges

► **Practice Question 01:**

Distinguish between civil law and criminal law giving two examples of each.

► **Solution:**

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

Examples of civil laws are company law, rent law, commercial law, family laws and employment law.

Criminal law is a body of law:

- defining conduct prohibited by law against the community at large;
- regulating how suspects are investigated, charged and tried and;
- establishing punishments for convicted offenders / accused.

Criminal law deals with crimes such as murder, violence, terrorism, theft, robbery etc.

► **Practice Question 02:**

Explain any four differences between civil and criminal laws. Also identify any two criminal laws which are presently enforced in Pakistan.

► **Solution:**

Differences between civil and criminal laws are as follows:

S.no.	Civil Law	Criminal Law
(i)	Civil law sets out the rights and duties of persons as between themselves, any violation of which is a tort/wrongdoing.	Criminal law is concerned with the conduct that is considered so undesirable that the State punishes persons who transgress as violation of the criminal law is a crime.
(ii)	Purpose of civil law is to provide a means whereby an injured party can obtain compensation.	Purpose of criminal law is to regulate the society by the threat of punishment.

S.no.	Civil Law	Criminal Law
(iii)	The person whose rights (private individuals) have been affected can claim a remedy from the wrongdoer.	Legal action may be brought by the State against individuals who are accused of being in breach of the criminal law. It is the responsibility of the State to bring these legal actions, in criminal trials.
(iv)	The claimant sues the defendant for harm caused.	The State (Government) prosecutes the accused (the defendant) whether or not the harm was caused.

The criminal laws in force in Pakistan include Pakistan Penal Code, Anti-Money Laundering Act etc.

► **Practice Question 03:**

List down the main topics/areas covered under the following parts of the Constitution of the Islamic Republic of Pakistan 1973:

- Part III - The Federation of Pakistan
- Part VI - Finance, Property, Contracts and Suits

► **Solution:**

- Part III - The Federation of Pakistan include provisions related to:
 - eligibility, term of office, powers, removal of President of Pakistan;
 - the President of Pakistan's job responsibilities and limitations such as exercising functions in accordance with the advice of the Cabinet or Prime Minister;
 - composition, duration and meetings of the Parliament and Senate;
 - qualifications and disqualifications for membership of the Parliament;
 - introduction and passing of bills.
- Part VI - Finance, Property, Contracts and Suits include provisions of:
 - distribution of revenues between the federation and the provinces;
 - financial provisions such as exemption and imposition of certain taxes;
 - borrowing by Federal and Provincial government;
 - appointment, powers and functions of Auditor General of Pakistan;
 - property, contracts, liabilities and suits.

2 THE PROCESS OF LEGISLATION AS PER THE CONSTITUTION

2.1 Governing Structure [Article 50]

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

The President [Article 41, 44, 46 and 48]

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

Prime Minister [Article 90 and 91]

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

Senate [Article 59, 60 and 49]

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

National Assembly [Article 51, 52 and 53]

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

2.2 Process of Legislation

2.2.1 Act of Parliament

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

Scenario 1: The Bill passed without amendment [Article 70]

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

Scenario 2: The Bill passed with amendment [Article 70]

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

Scenario 3: The Bill is rejected or not passed by the other House [Article 70]

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

Scenario 4: The Bill with amendment is not passed [Article 70]

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

Scenario 5: The Money Bill [Article 73]

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

The Power of the President [Article 75]

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

Scenario 6: The President returns the Bill for reconsideration [Article 75]

- The Bill is returned by the President for reconsideration by the Parliament in joint sitting.
- It is again passed with or without amendment by the Parliament by the votes of the majority of the members of both Houses present and voting.
- The Bill is presented to the President for assent.

Lapse of the Bill [Article 76]

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

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

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

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

2.2.2 Power of President to Promulgate Ordinances [Article 89]

The President if deems necessary to take immediate action, he has power to make an Ordinance when the Senate or the National Assembly are not in session.

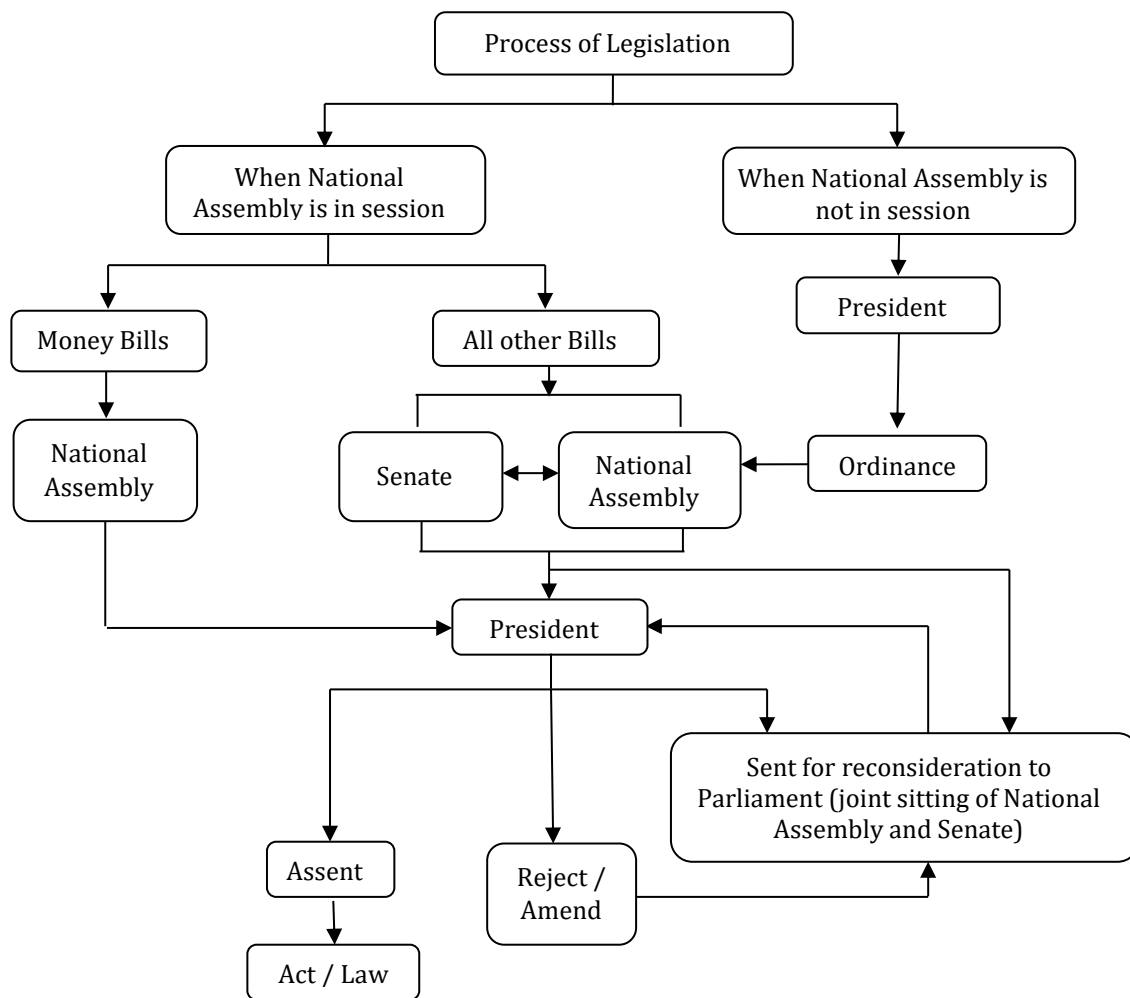
Such Ordinance promulgated thus, shall have the same force and effect as an Act of the Parliament.

The Ordinance shall stand repealed after one hundred and twenty days if it is not presented or passed

- by the National Assembly in case of Money Bill and
- by both the Houses if it is other than Money Bill.

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

The chart below shows the process of legislation



2.3 Delegated Legislation

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

Control over delegated legislation

Parliament has some control over delegated legislation by restriction and defining the power to make rules.

Rules made under delegated power to move legislation may be challenged in the courts on the grounds that it is ultra vires. In other words, it exceeds the prescribed limits or has been made without due compliance. If the objection is valid the court declares it void.

Advantages of delegated legislation

Time: Parliament does not have time to examine matters in detail

Expert opinion: Much of the content of delegated legislation is technical and is better worked out in consultation with professional, commercial or industrial groups outside Parliament.

Flexible: Delegated legislation is more flexible than an Act of Parliament. It is far simpler to amend a piece of delegated legislation than to amend an Act of Parliament.

Disadvantages of delegated legislation

The main criticism of delegated legislation is that it takes law making away from the democratically elected members. Power to make law is given to unelected civil servants and experts working under the supervision of a government minister.

Because delegated legislation can be produced in large amounts the volume of such law making becomes **unmanageable** and it is impossible to keep up-to-date.

► Practice Question 04:

Briefly describe the process of legislation in case of a Money Bill when:

- National assembly is in session
- National assembly is not in session

► Solution:

Legislation in case of a Money Bill when National assembly is in session:

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

Legislation in case of a Money Bill when National assembly is not in session:

When National assembly is not in session and President deems necessary to take immediate action, he has the power to issue an Ordinance.

Such Ordinance promulgated thus, shall have the same force and effect as an Act of the parliament.

However, the Ordinance shall stand repealed after 120 days if it is not presented or passed by the National assembly.

► Practice Question 05:

How is a law promulgated when national assembly is not in session? Is such law in any way different from an Act of parliament? What is its tenure?

► Solution:

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

► Practice Question 06:

Specify Pakistan's system of government and identify Senate's role in the legislation process.

► Solution:

System of government:

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

Role of Senate:

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

► Practice Question 07:

Briefly describe how delegated legislation takes place and also describe how control is exercised over delegated legislation.

► **Solution:**

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

Control over delegated legislation is exercised in following ways:

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

► **Practice Question 08:**

Briefly describe how an Ordinance is promulgated in Pakistan and what is the effect of such Ordinance.

► **Solution:**

In terms of the constitution, the President has power to promulgate Ordinances only if the Senate or National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action.

The Ordinance as promulgated by the President has the same force and effect as an Act of the Parliament.

However, within 120 days of its issuance, such Ordinance is required to be presented or passed by the National Assembly in case of money bill and by both the houses in case of all other bills, otherwise the Ordinance stands repealed.

► **Practice Question 09:**

Briefly describe the process of legislation in case of a bill which has been passed by the National Assembly but rejected by the Senate.

► **Solution:**

Where a bill is rejected by the Senate, then such bill will not be effective unless it is, at the request of National Assembly, (i.e. the house in which it originated) is considered in joint sitting of both the houses (i.e. National Assembly and Senate both).

If in the joint sitting, such bill is passed by the votes of the majority of the members present and voting in the joint sitting, it shall be presented to the President for assent.

The President shall within 10 days assent to the bill or return it to the Parliament for reconsideration of any provision or any amendment therein.

► **Practice Question 10:**

Briefly discuss delegated legislation and state any two advantages and two disadvantages of delegated legislation. Also describe how control is exercised over delegated legislation.

► **Solution:**

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

Advantages of delegated legislation

- As Parliament does not have time to examine matters in detail, delegated legislation helps to make the process faster.
- Much of the content of delegated legislation is technical and is better worked out in consultation with professional, commercial or industrial groups outside Parliament.

Disadvantages of delegated legislation

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

Control over delegated legislation

- Parliament has some control over delegated legislation by restricting or defining the power to make rules.
- Rules made under delegated power to make legislation may be challenged in the Courts on the grounds that it is ultra vires i.e. it exceeds the prescribed limits or has been made without due compliance. If the objection is valid, the Court declares it void.

► Practice Question 11:

Describe how an Ordinance is promulgated in Pakistan and explain the effect of such Ordinance.

► Solution:

Promulgation of an Ordinance in Pakistan and its effect

The President, if deems necessary to take immediate action, has power to make an Ordinance when the Senate or the National Assembly are not in session.

The Ordinance shall stand repealed after 120 days if it is not presented or passed:

- by the National Assembly, in case of Money Bill; and
- by both the Houses, if it is other than Money Bill.

However, National Assembly may extend any Ordinance for another period of 120 days by passing a resolution.

If National Assembly, before expiration of above 120 days, passes a resolution disapproving an Ordinance, it shall expire on the day of passing of such resolution.

► Practice Question 12:

Identify the basis of legal system and explain the main sources of law in Pakistan.

► Solution:

Basis of legal system in Pakistan:

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

Main sources of law in Pakistan:

The following are the main sources of law in Pakistan:

i. Legislation:

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

ii. Precedent (case law):

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

iii. Custom:

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

iv. Agreement:

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

► **Practice Question 13:**

Briefly describe the legislative process for a bill passed by the National Assembly but rejected by the Senate.

► **Solution:**

Where a bill is rejected by the Senate, then such bill will not be effective unless it is, at the request of National Assembly, considered in the joint sitting of both the Houses (i.e., National Assembly and Senate).

If in the joint sitting, such bill is passed by the votes of the majority of the members present and voting in the joint sitting, it shall be presented to the President for assent.

The President shall within 10 days assent to the bill or return it to the Parliament for reconsideration of any provision or any amendment therein.

► **Practice Question 14:**

Briefly discuss delegated legislation, and state its two advantages and two disadvantages. Also, describe how control is exercised over delegated legislation.

► **Solution:**

Delegated legislation

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

Advantages of delegated legislation

- As Parliament does not have time to examine matters in detail, delegated legislation helps to make the process faster.
- Much of the content of delegated legislation is technical and is better worked out in consultation with professional, commercial, or industrial groups outside Parliament.
- Delegated legislation is more flexible than an Act of Parliament. It is easy to amend a piece of delegated legislation than to amend an Act of Parliament.

Disadvantages of delegated legislation

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

Control over delegated legislation

- Parliament has some control over delegated legislation by restriction and defining the power to make rules.
- Rules made under delegated power to make legislation may be challenged in the Courts on the grounds that it is ultra vires i.e., it exceeds the prescribed limits or has been made without due compliance. If the objection is valid, the Court declares it void.

3 OBJECTIVE BASED Q&A

- 1 The President is the head of the state and he is elected for a five-year term by
 - a) Senate and National Assembly
 - b) National Assembly and the members of Provincial Assemblies
 - c) Senate and the members of Provincial Assemblies
 - d) Senate, National Assembly and the members of Provincial Assemblies
- 2 In a criminal case, what is the normal burden of proof place upon the prosecution?
 - a) Beyond any doubt
 - b) Beyond all reasonable doubt
 - c) Beyond any reasonable doubt
 - d) Balance of probabilities
- 3 In a civil case of Talal vs Kashif where a case is brought to the civil court by Mr. Talal who is filing a suit against Mr. Kashif. State the legal position
 - a) Mr. Talal is plaintiff and Mr. Kashif is the defendant
 - b) Mr. Talal is defendant and Mr. Kashif is the plaintiff
 - c) Mr. Talal is accused and Mr. Kashif is the complainant
 - d) Mr. Talal is complainant and Mr. Kashif is the accused
- 4 The criminal law aims to:
 - a) Compensate injured parties
 - b) Recover property which has been taken from the true owner
 - c) Enforce legal obligations
 - d) Penalize wrongdoers
- 5 Those rules and principles that govern and regulate social conduct and observance of which can be enforced in courts of law, is known as:
 - a) Law
 - b) Rules
 - c) Policies
 - d) Customs
- 6 Property disputes, work related disputes, copyright disputes and claims by consumer against manufacturer are examples of
 - a) Administrative law
 - b) Labour law
 - c) Constitutional law
 - d) Civil law

- 7 Person found guilty of a crime is the
- Plaintiff
 - Respondent
 - Convict
 - Defendant
- 8 Pakistan has a Federal Parliamentary system of government. The federal legislature is a bicameral Majlis e Shoora (Parliament), composed of
- President, Governor and Prime Minister
 - President, National Assembly and Provincial Assembly
 - President, National Assembly and Senate
 - President, Prime Minister and National Assembly
- 9 The Prime Minister is assisted by a Federal Cabinet. A council of ministers whose members are appointed by the President on the advice of the
- Chief Justice
 - Governor
 - Attorney General
 - Prime Minister
- 10 If the Ordinance is not presented or passed by the National Assembly in case of money bill and by both houses if it is other than money bill, it shall stand repealed after
- One hundred and twenty days
 - Ninety days
 - Sixty days
 - One hundred days
- 11 All statutes passed by the National Assembly are also approved by the Senate before proceeding to the President for his assent with the exception of
- Treasury bill
 - Money bill
 - Social security bill
 - Industrial relation bill
- 12 The Senate is the permanent legislative body with equal representation from each of the four Provinces with representative elected by the members of their respective
- Chief Minister
 - Governor
 - High Court
 - Provincial Assembly

- 13 A money bill shall originate in the National Assembly after it has been passed by the National Assembly it shall (without being transmitted to the Senate) be presented to the
- President of Pakistan
 - Chief Justice of Pakistan
 - Chief of the Army Staff
 - Governor of the Province
- 14 The President may return a Bill for reconsideration by:
- The National Assembly only
 - The Senate only
 - The National Assembly and the Senate, independently
 - The National Assembly and the Senate, in joint sitting
- 15 Which of the following is not an advantage of having delegated legislations?
- Flexibility with which law is made
 - Involvement of experts in law making
 - Time saving of the parliament
 - Bulk and extensive volume
- 16 Which of the following is NOT considered to be a source of law in Pakistan?
- Legislation
 - Sharia
 - Precedent
 - International treaties and conventions
- 17 The Constitution of the Islamic Republic of Pakistan 1973 has five schedules. Which of the following is NOT part of the schedules?
- Oaths of Office
 - Legislative Lists
 - Amendment of Constitution
 - Election of President
- 18 'Tort' can be described as:
- restoration of benefit
 - violation of civil law
 - violation of criminal law
 - judgment of a superior court

- 19 If the President of Pakistan resigns and his office becomes vacant, which of the following will be next in line to act as the President until a new President is formally elected?
- a) Prime Minister of Pakistan
 - b) Chairman of the Senate
 - c) Speaker of the National Assembly
 - d) Chief Justice of Pakistan
- 20 Which part of the Constitution of the Islamic Republic of Pakistan 1973 contains special provisions relating to the National Economic Council?
- a) Part II - Fundamental Rights and Principles of Policy
 - b) Part III - The Federation of Pakistan
 - c) Part V - Relations between Federation and Provinces
 - d) Part VII - The Judiciary
- 21 Precedents are defined as:
- a) interpretation of law by the Supreme Court of Pakistan
 - b) interpretation of law by any high court which are binding on other high courts
 - c) decisions of superior courts which are not an intrinsic part of the legal system
 - d) judgements of a superior court which are binding on subordinate courts
- 22 Which part of the Constitution of the Islamic Republic of Pakistan 1973 includes articles related to distribution of revenues between the Federation and the Provinces?
- a) Part II - Fundamental Rights and Principles of Policy
 - b) Part III - The Federation of Pakistan
 - c) Part V - Relations between Federation and Provinces
 - d) Part VI - Finance, Property, Contracts and Suits
- 23 Which of the following statements related to the President of Pakistan is NOT true?
- a) A person elected as the President represents the unity of the republic
 - b) A person is eligible for re-election as the President for three consecutive terms
 - c) The President must be a Muslim
 - d) The President is elected for a term of five years
- 24 Which of the following statements is true regarding a bill in respect of any matter, other than money bill?
- a) The bill must be originated in the National Assembly
 - b) The bill must be originated in the Senate
 - c) The bill must be originated simultaneously in both the National Assembly and the Senate
 - d) The bill may originate in either the National Assembly or the Senate

- 25 Which of the following is NOT an advantage of delegated legislation?
- a) Delegated legislation is more flexible than an Act of Parliament
 - b) Delegated legislation is better worked out in consultation with professional, commercial or industrial groups outside Parliament
 - c) It is simpler to amend delegated legislation than to amend an Act of Parliament
 - d) The power to make law is given to unelected civil servants and experts working under the supervision of a government minister

ANSWERS

1	d)	President is elected for a five year term by Senate, National Assembly and members of Provincial Assembly.
2	b)	In criminal case, the guilt of an accused person needs to be proved beyond all reasonable doubt.
3	a)	In a civil case the one who is filing a suit is known as plaintiff and against whom the case is filed is known as defendant.
4	d)	The criminal law is not to compensate injured parties but to punish and penalize the wrongdoers.
5	a)	Law is a set of rules and system of rules designed and enforced by the state to control the conduct of people.
6	d)	The civil law primarily deals with disputes between individuals and organisations.
7	c)	When an accused found guilty of a crime he is known as a convicted person.
8	c)	President is the head of state, National Assembly is the lower house and Senate is the upper house.
9	d)	Prime Minister is the head of the Government.
10	a)	One hundred and twenty days.
11	b)	A Money Bill shall originate in National Assembly then directly be presented to the President for assent.
12	d)	The Provincial Assemblies are responsible for electing the senators from their respective provinces.
13	a)	The President has got the powers to sign any piece of legislation.
14	d)	The National Assembly and the Senate, in Joint Sitting
15	d)	Bulk and extensive volume makes it unmanageable and therefore, is one of the disadvantages of delegated legislation.
16	d)	International treaties and conventions
17	c)	Amendment of Constitution
18	b)	violation of civil law
19	b)	Chairman of the Senate
20	c)	Part V - Relations between Federation and Provinces
21	d)	judgements of a superior court which are binding on subordinate courts
22	d)	Part VI - Finance, Property, Contracts and Suits
23	b)	A person is eligible for re-election as the President for three consecutive terms
24	d)	The bill may originate in either the National Assembly or the Senate
25	d)	The power to make law is given to unelected civil servants and experts working under the supervision of a government minister

STICKY NOTES

Civil law and criminal laws are distinguished on following points:

- | | |
|-----------------------------------|--------------------|
| 1. Application (definition) | 4. Burden of proof |
| 2. Purpose | 5. Remedy |
| 3. Whether or not harm was caused | |

The process of legislation includes various scenarios:

1. The Bill is passed without amendment
2. The Bill is passed with amendment
3. The Bill is rejected or not passed by the other House
4. The Bill with amendment is not passed
5. The Money Bill
6. The President returns the Bill for reconsideration
7. The Ordinance promulgated by the President.

In delegated legislation, the Parliament delegates its power to make law to Executive/experts. This has following advantages and disadvantages:

Advantages

1. Time saving
2. Experts' input
3. Flexible procedures

Disadvantages

1. Undemocratic
2. Bulk volume

OFFER, ACCEPTANCE AND REVOCATION

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Introduction to Contract
- 2 Communication, Acceptance and Revocation of proposals
- 3 Objective Based Q&A

STICKY NOTES

AT A GLANCE

A contract is an agreement between two or more parties which the law will enforce. An agreement comes into existence by the process of offer by one party and its unqualified acceptance by the other party.

An agreement may be made by express words spoken or written, or it may be implied when it is inferred from the conduct of the parties or from the circumstances.

An agreement may be a social agreement or a legal agreement. A social agreement does not have legal consequences i.e. in case of breach the parties cannot enforce a right in court of law. A legal agreement has legal consequences and parties can enforce it in court of law for remedies in case of its breach.

An offer is an undertaking by the offeror or to be contractually bound in the event of proper acceptance of the offer by the offeree. An offer may be terminated before its acceptance.

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

The communication of an acceptance is complete:

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

The communication of a revocation is complete:

- a) as against the person making it, when it is put in a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it.
- b) as against the person to whom it is made, when it comes to his knowledge.

1 INTRODUCTION TO CONTRACT

1.1 Short title, extent and commencement [Section 1]

The law governing contracts between persons is the Contract Act, 1872 (the Act). It was enacted and made applicable since the first day of September 1872 by the erstwhile British colonial rule. Despite its longevity and minimal amendments, the Act continues to be the principal legal framework for contracts in Pakistan, with its provisions interpreted and applied by courts to ensure the enforceability of agreements and protection of parties' rights

1.2 Definitions and basic concept

1.2.1 Definition: Proposal [Section 2(a)]

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

Proposal is also called an "offer".

► *Example 01:*

Adeel offers to buy bike from Babar for Rs. 50,000. Here Adeel has made a proposal to Babar in order to obtain assent of Babar to sell his bike to Adeel.

1.2.2 Definition: Promise [Section 2(b)]

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



► *Example 02:*

Adeel offers to buy bike from Babar for Rs. 50,000 to which Babar responds positively. Here Adeel has made an offer and Babar has accepted it.

1.2.3 Definition: Promisor and Promisee [Section 2(c)]

The person making the proposal is called the "promisor" and the person accepting the proposal is called the "promisee".

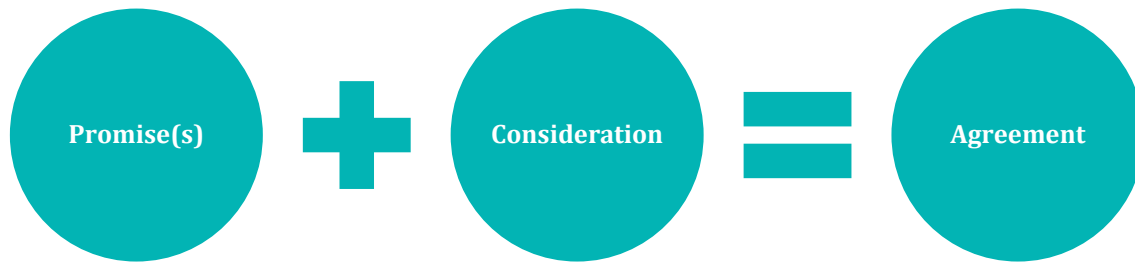
► *Example 03:*

Adeel offers to buy bike from Babar for Rs. 50,000 to which Babar responds positively. Here Adeel has made an offer and Babar has accepted it. Adeel is promisor and Babar is promisee.

Promisor is also called "offeror" and promisee is also called "offeree".

1.2.4 Definition: Agreement [Section 2(e)]

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



► **Example 04:**

Adeel offers to buy computer from Babar for Rs. 50,000 to which Babar responds positively. Here Adeel's promise to pay Rs. 50,000 is the consideration for Babar's promise and Babar's promise to sell the computer is the consideration for Adeel's promise.

1.2.5 Definition: Contract [Section 2(h)]

An agreement enforceable by law is a “contract”.



1.2.6 Enforceability

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

► **Example 05:**

Adeel offers to sell his furniture to Babar for Rs. 50,000. Babar accepts this offer. In this agreement if there is default by either party, an action for breach of contract can be enforced through a court of law provided all the essential elements of a valid contract are present in this agreement.

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

► **Example 06:**

Adeel invited Babar on a dinner at his home. Babar accepted the invitation. It is a social agreement. If Adeel fails to serve dinner to Babar then Babar cannot go to court for enforcing the agreement and similarly if Babar did not turn up then Adeel cannot go to court for enforcing the agreement.

1.3 Promises, express and implied [Section 9]

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

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

► *Example 07:*

Adeel offers (on telephone) to sell his car to Babar for certain sum and Babar in reply informs Adeel that he accepts the offer, there is an express contract.

► *Example 08:*

Abid a shoe shiner starts polishing the shoes of Sajid in his presence, and Sajid allows him to do so, there is an implied contract.

2 COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

2.1 Proposal/Offer

2.1.1 Definition: proposal [Section 2(a)]

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

Proposal is also called an “offer”.

► *Example 09:*

Adeel offers to buy bike from Babar for Rs. 50,000. Here Adeel has made a proposal to Babar in order to obtain assent of Babar to sell his bike to Adeel.

Additional points

The following points are important:

- A person cannot make offer to himself.
- A valid offer is one which is certain and definite.
- An offer may be subject to condition. When there are special terms and conditions in an offer, these must be specifically communicated to other party.
- An offer is different from an invitation of an offer. The intention in invitation of an offer is to circulate information of his readiness to do the transaction. Such intentions are not offers and do not tantamount to promise on acceptance.

► *Example 10:*

Salman purchased a horse from Irfan and promised to buy another, if the first one proves lucky. Salman refused to buy the second horse. Irfan could not enforce the agreement, it being loose and vague.

► *Example 11:*

Adeel asks Mohsin to send the reply of his offer by email but Mohsin sends reply by letter. Adeel may reject such acceptance.

► *Example 12:*

Iqbal displays goods for an auction sale. It is not an offer. Offer will come from buyer in form of bid.

► *Example 13:*

Goods were displayed in a departmental store for sale and self-service system was there. One customer selected an item. Here the display of goods is an invitation to offer and selection by the customer is an offer to buy.

2.1.2 Communication [Section 3]

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

► *Example 14:*

A shoe shiner starts shining one's shoes, without being asked to do so, in such circumstances that any reasonable man could guess that he expects to be paid for this, this is an offer communicated impliedly.

► *Example 15:*

Mohsin says to Noor that he is willing to sell his motor cycle to him for Rs. 20,000. This is an offer communicated expressly.

2.1.3 Communication when Complete [Section 4]

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

► *Example 16:*

Azam proposes, by letter, to sell a house to Babar at a certain price. The communication of the proposal is complete when Babar receives the letter.

2.1.4 Revocation of proposal [Section 5]

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

► *Example 17:*

Adeel proposes, by a letter sent by a post, to sell his house to Jazib. Jazib intends to accept the offer but has not posted the letter of acceptance yet. Adeel may revoke his offer.

► *Example 18:*

Adeel proposes, by a letter sent by a post, to sell his house to Jazib. Jazib has posted the letter of acceptance. Adeel cannot revoke his offer.

2.1.5 Manner of revocation of proposal [Section 6]

A proposal may be revoked in following ways:

- a) by the communication of notice of revocation by the proposer to the other party;
- b) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;
- c) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
- d) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

► *Example 19:*

Azam, at an auction gives the highest bid to buy Babar's goods. He withdraws the bid before the fall of hammer. The offer is revoked and cannot be accepted.

► *Example 20:*

Ameer offers to sell his cycle to Ghalib and keeps the offer open for ten days. Ghalib does not accept the offer in the ten days. The offer is lapsed.

► *Example 21:*

Maria applied for shares of a company in June but allotment was made in November. Maria refused to accept the shares. It was held that Maria could refuse to take shares because the offer had lapsed after the expiry of a reasonable time.

► *Example 22:*

Jazib offers to sell his scooter to Babar, for Rs. 40,000 if Babar joins the ABC Club within a week. Babar did not join the Club within a week, the offer stands terminated.

► *Example 23:*

Zain offered Dawood his car for Rs. 3 million on 15th January. Zain died on 18th January. Dawood accepted Zain's offer on 20th January when he became aware of his death. The offer cannot be accepted as it has been terminated.

► *Example 24:*

Zain offered Dawood his car for Rs. 3 million on 15th January. Zain died on 18th January. Dawood accepted Zain's offer on 20th January in ignorance of the fact of Zain's death. There is contract between Zain and Dawood and Zain's legal representative are liable to perform it.

Additional points

The following points are also relevant:

- An offer is also terminated by non-acceptance or rejection by offeree.
- An offer is also terminated by counter offer. A counter offer is an offer by offeree in response to the original offer.
- An offer once accepted becomes a contract and cannot be revoked.

► *Example 25:*

Ameer offers to sell his cycle to Ghalib and keeps the offer open for ten days. Ghalib refuses after three days. The offer terminates although the period of ten days has not yet expired.

► *Example 26:*

Wajid offered to sell a farm to Hamid for Rs. 1,000. Hamid offered Rs. 950. Wajid refused the offer. Subsequently Hamid offered Rs. 1,000. Held, there was no contract as Hamid by offering Rs. 950 had rejected the original offer.

2.2 Acceptance

2.2.1 Definition: acceptance [Section 2(b)]

When the person to whom the proposal is made signifies his assent to it, the proposal is said to be accepted. Therefore, the act of signifying the assent to a proposal is "acceptance".

► *Example 27:*

Adeel offers to buy bike from Babar for Rs. 50,000 to which Babar responds positively. Here Adeel has made an offer and Babar has accepted it.

2.2.2 Communication [Section 3]

The communication of acceptance of proposals is deemed to be made by any act or omission of the party accepting by which he intends to communicate such acceptance or which has the effect of communicating it.

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

► *Example 28:*

Azam wrote to Babar to sell his book adding that if he did not reply within 5 days, the offer would be considered accepted. Babar did not reply and a week has passed. There is no contract as silence cannot be considered as acceptance.

2.2.3 Communication when Complete [Section 4]

The communication of an acceptance is complete:

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

► *Example 29:*

Adeel offers, by letter, to sell a van to Kashif for Rs. 100,000. The letter reaches Kashif on 8th March. Kashif accepts by a letter sent by post on 9th March. The letter reaches Adeel on 11th March. The communication of the acceptance is complete:

- As against Adeel when the letter is posted i.e. on 9th March
- As against Kashif when the letter is received by Adeel i.e. on 11th March.

2.2.4 Conditions for valid acceptance [Section 7]

A valid acceptance:

- a) must be absolute and unqualified (unconditional); and
- b) must be expressed in the manner prescribed in the proposal; or
- c) must be expressed in some usual and reasonable manner if the proposal did not prescribe any manner.

► *Example 30:*

Laila offered to Maria her scooter for cash of Rs. 40,000. Maria accepted the offer and tendered Rs. 39,000 cash down, promising to pay Rs. 1,000 by the evening. There is no contract, as the acceptance was not absolute and unqualified.

► *Example 31:*

Azam makes an offer to Babar and asks him to accept the offer by telegram. Babar sends his acceptance by post. It is not a valid acceptance as acceptance was not made in prescribed manner.

► *Example 32:*

Azam was expecting reply by email but did not prescribe any method of communication of acceptance and Babar sends acceptance by letter being customary practice in their trade. The acceptance is valid.

If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner:

- a) the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise;
- b) but if he fails to do so, he is deemed to accept the acceptance.

► *Example 33:*

Azam makes an offer to Babar and asks him to accept the offer by post only. Babar texted him his acceptance in SMS. Azam responded to that he will only consider his acceptance when he will receive the letter of acceptance. Babar did not send any letter. There is no contract between them.

► *Example 34:*

Azam makes an offer to Babar and asks him to accept the offer by post only. Babar sent him his acceptance by Fax under acknowledgement. Azam did not insist on a letter to be sent. Babar did not send any letter. There is a contract between Azam and Babar.

Additional points

The following points are also relevant:

- The offeree must be aware of the proposal, otherwise the acceptance is not valid.
- An offer cannot be accepted after it has been rejected earlier.
- An offer cannot be accepted if it has been terminated earlier.

► *Example 35:*

Azam offered a reward for anyone who finds his lost dog. Babar, in ignorance of the offer, finds and returns the dog. Babar cannot claim the reward.

► *Example 36:*

Azam offers to sell 10 bags of rice to Babar for Rs. 2,000. Before its acceptance, a law banned the sale of rice. The offer terminates and cannot be accepted.

2.2.5 Acceptance by performing conditions or receiving consideration [Section 8]

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

► *Example 37:*

Kamran offered Jameel 50 Laptops for Rs. 78,000 each and said that if you agree, you will have to deposit 10% by tomorrow in my bank account. Jameel deposited 10% amount in Kamran's bank account the next day but did not communicate otherwise. This is valid acceptance by Jameel.

2.2.6 Revocation of acceptance [Section 5]

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

► *Example 38:*

Adeel offers, by letter, to sell a van to Kashif for Rs. 100,000. The letter reaches Kashif on 8th March. Kashif accepts by a letter sent by post on 9th March. Next day, Kashif thought that the deal is not good and called Adeel to revoke his offer. Adeel had already received the letter of acceptance. Kashif cannot revoke his acceptance.

► *Example 39:*

Adeel offers, by letter, to sell a van to Kashif for Rs. 100,000. The letter reaches Kashif on 8th March. Kashif accepts by a letter sent by post on 9th March. Next day, Kashif thought that the deal is not good and called Adeel to revoke his offer. Adeel had not received the letter of acceptance yet. Kashif can revoke his acceptance.

2.3 Revocation**2.3.1 Meaning and time limit [Section 5]**

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

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

► *Example 40:*

Adeel offers by letter to sell his house to Kashif. Kashif accepts the offer by a letter posted on 4th May. The letter reaches Adeel on 6th May.

- Adeel may revoke his offer before Kashif posts his letter of acceptance, i.e. 4th May but not afterwards.
- Kashif may revoke his acceptance before the letter of acceptance reaches Adeel, i.e. 6th May but not afterwards.

2.3.2 Communication [Section 3]

The communication of revocation of proposals and acceptances is deemed to be made by any act or omission of the party revoking by which he intends to communicate such revocation or which has the effect of communicating it.

► **Example 41:**

Aslam offered to sell his car to Shahid for Rs. 2 million. Shahid said that he needs some time to decide and will let Aslam know if he is interested. Later, same day Aslam called (on phone) Shahid and told him that he has changed his mind and his offer is no more available to be accepted (i.e. communicated the revocation of his offer).

2.3.3 Communication when Complete [Section 4]

The communication of a revocation is complete:

- as against the person making it, when it is put in a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it.
- as against the person to whom it is made, when it comes to his knowledge.

► **Example 42:**

Talal offered by a letter on October 1st, to sell goods to Bilal in Multan. Bilal received the offer on 11th October and gave his acceptance. On 18th October Talal wrote a letter revoking his offer. The letter was received by Bilal on 20th October. Held, the revocation was of no effect until it reached Bilal. A contract was made on 11th October when Bilal accepted the offer.

► **Practice Question 01:**

Murad offered his car to Sanum for Rs. 400,000. Sanum accepted the offer and enclosed a pay order of Rs. 150,000 with a promise to pay the balance in monthly instalments of Rs. 62,500 each.

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

► **Solution:**

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

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

► **Practice Question 02:**

Batool offered to sell her flat to Saqib for Rs. 4,200,000. Saqib accepted the offer and sent a cheque of Rs. 1,500,000 with a stipulation to pay the balance in 24 equal monthly instalments of Rs. 112,500 each. Explain whether it is a valid contract.

► **Solution:**

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

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

► **Practice Question 03:**

Bader, who is the owner of Mashoor Associates, sent one of his employees Aftab in search of his pet horse which had been missing for 5 days. Bader advertised a reward of Rs. 20,000 in a newspaper for anyone who finds his missing horse. Aftab, unaware of the newspaper advertisement, traced the horse. Subsequently, on knowing about the reward Aftab claimed it from Bader.

Under the provisions of the Contract Act, 1872 identify the type of offer which was made by Bader. Also state whether Aftab would be able to claim the amount of reward under the circumstances.

► *Solution:*

In this case the offer was made to the public. A contract is made with the person who having the knowledge of the offer comes forward and acts according to the conditions of the offer.

However, under the given circumstances, Aftab cannot claim the amount of reward from Bader as there was lack of communication of the offer and Aftab did not know about the reward when he found the missing horse. Aftab could have accepted the offer only when he knew about it because an offer accepted without its knowledge does not confer any legal rights.

► *Practice Question 04:*

On 3 September 2025 Saleem offered, by a letter, to sell his laptop to Ghazi for Rs. 50,000. Ghazi received the letter on 5 September 2025. On 6 September 2025 Ghazi posted the letter of acceptance to Saleem. The letter reached Saleem on 8 September 2025. Saleem wrote a letter of revocation of his offer and posted it to Ghazi on 5 September 2025. The letter reached Ghazi on 7 September 2025.

Under the provisions of the Contract Act, 1872 briefly describe when the communication of the offer and acceptance and the revocation of the offer was completed as against Saleem and Ghazi under the above circumstances and whether a binding contract was created between Saleem and Ghazi.

► *Solution:*

Communication of offer was completed on 5 September 2025 i.e. when it came to the knowledge of Ghazi. Communication of acceptance was completed as against Saleem when the letter was posted i.e. on 6 September 2025 and as against Ghazi it was completed when the letter of acceptance reached Saleem i.e. on 8 September 2025. The communication of revocation of offer was completed as against Saleem on 5 September 2025 i.e. when the letter of revocation was posted, and as against Ghazi on 7 September 2025, when the letter of revocation was received by him.

Since Ghazi had posted his letter of acceptance on 6 September 2025 and revocation of offer was communicated to him on 7 September 2025, his acceptance was valid. Saleem cannot revoke his offer after 6 September 2025, when the communication of acceptance was completed as against him. Therefore, a binding contract had been created between Saleem and Ghazi.

► *Practice Question 05:*

Ahmed being interested in purchasing Adil's DHA property sent him this letter on 01 March 2026, "I have heard that you are selling your DHA property. I am very much interested in purchasing it. Will you please consider selling the same to me? What is the highest price you have been offered so far?" Adil replied, "The highest quote for the property till now is Rs. 35 million." Ahmed replied, "I agree to buy your DHA property for Rs. 36 million." Subsequently, Adil received an offer from Hamid quoting Rs. 38 million for the said property. What will be Adil's liability towards Ahmed if he wishes to make the sale to Hamid?

► *Solution:*

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

► *Practice Question 06:*

Under the provisions of the Contract Act, 1872 list the essentials of a valid acceptance.

► *Solution:*

Following are the essentials of a valid acceptance:

- must be absolute and unqualified (unconditional); and
- must be expressed in the manner prescribed in the proposal; or
- must be expressed in some usual and reasonable manner if the proposal did not prescribe any manner.

Additionally:

- a) the acceptor must be aware of the proposal at the time of acceptance of the proposal;
- b) the acceptance must be given before the offer lapses or is withdrawn.

► **Practice Question 07:**

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

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

► **Solution:**

In order for Mehmood to claim the reward from Sulman, it is necessary for him to prove that he was aware of Sulman's proposal before finding the missing boy.

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

Under the given circumstances, since Mehmood acted in ignorance of the offer, he is not entitled to claim the reward from Sulman.

► **Practice Question 08:**

Under the provisions of the Contract Act, 1872 identify how and on what grounds a proposal stands revoked. Also describe the time frame after which a proposal cannot be revoked.

► **Solution:**

A proposal is revoked by:

- a) the communication of notice of revocation by the proposer to the other party;
- b) the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;
- c) the failure of the acceptor to fulfil a condition precedent to acceptance; or
- d) the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance;
- e) non-acceptance or rejection by offeree;
- f) a counter offer made by the offeree in response to the original offer.

Time frame after which a proposal cannot be revoked:

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

► **Practice Question 09:**

Lime Cement (LC) operates as a medium-scale cement manufacturer and distributor.

LC received an offer to export 50,000 bags of cement to Europe. According to the offer document, LC is required to send two sample cement bags to the customer.

LC's production team is carrying out a detailed feasibility check while its head of sales is aggressively pushing for the offer acceptance to be sent immediately.

Under the Contract Act, 1872, identify the possible situations in which the offer would be revoked.

► *Solution:*

The offer can be revoked before its acceptance is completed with respect to the customer under the following circumstances:

- i. The customer communicates a notice of revocation to LC or LC itself rejects the customer's offer.
- ii. The time period specified for accepting the offer has elapsed, or, if no time period is specified, a reasonable amount of time has passed without LC communicating acceptance.
- iii. LC fails to fulfil a condition precedent to acceptance, such as sending two sample bags as required by the customer.
- iv. The customer dies or becomes insane (if the customer is a natural person), provided that LC becomes aware of the death or insanity before acceptance.
- v. LC sends a counter offer to the customer.

► *Practice Question 10:*

Rectangle Pharmaceuticals (RP) offered to sell 1,000 cartons of a life-saving drug at a discounted price to Cube Medicos (CM) and requested a confirmed purchase order by 7 March 2026. RP received CM's response letter on 5 March 2026 confirming an order for 500 cartons at the offered price, mentioning that the purchase order would be dispatched within a week. The letter was accompanied with a cheque for advance payment.

Under the provisions of the Contract Act, 1872, evaluate CM's response to RP's offer.

► *Solution:*

CM's response contain the following deficiencies:

- CM's acceptance is not absolute: CM has actually extended a counter offer proposing to purchase 500 cartons at the discounted offer price to which RP's acceptance would be required in order for a contract to be formed.
- Acceptance is not given in prescribed mode: CM has not sent confirmed purchase order rather has mentioned that it would be sent after prescribed time. RP may, within a reasonable time, insist that the offer should be accepted in prescribed manner but if RP fails to make such demand, then it would be implied that CM's mode of acceptance has been accepted by it.

Moreover, CM has sent an advance cheque, therefore, RP's act/response would be critical in determining the status of the deal. Acceptance of the advance cheque as consideration would imply RP's acceptance of CM's counter offer.

► *Practice Question 11:*

Malik deals in real estate and has opened his offices in all major cities of Pakistan. Below are some of the recent events related to Malik's business for which he requires your advice:

Malik has received an offer from a senior citizen to purchase her farm for Rs. 15 million, with a request for acceptance by 30 September 2025. Considering the farm's remote location, Malik believes that it can be purchased for Rs. 12 million. However, Malik is still evaluating the proposed deal at usual pace considering there is ample time to make the decision. Meanwhile, his manager believes that there is a significant chance of losing the deal if acceptance is delayed. Under the Contract Act, 1872, identify the possible situations in which the offer to sell the farm would be revoked.

► *Solution:*

The offer can be revoked before its acceptance is completed with respect to the farm owner under the following circumstances:

- Although the acceptance may be given by 30 September 2025, however, the farm's owner may still communicate notice of revocation to Malik any time before the acceptance is completed as against the farm owner.

- The farm's owner dies or becomes insane provided that Malik becomes aware of her death or insanity before accepting the deal.
- Malik sends a counter offer to the farm's owner i.e., by either offering to purchase the farm for Rs. 12 million or by attaching terms of his own with the acceptance that require the farm's owner agreement.
- By the lapse of time prescribed in the offer of the farm owner, i.e., the acceptance is not completed as against the farm owner by 30 September 2025.

3 OBJECTIVE BASED Q&A

- 1 Lawful offer is
 - a) Promise
 - b) Legal relation
 - c) Proposal
 - d) Presentation
- 2 Which of the following result/results in an offer?
 - a) A declaration of intention
 - b) An invitation to offer
 - c) An advertisement offering reward to anyone who finds the lost dog of the advertiser
 - d) An offer made in a joke
- 3 A letter of acceptance, for a lawful and legal matter, sufficiently stamped and duly addressed is put into course of transmission. There is
 - a) A valid contract as against the acceptor
 - b) A contract voidable at the option of offeror
 - c) No contract at all
 - d) A valid contract as against the proposer
- 4 An offer is not different from
 - a) Advertisement
 - b) Price list
 - c) Proposal for doing or not doing something
 - d) Display of the goods
- 5 A makes an offer to B on 10th by a letter which reaches B on 12th. B posts letter of acceptance on 14th which reaches A on 16th. The communication of acceptance is complete as against A on
 - a) 12th
 - b) 14th
 - c) 16th
 - d) 10th
- 6 Offer is simply a
 - a) Mere expression of willingness to do or not to do some thing
 - b) Intention to create legal relationship
 - c) Intention to get assent of other party for offered act or abstinence
 - d) All of the above

- 7 An offer cannot be made
- By the words of mouth
 - By the conduct of party
 - By the circumstances
 - To the offeror himself
- 8 An offer is said to be revoked
- By non-fulfilment of condition precedent to acceptance
 - Acceptance is not in prescribed mode, but offeror does not object to it.
 - Acceptance is not given within reasonable period of time, but offeror does not object
 - Misunderstanding has arisen between offeror and offeree
- 9 Acceptance must be given in:
- Usual manner
 - Prescribed manner
 - Any manner suitable to the offeree
 - More effective manner
- 10 Which of the following statements is true
- A proposal may be revoked at any time before the communication of its acceptance is complete as against the offeree.
 - Acceptance may be revoked at any time, before the communication of acceptance is complete as against the acceptor
 - An offer initially rejected may subsequently be accepted
 - Letter of offer may be sent after letter of acceptance
- 11 A person cannot make an offer
- To a person of sound mind
 - To his friend
 - To himself
 - To the citizen of a foreign country
- 12 An offer gets legal consequences
- As soon as it is made
 - As soon as it is communicated
 - As soon as it is revoked
 - As soon as it is accepted

- 13 Implied acceptance is inferred
- From the silence of offeree
 - From the conduct of the offeree
 - From the written statement of the offeree
 - From the oral statement of the offeree
- 14 Abdullah offered by letter to sell Karim his motorbike for Rs. 5,000. Karim wrote back saying he accepted the offer and would pay in two instalments at the end of the two following months. Is there a contract?
- No, because Karim is trying to amend the contractual terms. Abdullah can be assumed to revoke the offer
 - Yes, there has been an offer and acceptance and a binding contract applies
 - No, Karim's response constitutes a counteroffer and is effectively a rejection of Abdullah's offer
 - Yes, Karim's response is merely a clarification of contractual terms.
- 15 The Law of Contract is
- Law of agreements
 - Law of agreements which creates legal obligation
 - Law of all agreements
 - Law of personal and social agreement
- 16 Paramount Furniture wrote a letter to Baber Naeem stating, "We have received exquisite bedside tables which we will sell to you at a very favourable price."
Which of the following statements with respect to the above is correct?
- The letter is an offer to sell
 - The letter lacks the essential element of an offer
 - The letter contains a valid offer which will terminate within a reasonable time
 - An offer made by a letter must be accepted by a letter
- 17 Amir had offered both Behram and Ahmed to sell his piano at a discounted price of Rs. 25,000. Behram responded immediately and refused to accept the offer. Amir who was in urgent need of money, lowered the offered price to Rs. 15,000 which was finally accepted by Behram. Before delivering the piano to Behram, Amir received acceptance from Ahmed on his initially offered price. Therefore, Amir has refused to deliver the piano to Behram.
Can Behram claim damages upon Amir's refusal?
- No, because Amir refused the delivery to Behram due to inadequate consideration
 - No, because Amir had agreed to deliver piano to Behram under undue influence
 - Yes, because the contract was completed on acceptance of revised offer price
 - Yes, because Behram responded first to the Amir's offer

- 18 During the clearance sale at a famous clothing store, Sana selected a dress from the rack with a price tag of Rs. 20,000 and brought it to the cash counter. Sana asked the cashier to pack the dress and handed over her credit card for payment. Her act was to be considered as:
- invitation of an offer
 - acceptance of an offer
 - making an offer
 - making an agreement
- 19 Zakir sent a letter to Rehman offering him to sell his sports bike for Rs. 50,000. It was mentioned in the letter that if Rehman would not send a reply within one week, the offer shall be presumed to be accepted. Rehman was thrilled to purchase the bike at this price and therefore did not reply within the stipulated time. Which of the following statements is correct?
- Rehman's conduct constitutes implied acceptance of the offer
 - Contract is valid because Rehman satisfied all the conditions of the offer
 - Contract is not valid because the offer must be unconditional
 - Rehman's silence cannot be considered as acceptance
- 20 On 28 February 2026, Fahad offered to sell his vintage car to Rafay for Rs. 2 million. Subsequently, Fahad died on 2 March 2026. Rafay was not aware of Fahad's death and sent acceptance to Fahad on 7 March 2026. Which of the following statements is correct?
- The offer was revoked on 2 March 2026
 - Fahad's legal representatives are bound to sell the car to Rafay
 - Contract is voidable at the option of Fahad's legal representatives
 - Fahad's legal representatives are not bound to sell the car to Rafay
- 21 Aziza is a home-based baker famous for making themed cakes for special occasions. On 5 September 2026, a discount offer was made on Aziza's social media account with the caption 'Order today to avail special price of Rs. 2,000 per pound for our special chocolate fudge cake. Delivery within 24 hours'. Sadia messaged Aziza on the same day for placing an order for a 2.5 pound cake. Aziza replied that she will charge Rs. 3,000 per pound for the cake as she has received many orders and will now charge premium price. Can Sadia compel Aziza to sell the cake at Rs. 2,000 per pound?
- No, because Aziza's offer was not specifically given to Sadia
 - No, because Sadia's offer has not been accepted by Aziza
 - Yes, because Aziza's discount offer regarding sale of cake is still valid
 - Yes, because change in price was communicated after receiving of Sadia's message
- 22 On 1 June 2026, Ali made an announcement promising to pay a reward of Rs. 90,000 to any person who would find his lost dog. Sarim came to know about the announcement on 15 June 2026 and decided to find the dog. On 30 June 2026, Sarim found the dog and handed it over to Ali on the same day. Ali paid the reward of Rs. 90,000 to Sarim on 10 July 2026.

In the above scenario, the contract between Ali and Sarim was formed on:

- a) 1 June 2026
- b) 15 June 2026
- c) 30 June 2026
- d) 10 July 2026

- 23 Kamal and Jamal are brothers who live in identical bungalows constructed side-by-side. Kamal engaged Aqib to paint the servant quarters of his bungalow and showed him the location. On 5 March 2026, Aqib arrived at the location while Kamal was away on a business trip. Aqib mistakenly entered Jamal's bungalow and started painting the servant quarters. Jamal saw Aqib but did not stop him.

Can Aqib recover his service charges from Jamal?

- a) Yes, because it was an honest mistake on the part of Aqib
- b) Yes, because Jamal accepted Aqib's offer impliedly
- c) No, because Jamal was not a party to the contract between Aqib and Kamal
- d) No, because the price was not agreed between Aqib and Jamal

- 24 Fahad emailed Alia an offer to sell his brick factory for Rs. 1,500,000. He requested a signed letter of acceptance to be sent to him through post by 5 July 2026.

On 4 July 2026, Alia emailed Fahad, in which she communicated her acceptance to purchase the factory and mentioned that she cannot send a signed letter as she is travelling to a remote area in South Africa for a month. Fahad read Alia's email on the same day but did not reply. On 4 August 2026, Fahad received the signed letter through post.

Under the Contract Act, 1872, can Fahad refuse to sell his factory to Alia?

- a) Yes, because Alia sent a counter offer on 4 July 2026
- b) Yes, because Alia sent the signed letter of acceptance after 5 July 2026
- c) No, because Alia sent the signed letter of acceptance within reasonable time
- d) No, because Fahad did not insist for acceptance through letter after he received Alia's email on 4 July 2026

- 25 Under the Contract Act, 1872, a proposal may be revoked at any time before the communication of its acceptance is complete, as against the:

- a) Acceptor
- b) promisee
- c) Proposer
- d) Offeree

- 26 Sialkot Footballs (SF) made an offer to Football Academy (FA) to sell 1,000 footballs at Rs. 600 each. Zain, FA's manager and owner of a separate private sports academy, sent an acceptance letter from his private sports academy, enclosing a cheque drawn by him in favour of SF.

Under the Contract Act, 1872, which of the following statements is correct?

- a) A counter offer has been made to SF as the acceptance was not given by FA
- b) FA has given conditional acceptance to SF's offer as the cheque was sent by Zain
- c) A contract has been formed between SF and FA as the offer was given to FA
- d) The acceptance letter is not effective as the offer was given by SF to FA

ANSWERS

1	c)	An offer is a proposal by one person to another for entering into a legally binding agreement with him
2	c)	An advertisement offering reward to anyone who finds the lost dog of the advertiser is an offer.
3	d)	A valid contract as against the proposer, as the communication is complete as against the proposer.
4	c)	An offer is a proposal for doing or not doing something.
5	b)	14th because the communication of acceptance as against offeror is complete when the offeree posts letter of acceptance.
6	c)	Intention to get assent of other party for offered act or abstinence.
7	d)	For a valid offer there is needs to be two persons. A person cannot make an offer to himself
8	a)	By non-fulfilment of condition precedent to acceptance because it is necessary on the part of offeree to fulfil the condition precedent to acceptance
9	b)	Prescribed manner because an offer come to an end if it is not accepted according to the prescribed manner (if any)
10	b)	Acceptance may be revoked at any time, before the communication of acceptance is complete as against the acceptor
11	c)	To himself because for a valid offer there needs to be two persons at least.
12	d)	Offer has no legal consequence or value unless it is accepted
13	b)	The implied acceptance may be complete when it is communicated to the offeror through conduct of the offeree.
14	c)	No, Karim's response constitutes a counteroffer and is effectively a rejection of Abdullah's offer. This is also known as bargaining
15	b)	The contract law deals with agreements having legal consequences.
16	b)	The letter lacks the essential element of an offer
17	c)	Yes, because the contract was completed on acceptance of revised offer price
18	c)	making an offer
19	d)	Rehman's silence cannot be considered as acceptance
20	b)	Fahad's legal representatives are bound to sell the car to Rafay
21	b)	No, because Sadia's offer has not been accepted by Aziza
22	c)	30 June 2026
23	b)	Yes, because Jamal accepted Aqib's offer impliedly
24	d)	No, because Fahad did not insist for acceptance through letter after he received Alia's email on 4 July 2026
25	c)	Proposer
26	d)	The acceptance letter is not effective as the offer was given by SF to FA

STICKY NOTES

Proposal + Acceptance = Promise

Promise + Consideration = Agreement

Agreement + Enforceability = Contract

A proposal or acceptance may be express (words spoken or written) or implied (inferred from conduct of parties or circumstances)

Definitions to remember

1. When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a "proposal".
2. 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".
3. The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee"
4. Every promise and every set of promises, forming the consideration for each other, is an "agreement".
5. An agreement enforceable by law is a "contract".

Revocation of proposal

A proposal may be revoked in following ways:

- a) by the communication of notice of revocation by the proposer to the other party;
- b) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;
- c) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
- d) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Conditions of valid acceptance

A valid acceptance:

- a) must be absolute and unqualified (unconditional); and
- b) must be expressed in the manner prescribed in the proposal; or
- c) must be expressed in some usual and reasonable manner if the proposal did not prescribe any manner.

Communication

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

The communication of an acceptance is complete:

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

The communication of a revocation is complete:

- a) as against the person making it, when it is put in a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it.
- b) as against the person to whom it is made, when it comes to his knowledge.

VALIDITY OF CONTRACTS AND AGREEMENTS

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Validity of Contracts and Agreements
- 2 Consideration and Object
- 3 Objective Based Q&A

STICKY NOTES

AT A GLANCE

Void agreement is an agreement not enforceable by law at all, while a void contract is a contract which was enforceable at the time of formation but ceases to be enforceable for some reason subsequently.

Voidable contract is a contract voidable at the option of aggrieved party and not at the option of defaulting party.

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Consideration means something in return. It is the price for which the promise of the other is bought. It must result in a benefit to the promisor and/or detriment to the promisee or both. An agreement without consideration is void with few exceptions.

The consideration or object of an agreement is unlawful, if:

- it is forbidden by law; or
- is of such nature that, if permitted, it would defeat the provisions of any law; or
- is fraudulent; or
- involves or implies injury to the person or property of another; or
- the Court regards it as immoral, or opposed to public policy.

Every agreement of which the object or consideration is unlawful is void.

1 VALIDITY OF CONTRACTS AND AGREEMENTS

1.1 Definitions

1.1.1 Valid contract [Section 2(h)]

An agreement enforceable by law is a contract.

► *Example 01:*

Amjad agrees with Habib to sell his Suzuki Mehran 2008 model to Habib for Rs. 450,000. If Amjad refuses to deliver car, Habib may sue Amjad. If Habib refuses to pay for car, Amjad may sue Habib. It is a valid contract.

1.1.2 Voidable contract [Section 2(i)]

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.

The contract is voidable at the option of aggrieved party and not at the option of defaulting party.

► *Example 02:*

Azam threatens to kill Babar if he does not sell his BMW for Rs 1 million to Azam. Babar contracted to sell his BMW to Azam and receives the payments. Here, Babar's consent has been obtained by coercion. Hence, this contract is voidable at the option of Babar but Azam has no right to insist that contract shall be performed.

1.1.3 Void contract [Section 2(j)]

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Notice that void contract was valid contract at the time of formation but subsequently it ceases to be enforceable.

► *Example 03:*

A music hall was rented out for a series of concerts. The hall caught fire before the date of first concert. The contract was valid at the time of its formation but became void when hall caught fire and it became impossible to perform it.

1.1.4 Void agreement [Section 2(g)]

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

Notice that a void agreement is void ab initio i.e. void from the beginning.

► *Example 04:*

Maria (a minor) borrowed Rs. 100,000 from Laila and executed mortgage of her property in favour of the lender. This is a void agreement because Maria is not competent to contract and Laila cannot legally enforce this agreement against Maria.

1.2 What agreements are contracts?

1.2.1 Essentials of a valid contract [Section 10]

An agreement is a contract if it meets all the following conditions:

- The agreement is made by the free consent of the parties.
- The parties making the agreement are competent to contract.
- The agreement is made for a lawful consideration.
- The agreement is made with a lawful object.
- The agreement is not expressly declared to be void by law.

► *Example 05:*

Adeel beats Babar and compels him to sell his bike for Rs. 20,000. Here, Babar's consent is not free as it has been obtained by coercion. It is a voidable contract and not a valid contract unless Babar decides to insist on its performance.

► *Example 06:*

Maria (a minor) borrowed Rs. 100,000 from Laila and executed mortgage of her property in favour of the lender. This is not a valid contract because Maria is not competent to contract.

► *Example 07:*

Adeel offers to buy computer from Babar for Rs. 50,000 to which Babar responds positively. Here Adeel's promise to pay Rs. 50,000 is the consideration for Babar's promise and Babar's promise to sell the computer is the consideration for Adeel's promise.

► *Example 08:*

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

► *Example 09:*

Arslan promises to pay Rs 10,000 to Habib if it rained today, and Habib promises to pay Rs 1,000 to Arslan if it did not. The agreement is void because the happening and non-happening is dependent on future uncertain event (wager) and wagering agreements are expressly declared to be void under the provision of Contract Act, 1872.

An oral contract is also a valid contract except in certain cases when any special law requires certain contract to be made in writing or in the presence of witness or for registration of documents relating to that contract.

► *Example 10:*

An oral agreement for arbitration about present disputes is unenforceable because the law requires that such arbitration agreement must be in writing.

► *Example 11:*

Adeel verbally promises to sell his book to Babar for Rs. 1,000/-. It is a valid contract because the law does not require it to be in writing.

1.2.2 Competent to contract [Section 11]

Every person is competent to contract:

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

1.2.3 Age of Majority

According to the Majority Act, 1875, the age of majority of a person domiciled in Pakistan is 18 years, except in cases where a guardian of a minor is appointed by the court, in which case the age of majority extends to 21 years.

An agreement with a minor is void ab initio.

► *Example 12:*

Dawood, a minor mortgaged his house in favour of Mohsin to secure a loan of Rs. 20,000. Dawood received the amount. Mohsin filed a suit for recovery of money and sale of mortgaged property in case of default. Held that the agreement with minor was void so Mohsin cannot recover the money or sell the minor's mortgaged property.

Additional points

The following additional points are relevant:

- The rule of estoppel does not apply to minor. It means if minor represents fraudulently or otherwise that he is of the age of majority and induces another to enter into a contract with him, even then, he will not be liable.
- It is necessary that the minor must be competent to contract at the time of entering in the contract. Therefore, an agreement with a minor cannot be ratified subsequently after he attains majority. Ratification is approving or accepting something which has happened already.
- A minor cannot be declared insolvent because he is incompetent to contract.
- If a minor enters into an agreement jointly with a major person, then such agreement can be enforced against the major person who has jointly promised to perform.

► *Example 13:*

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

► *Example 14:*

Maria, a minor borrowed some money and wrote a pro-note for it. On attaining majority, Maria wrote a second pro-note to settle the first note. It was held that the second pro-note is also void.

► *Example 15:*

Maryam, a minor buys medicines from Zain. Maryam has no property. Maryam cannot be held liable for payment. She cannot be declared insolvent.

► *Example 16:*

Hussain (aged 16) and Burhan (aged 26) jointly agree to pay certain amount and executed a bond. The court held that only Burhan is liable.

1.2.4 Sound mind for the purpose of contracting [Section 12]

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 of forming a rational judgment as to its effect upon his interests.

► *Example 17:*

The examples of persons having an unsound mind include:

- specific persons/idiots (permanent insanity with no interval of sanity)
- lunatics (mental strain or disease with possibly some intervals of sanity)
- drunken persons (the excessive use of certain substances may cause temporary impotence of mind).

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

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

► *Example 18:*

Salim agreed to sell property worth Rs.25 million for Rs.12 million. His mother proved that he was an idiot by birth. The agreement was held to be void.

► *Example 19:*

A patient in a lunatic asylum who is at intervals of sound mind may contract during those intervals.

► *Example 20:*

A sane man who is so delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interest cannot enter into contract while such delirium or drunkenness lasts.

1.2.5 Disqualified from contracting by law

There are some disqualifications imposed on certain persons under certain legislation in respect of their capacity to contract which include:

- A citizen of foreign country while Pakistan is at war with that country.
- Foreign sovereigns and ambassadors have immunity unless they choose to submit themselves to the jurisdictions of our courts. They have a right to enter into a contract but can claim the privilege of not being sued.
- A convict while under imprisonment is incapable of contracting but this disability comes to an end after the expiry of the sentence or when he is on parole.
- A person declared as insolvent cannot enter into a contract as his property is dealt with by official assignee or official receiver.

► *Example 21:*

Imran agrees to buy goods from Narendra, a citizen of a country at war with Pakistan. The agreement is void.

► *Example 22:*

Emily, a diplomat got a house on rent from Momin on behalf of the country to which she belongs. Momin sued for recovery of arrears of rent. It was held that no action can be brought against Emily.

► *Example 23:*

Wajid, during imprisonment enters into an agreement with Sajid to sell his land. The agreement is void.

► *Example 24:*

Sajid, an insolvent, promises to sell his car to Babar. The agreement is void. The property will be dealt by official assignee.

► *Practice Question 01:*

Shoaib, aged 15, is the son of a billionaire businessman, Ijaz Munsif. Last month Shoaib drove his father's 2018 Model BMW to a vintage car exhibition arranged by Volkswagen Club of Pakistan. At the exhibition he saw a vintage Mercedes-Benz and entered into a contract with the seller for the purchase of the car. The seller, knowing Ijaz Munsif's status, delivered the car to Shoaib at his house. The seller requested for payment for the car but Shoaib refused to pay. The seller is now requesting for full payment by Ijaz Munsif. Discuss whether the seller would succeed in recovering the payment from Shoaib or Ijaz Munsif.

► *Solution:*

Shoaib, being a minor, lacks the capacity to enter into a legally binding contract with the seller. Therefore, Shoaib is not bound by the contract and the contract is void ab-initio. A minor can only be bound by a contract, if he has been supplied with necessities suited to his condition in life. His liability in such a case would be limited to the extent of his property, if any. In this case, the vintage car cannot be regarded as a necessary good. Therefore, the seller cannot enforce payment for the vintage car against Shoaib.

The seller can only claim for the return of his car through an order of restitution. Similarly, Ijaz Munsif cannot be held liable for the price of the car which his son Shoaib bought. He would have been held liable if his son had either entered into a contract jointly with him or on behalf of Ijaz Munsif as his agent.

► *Practice Question 02:*

On 4 March 2026, Aliya agreed to sell her ancestral jewels to Salma at a discounted price. However, on the next day when Salma came to take the delivery, Aliya's brother being custodian of the jewels refused to honour the delivery on the premise that Aliya was admitted to the mental hospital and, therefore, her earlier agreement to sell the jewels was not valid.

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

► *Solution:*

Aliya's brother is justified in refusing the delivery to Salma, if at the time of making the agreement, Aliya was:

- not capable of understanding it; and
- not capable of forming a rational judgment as to its effect upon her interests.

If Aliya is usually of unsound mind but occasionally of sound mind then she may enter into a contract when she is of sound mind. However, if she was of unsound mind, then the agreement would be void.

2 CONSIDERATION AND OBJECT

2.1 Definition [Section 2(d)]

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

The analysis of above definition can be described in following points:

- a) The consideration may be:
 - an act (i.e. doing something);
 - an abstinence or forbearance; or
 - a promise (for act or abstinence in future).
- b) The consideration must be at the desire of promisor.
- c) The consideration may be from promisee or any other person.
- d) The consideration may be past, present, or future.

► **Example 25:**

Azam promises Babar to guarantee payment of price of the goods which Babar sells on credit to Misbah. Here selling of goods by Babar to Misbah on credit is consideration for Azam’s promise.

► **Example 26:**

Adeel asks Habib not to sue Arslan for a year for his debts and promises in case of default of Arslan, Adeel would be liable. Here Habib not filing a suit for a year is abstinence, which is a sufficient consideration for Adeel.

► **Example 27:**

Ameer promises to deliver iPhone to Burhan and Burhan promises to pay Rs. 85,000 on delivery. Here the consideration for Ameer will be Rs. 85,000 on delivery and consideration for Burhan will be delivery of goods.

► **Example 28:**

Adeel saves Arslan’s goods from fire without being asked to do so. Adeel cannot demand payment for his services as consideration was not moved at the desire of the promisor.

► **Example 29:**

Arif transferred certain property to his daughter Humera with a direction that Humera should pay Noman annuity. On the same day Humera executed a deed in writing in favour of Noman and agreed thereby to pay the annuity. Later, Humera refused to pay the annuity on the plea that no consideration had moved from Noman. Here Noman is entitled to maintain suit because a consideration not necessarily move from the promisee, it may move from any other person (by Arif in this case).

► **Example 30:**

Akram renders some service to Wasim in the month of August. In September Wasim promises to compensate Akram an amount of Rs. 10,000 for the services he rendered to him. Past services amount to past consideration. Akram can recover Rs. 10,000 from Wasim.

► **Example 31:**

Waqar sells his car for Rs. 1 million and delivers the car at the time of payment. Here the consideration is moving simultaneously with the promise and is called present consideration.

► **Example 32:**

Akhtar promises to deliver certain goods to Shoaib after 5 days and Shoaib promises to pay after 5 days from the date of delivery. Consideration in this case is future consideration.

Additional points

The following additional points are relevant:

- a) The consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.
- b) The consideration must be real and not illusory.

▶ **Example 33:**

Hamid was summoned to give evidence in a court where Sajid was in litigation. Sajid promised to pay certain amount to Hamid for giving the evidence. Later, Sajid refused to pay. Hamid sued and failed. Held, the consideration was not valid as it was Hamid's duty to give evidence.

▶ **Example 34:**

Azam promises to put life into Babar's dead wife and Babar promises to pay Rs. 1 million. This agreement is void because consideration is impossible to perform and not real.

▶ **Example 35:**

Azam engages Babar to work as an accountant in his office and promises to pay him Rs. 75,000 per month. This is a real consideration for both the parties.

2.2 Agreements without consideration [Section 25]**2.2.1 Basic Rule**

An agreement without consideration is void with certain exceptions.

▶ **Example 36:**

Adnan promises, for no consideration, to give to Behzad Rs. 5 million. This is a void agreement.

2.2.2 Exception: Natural love and affection

An agreement without consideration shall not be void if:

- a) it is expressed in writing and registered under the relevant law; and
- b) it is made on account of natural love and affection between parties standing in a near relation to each other.

▶ **Example 37:**

Azam, for natural love and affection; promises to give his son, Babar, Rs. 10,000. Azam puts his promise to Babar into writing and registers it. This is a valid contract.

2.2.3 Exception: Promise to compensate past voluntary services

An agreement without consideration shall not be void if it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do.

▶ **Example 38:**

Ameer finds Bushra's purse and gives it to her. Bushra promises to give Ameer Rs.5,000. Now this promise of Bushra is a contract.

▶ **Example 39:**

Azam supports Babar's infant son. Babar promises to pay Azam's expenses in so doing. This is a contract.

2.2.4 Exception: Time barred debt

An agreement without consideration shall not be void if:

- a) it is a promise, made in writing and signed by the debtor or his agent; and
- b) it relates to a payment (wholly or in part) of time barred debt.

A time barred debt is debt which a creditor cannot enforce payment of due to law of limitation.

► **Example 40:**

Adeel owes Rs. 1,000 to Kashif but the debt has become time barred. Adeel signs a written promise to pay Kashif Rs. 900 of this time barred debt. It is a valid contract.

2.2.5 Exception: Completed gifts

Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person (i.e. donor) to another person (i.e. donee) and accepted by or on behalf of the donee. Any completed gift actually made between donor and donee is valid, although without consideration. A gift is executed in writing through a deed duly registered.

► **Example 41:**

Arif transferred some property to Haseeb by a duly written and registered deed as a gift. This is a valid contract even though no consideration was given by Haseeb.

2.3 Adequacy of Consideration [Section 25]

An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

► **Example 42:**

Azam agrees to sell a horse worth Rs. 100,000 for Rs. 1,000. Later, Azam denies that his consent to the agreement was freely given. The inadequacy of consideration is a fact which the Court should take into account in considering whether or not Azam's consent was freely given.

► **Example 43:**

Adeel, with his free consent, agrees to sell his car worth Rs. 3 million for Rs. 1 million to Saima. The contract is valid.

2.4 Circumstances where object or consideration is unlawful [Section 23]

Every agreement of which the object or consideration is unlawful is void.

The consideration or object of an agreement is lawful, unless

- a) it is forbidden by law; or
- b) is of such a nature that, if permitted, it would defeat the provisions of any law; or
- c) is fraudulent; or
- d) involves or implies injury to the person or property of another; or
- e) the Court regards it as immoral, or opposed to public policy.

► **Example 44:**

Ameer promises to obtain for Faqeer an employment in the public service, and Faqeer promises to pay Rs.1,000/- to Ameer. The agreement is void as the consideration for it is unlawful.

► *Example 45:*

Qadir fails to pay his loan and his house is auctioned for recovery. According to law, the defaulter (Qadir) is prohibited to bid so he appoints an agent to bid for him and later transfer the house. The agreement is void as the transaction, in fact, is a purchase by the defaulter, and would so defeat the object of the law.

► *Example 46:*

Abid, Sajid and Amjad agreed to divide the cash obtained by tax refund on the basis of fake documents. Held, the object was unlawful (being fraudulent), and agreement is void.

► *Example 47:*

Abid promised to pay Rs.100,000 to Sajid on agreeing to publish a defamatory article against Arslan. It was held that Sajid could not recover the amount because the agreement was void as it involves injury to a person.

► *Example 48:*

Abid, who is guardian of Tanveer, promises to exercise his influence, as such, with Tanveer in favour of Farhan, and Farhan promises to pay Rs 1,000 to Abid. The agreement is void because it is immoral.

► *Example 49:*

A married woman was given money to obtain divorce from her husband and then marry the lender. Later, the woman refused to take divorce. The agreement is void, though the taking such divorce may not be punishable under the law.

► *Example 50:*

Anjum, who knows that Kanwar has stolen goods amounting to Rs.500,000, receives Rs.100,000 from Kanwar in consideration of not exposing him. This agreement is illegal being opposed to public policy.

2.5 Where object or consideration is partly unlawful [Section 24]

The agreement is void:

- a) if any part of a single consideration for one or more objects, is unlawful; or
- b) if anyone or any part of any one of several considerations for a single object, is unlawful.

► *Example 51:*

Azam promises to superintend, on behalf of Babar, a legal manufacture of indigo, and an illegal traffic in other articles. Babar promises to pay to Azam a salary of Rs. 30,000 a month. The whole agreement is unlawful and void because it cannot be ascertained as to what was due on account of legal manufacture and what was due on account of illegal trafficking.

► *Practice Question 03:*

Mohsin promised Ahsan that he will pay his university fee. Later Mohsin suffered losses in his business and refused to pay the fee. Mohsin is of the view that since the agreement was without consideration, it does not constitute a valid contract. However, Ahsan believes that the agreement is enforceable under law as it meets certain other conditions. You are required to narrate the conditions which Ahsan may be referring to.

► *Solution:*

The conditions under which the said contract is enforceable are:

- Mohsin and Ahsan stand in near relation to one another.
- The agreement is out of natural love and affection; and
- The said contract is in writing.

► **Practice Question 04:**

Mrs. Ikram was searching for a house for her family in city's posh locality. Her grandfather Nadeem had promised to pay her Rs. 1.0 million by way of a gift for the purchase of the house. After finalizing the deal with one of the estate brokers, Mrs. Ikram asked Nadeem to pay her Rs. 1.0 million as promised. Nadeem, however, refused to pay the amount. Mrs. Ikram filed a suit against her grandfather Nadeem for the enforcement of the promise made by him. Advise under what circumstances Mrs. Ikram would be able to recover the amount from Nadeem.

► **Solution:**

An agreement made without consideration is void. However, Mrs. Ikram may claim the amount of Rs. 1.0 million from her grandfather Nadeem, by proving either gift or love and affection.

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

An agreement made on account of natural love and affection without consideration will be valid if it is expressed in writing, registered under the law, made on account of natural love and affection, and between parties standing in a near relation to each other.

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

► **Practice Question 05:**

Muneer wanted to complete his bachelor's degree from Europe. His paternal uncle Furqan had promised him to pay Rs. 2 million by way of a gift, at the time of his admission to a college in Europe. After getting admission to one of the renowned colleges in Europe, Muneer asked Furqan to pay him Rs. 2 million as promised. However, Furqan refused to pay the amount and Muneer filed a suit against Furqan for the enforcement of his promise. Discuss the circumstances in which Muneer may be able to recover the amount from Furqan.

► **Solution:**

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

- i. gift
- ii. love and affection

Completed gift:

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

Love and affection:

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

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

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

► *Practice Question 06:*

Asif stole cash and merchandise from the ABC Store. Basit, the owner of store, initiated legal proceedings against him. Asif contacted Basit with an offer to return the stolen cash and merchandise if Basit withdraws the suit. Basit accepted the offer. Is it a valid agreement? Discuss.

► *Solution:*

No, the agreement is void as its object is unlawful and constitutes stifling the criminal prosecution.

► *Practice Question 07:*

Naeem was a treasury manager in Raheel Associates (RA). Naeem robbed Rs. 100,000 cash from the business. Raheel, the owner of the business, instituted legal proceedings against Naeem. Naeem agreed to return the cash and Raheel agreed to withdraw the proceedings against him. Naeem fulfilled his part of the promise.

Under the provisions of the Contract Act, 1872 explain whether Raheel is bound to withdraw the proceedings against Naeem.

► *Solution:*

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

► *Practice Question 08:*

Under the provisions of the Contract Act, 1872 explain the circumstances in which an agreement without consideration is considered to be a valid contract.

► *Solution:*

An agreement without consideration is considered to be a valid contract:

- a) if it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or
- b) if it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or
- c) if it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits; or
- d) if it is a gift already made by the donor to the donee.

► *Practice Question 09:*

Nonagon Books (NB), owned by Haroon, is a publishing house that also deals in a wide variety of educational books. The following is a matter related to NB that need to be addressed under the provisions of the Contract Act, 1872:

NB's warehouse, located in a remote area, reported a significant shortfall in inventory. Upon further inquiry, it was revealed that Moiz, the warehouse manager, was involved in the theft of inventory. Subsequently, Moiz agreed to pay the price of stolen inventory when Haroon promised to withdraw the suit filed against him. Advise whether Moiz can hold Haroon liable if he pays the agreed price but the suit filed against him is not withdrawn.

► *Solution:*

The agreement between Moiz and Haroon is void because the object is unlawful as the Court may regard such an agreement being opposed to public policy.

Therefore, Moiz cannot hold Haroon liable if the suit filed against him is not withdrawn regardless of the fact that he pays the agreed amount as consideration.

3 OBJECTIVE BASED Q&A

- 1 Voidable contract is voidable at the option of
 - a) Both parties of contract
 - b) One party of the contract
 - c) None of the parties of the contract
 - d) Aggrieved party of a contract

- 2 Which of the following statement is true
 - a) Void agreement and void contract are one and same
 - b) Void agreement creates legal rights and obligation between parties
 - c) Void contracts remain valid until they cease to be enforceable
 - d) Any transaction based on void contract will also be void

- 3 Void agreement can be enforced
 - a) By one of the parties
 - b) By aggrieved party
 - c) By none of the parties
 - d) By the party entitled to do so

- 4 An agreement to be enforced in the court must have
 - a) Legal enforceability
 - b) Mutual and free consent between the parties
 - c) Lawful consideration
 - d) All of the above

- 5 An agreement is a voidable contract when it is
 - a) Enforceable if certain conditions are fulfilled
 - b) Enforceable by law at the option of the aggrieved party
 - c) Enforceable by both the parties
 - d) Not enforceable at all

- 6 A Contract
 - a) May be void as originally entered into
 - b) May become void subsequent to its formation
 - c) Cannot become void subsequent to its formation under any circumstances
 - d) May become void at the will of a party to the contract

- 7 An agreement by an idiot is:
- a) Voidable
 - b) Enforceable
 - c) Invalid
 - d) Void ab-initio
- 8 An agreement made with a minor is:
- a) Void
 - b) Void ab-initio
 - c) Voidable
 - d) Unenforceable
- 9 A person is said to be of sound mind if
- a) He is mentally fit for making decisions
 - b) He is capable of understanding contract and forming rational judgement about it
 - c) He has been declared as of a sound mind by the Doctor
 - d) He can make contract and can obtain benefit
- 10 Contractual capacity of the person is affected by
- a) His age
 - b) His soundness of mind
 - c) By law to which he is subject
 - d) By all above factors
- 11 A person is usually of unsound mind, but occasionally of sound mind
- a) He may enter into a contract when he is of sound mind
 - b) He may not make a contract even when he is of sound mind
 - c) He cannot enter into a contract at all
 - d) None of the above
- 12 Any lawful act will constitute consideration if it is done
- a) At the desire of promisee
 - b) Voluntarily
 - c) At the desire of promisor
 - d) At the desire of third party

- 13 Consideration in order to be legally valid
- Must be adequate
 - Need not be adequate
 - Must be equal in terms of value
 - Must be in-equal to promise
- 14 Agreements made on account of natural love and affection without consideration will be valid if it fulfils following conditions
- Expressed in writing
 - Registered under the law
 - Between parties standing in a near relation to each other
 - All of the above
- 15 Consideration which is moved simultaneously with the promise is known as
- Present consideration
 - Past consideration
 - Future consideration
 - Instant consideration
- 16 Which of the following statement is true
- Consideration must always be given by the promisee
 - Consideration must be given by third party on behalf of promisee
 - Consideration must be given by the agent of promisee
 - Consideration may be given by promisee or any other person on his behalf
- 17 Agreement made without consideration is
- Void
 - Unlawful
 - Unenforceable
 - Voidable
- 18 Akram makes an agreement for buying raw material from Bilal on 1st January. The raw material is to be supplied by Bilal on 20th January and Payment is to be made by Akram on 15th March. What is the legal status of this contract?
- This contract is not valid as consideration has not been supplied
 - This contract is valid and the consideration is present consideration
 - This contract is not valid because past consideration is not recognized by law
 - This contract is valid and the consideration is future consideration

- 19 A promise to compensate, wholly or in part, a person who has voluntarily done something for the promisor is
- Enforceable
 - Not enforceable
 - Void
 - Voidable
- 20 It is necessary that in a valid contract
- Consideration must be lawful
 - Object must be lawful
 - Both of these must be lawful
 - Anyone of these may be lawful
- 21 An agreement is immoral if
- Court regards it immoral
 - People think it immoral
 - Society does not recognize it as moral
 - It is below the standard of moral
- 22 Every contract is made for a lawful object or lawful purpose. The object of a contract is formed on the basis of promises made by the parties. The contract to be legally valid must contain lawful object which includes
- If it is not forbidden by law
 - If it is not defeating the provisions of any law
 - If it is not fraudulent
 - All of the above
- 23 Mr. A, in consideration of Rs. 100,000/- from Mr. B agrees to publish defamatory material against Mr. T, a famous lawyer, in order to damage his goodwill and reputation. This agreement is void because
- It is fraudulent
 - It is immoral and against public policy
 - It involves an injury to a person
 - It defeats the provision of any law
- 24 Mr. P had advanced money to Mrs. D, a married woman, to enable her to obtain divorce from her husband. Mrs. D agreed that as soon as she gets divorced she will marry Mr. P. What is the legal status of this agreement?
- This agreement is valid as marriage is a lawful contract
 - This agreement is valid as this is made with the free consent of the parties.
 - This agreement is void because it is a marriage brokerage agreement and is opposed to public policy.
 - This agreement is void on account of undue influence.

- 25 The term 'Quid pro quo' means:
- something in return
 - something important
 - something of value
 - something relevant
- 26 Saad agreed to pay Rs. 500,000 to Hafsa if she delivered a judgement in his favour in a suit. Hafsa gives the judgement in Saad's favour but he later refuses to pay any money. In this situation, can Hafsa claim the amount?
- No, because the agreement was voidable at the option of Saad only
 - Yes, because the agreement was valid and enforceable
 - Yes, because the agreement was voidable at the option of Hafsa only
 - No, because the agreement was void due to unlawful activity
- 27 Kabeer, during his employment with Catfish Jewellers, stole a diamond set worth Rs. 1,000,000. Basheer, the watchman at the shop, came to know about this fact. However, Basheer agreed not to disclose it to anyone when Kabeer offered to pay Rs. 100,000 to him. This agreement is:
- void
 - valid
 - voidable at the option of Kabeer
 - voidable at the option of Basheer
- 28 Furqan gifted a property to his spouse Nadira on completion of her post-graduation. Subsequently, on Furqan's request, Nadira agreed to transfer the property in Furqan's name if, at any time in future, he incurs heavy loss in business due to any reason. After five years, Furqan incurred heavy loss in business due to COVID-19 pandemic and asked Nadira to transfer the property in his name which she refused. Can Furqan hold Nadira responsible for the breach of contract?
- Yes, because the agreement was contingent on incurring of heavy loss in business
 - Yes, because all agreements made verbally are enforceable by law
 - No, because the agreement is void due to lack of consideration
 - No, because the agreement was made by Nadira under undue influence
- 29 Faiq agreed to sell two snow leopard cubs to Wajeeha for Rs. 500,000. He also promised to deliver an imported Persian cat worth Rs. 80,000 along with the cubs as complimentary. On the delivery date, Wajeeha refused to take delivery of the cubs on the premise that snow leopards were endangered species and capturing them was prohibited under local laws. However, she demanded that Faiq must deliver the cat as promised and said that she is willing to pay the market price for the cat. Is Faiq compelled to deliver the cat?
- Yes, because the contract is voidable at Wajeeha's option due to unilateral mistake of law
 - Yes, because the legal set of reciprocal promises should be executed by Faiq
 - No, because the promise to deliver the cat was dependent on the delivery of snow leopard cubs
 - No, because the agreement is void due to illegal consideration

- 30 Pervez had a guest house in Abbottabad which he rented to his business partner Karim at a regular price for two days. On the day of leaving Abbottabad, Karim noticed overdues of last month appearing in the electricity bill of the guest house. He paid the bill to appease Pervez. When Pervez came to know about Karim's act, he thanked Karim and verbally promised to pay back the bill amount of Rs. 55,000.

Can Pervez be held liable if he subsequently refuses to pay Rs. 55,000 to Karim?

- a) No, because Pervez did not make the agreement in writing
- b) No, because Karim was not legally bound to pay the dues
- c) Yes, because Pervez promised to pay Karim for his voluntary act
- d) Yes, because Karim was legally bound to pay the dues

- 31 Fahad, a foreign ambassador stationed in Pakistan, signed a lease agreement with a local landlord for an office space in Quetta, to be used for the foreign embassy's consular operations.

Under the Contract Act, 1872, which of the following statements is correct regarding the lease agreement signed by Fahad?

- a) Fahad can be sued in the local courts only despite his diplomatic status
- b) Fahad can be sued both in the local and international courts despite his diplomatic status
- c) Fahad cannot be sued in the local courts due to his diplomatic status
- d) Fahad cannot avoid legal actions even if a personal immunity clause is included in the lease agreement

ANSWERS

1	d)	Only the injured party has an option to set aside the contract in case of voidable contract.
2	c)	Void contract is a perfectly valid contract at the time of formation of a contract.
3	c)	By none of the parties because void agreement is void ab-initio i.e. void from the beginning.
4	d)	Legal enforceability along with mutual and free consent between the parties and lawful consideration is must for an agreement to be enforced.
5	b)	Enforceable by law at the option of the aggrieved party.
6	b)	A contract may become void subsequent to its formation because a contract can never be void from the time of its formation.
7	d)	An idiot is person of unsound mind and is not competent to enter into a contract.
8	b)	An agreement with a minor is void ab initio as minor is not competent to contract.
9	b)	He is capable of understanding contract and forming rational judgement about it.
10	d)	His age, soundness of mind and qualification by law is compulsory for him to have contractual capacity.
11	a)	He may enter into a contract when he is of sound mind because when he is of sound mind, he is capable to enter into a contract according to the law.
12	c)	Any act or promise will be valid consideration if such act has been done at the request of the promisor.
13	b)	There is no requirement for the adequacy of consideration, but it should have some monetary value.
14	d)	An agreement made on account of natural love and affection will be valid if it is expressed in writing, registered and it is made between the parties in a near relation
15	a)	If the two acts of making promise and getting consideration are done simultaneously, the consideration is known as Present consideration.
16	d)	Consideration may be given by promisee or any other person on his behalf. Under the law it is not important that who has given a consideration.
17	a)	An agreement without consideration is void.
18	d)	This contract is valid as consideration is future consideration.
19	a)	Promise made without consideration is valid if the person who is to be compensated has done something voluntarily.
20	c)	The object and consideration of an agreement both must be lawful.
21	a)	When the object or consideration of an agreement is considered as immoral in the opinion of the court such agreement will be void.
22	d)	An agreement is lawful when it is not forbidden by law, it is not fraudulent, and it is not the defeating the provisions of any law.

23	c)	Publishing any defamatory material involves damaging the goodwill and reputation of a person which is void.
24	c)	Breaking a marriage of another is void being opposed to public policy.
25	a)	something in return.
26	d)	No, because the agreement was void due to unlawful activity.
27	a)	Void.
28	c)	No, because the agreement is void due to lack of consideration.
29	d)	No, because the agreement is void due to illegal consideration.
30	c)	Yes, because Pervez promised to pay Karim for his voluntary act.
31	c)	Fahad cannot be sued in the local courts due to his diplomatic status

STICKY NOTES**Important definitions**

1. An agreement enforceable by law is a “contract”.
2. 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”.
3. A “void contract” is a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
4. An agreement not enforceable by law is said to be void.
5. When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a “consideration” for the promise.

Essentials of a valid contract

An agreement is a contract if it meets the following conditions:

- a) The agreement is made by the free consent of the parties.
- b) The parties making the agreement are competent to contract.
- c) The agreement is made for a lawful consideration.
- d) The agreement is made with a lawful object.
- e) The agreement is not expressly declared to be void by law.

Competent to contract

Every person is competent to contract:

- a) who is of the age of majority according to the law to which he is subject; and
- b) who is of sound mind; and
- c) who is not disqualified from contracting by any law to which he is subject.

Exceptions to agreement without consideration is void.

- a) natural love and affection
- b) promise to compensate past voluntary services
- c) Time barred debt
- d) Completed gift

Circumstances where object or consideration is unlawful

Every agreement of which the object or consideration is unlawful is void.

The consideration or object of an agreement is lawful, unless

- a) it is forbidden by law; or
- b) is of such a nature that, if permitted, it would defeat the provisions of any law; or
- c) is fraudulent; or
- d) involves or implies injury to the person or property of another; or
- e) the Court regards it as immoral, or opposed to public policy.

FREE CONSENT AND VOID AGREEMENTS

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Consent: Coercion and Undue Influence
- 2 Consent: Fraud and Misrepresentation
- 3 Consent: Mistake
- 4 Expressly declared Void Agreements
- 5 Objective Based Q&A

STICKY NOTES

AT A GLANCE

All agreements are contracts if they are made by the free consent of the parties among other conditions. Two or more persons are said to consent when they agree upon the same thing/terms in the same sense.

Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake subject to provisions of the Contract Act.

When consent of an agreement is caused by coercion, fraud, misrepresentation, or undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. An agreement is void where both parties are under mistakes as to matter of fact.

A void agreement is one which is not enforceable by law. The following agreements have been expressly declared to be void:

- i. Agreement in restraint of marriage
- ii. Agreement in restraint of trade
- iii. Agreement in restraint of legal proceedings
- iv. Uncertain agreements
- v. Wagering agreements (also collateral agreements to wagering agreement).

There are certain exceptions to above void agreements.

1 CONSENT: COERCION AND UNDUE INFLUENCE

1.1 Introduction

1.1.1 Consent [Section 13]

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

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

► *Example 01:*

Azam has one Alto and one Couré. He wants to sell Couré. Babar does not know that Azam has two cars. Babar offers to buy Azam's Alto for Rs. 400,000. Azam accepts the offer thinking it to be an offer for his Couré. Here, there is no identity of minds in respect of the subject matter. Hence, there is no consent at all and hence there is no agreement.

1.1.2 Free consent [Section 14]

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

- a) Coercion; or
- b) Undue influence; or
- c) Fraud; or
- d) Misrepresentation; or
- e) Mistake (with certain exceptions).

Consent is said to be so caused when it would not have been given without the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

1.2 Coercion

1.2.1 Definition [Section 15]

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

The analysis of the above definition reveals that coercion may be compelling a person to enter into a contract under pressure or a threat.

► *Example 02:*

Azam beats Babar and compels him to sell his bike for Rs. 20,000. Here, Babar's consent has been obtained by coercion because beating someone is an offence under the Pakistan Penal Code.

► *Example 03:*

The government threatens to seize the property of Azam to recover the fine due from Babar, the son of Azam. Azam paid the fine. Held that fine was recovered by coercion.

It is immaterial whether the Pakistan Penal Code is or is not in force in the place where the coercion is employed. If the suit is filed in Pakistan, the provisions of Pakistan Penal Code shall apply.

► *Example 04:*

Ameer, on board of an English ship causes Faqeer to enter into an agreement by an act amounting to criminal intimidation under the Pakistan Penal Code. Ameer afterwards sues Faqeer for breach of contract at Karachi. Ameer has employed coercion, although his act is not offence by the law of England and PPC was not in force at the time when or place where the act was done.

Notice that, coercion may be exercised from any person, and may be directed against any person, who is even not a party to the contract.

► *Example 05:*

Ameer threatens to kill Salma, Basit's daughter, if Basit refuses to sell his house to him. Basit agrees to sell his house. Here, Basit's consent has been obtained by coercion though Salma is not a party to the contract.

► *Example 06:*

Asif threatens to kill Babar if Babar refuses to sell his house to Salman. Babar agrees to sell his house. Here, Babar's consent has been obtained by coercion though Asif is not a party to the contract.

1.2.2 Effect of coercion on agreement**Voidable [Section 19]**

The agreement is a contract voidable at the option of the party whose consent was caused by coercion.

► *Example 07:*

Azam threatens to kill Babar if he does not sell his BMW for Rs 1 million to Azam. Babar contracted to sell his BMW to Azam and receives the payments. Here, Babar's consent has been obtained by coercion. Hence, this contract is voidable at the option of Babar but Azam has no right to insist that contract shall be performed.

Restitution of benefits on rescission [Section 64]

The party rescinding voidable contract shall, if he has received any benefit from another party, restore such benefit i.e. restitution.

Repayment and return [Section 72]

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

1.3 Undue Influence**1.3.1 Definition [Section 16]**

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

► *Example 08:*

Azam having advanced money to his son, Babar during his age of minority. Upon Babar's coming of age obtains, by misuse of parental influence, a bond from Babar for a greater amount than the sum due in respect of the advances. Azam employs undue influence.

► *Example 09:*

Ameer, a man enfeebled by disease or age, is induced, by Asif's influence over him as his medical attendant, to agree to pay Asif an unreasonable sum for his professional services. Asif employs undue influence.

1.3.2 Presumption of position to dominate [Section 16]

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

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

► *Example 10:*

There is presumption of position to dominate on the basis of real or apparent authority in agreements between:

- Tax officer and taxpayer
- Police officer and accused being investigated
- Employer and employee

► *Example 11:*

There is presumption of position to dominate on the basis of fiduciary relationship in agreements between:

- Parent and child
- Guardian and minor
- Advocate and client
- Trustee and beneficiary
- Fiancé and fiancée

► *Example 12:*

There is presumption of position to dominate on the basis of affected mental capacity in agreements between:

- Doctor and patient
- Medical attendant and patient
- Family member and enfeebled old man

1.3.3 Burden of Proof [Section 16]

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

► *Example 13:*

Ameer, a man enfeebled by disease or age agrees with Asif, his medical attendant, to pay Asif a large sum for his professional services. The burden of proof that undue influence was not exercised lies on Asif as he is presumed to be in a position to dominate.

► *Example 14:*

Qaiser, a teacher sold an agricultural property to his student, Maqbool. Later, Maqbool filed a suit to cancel the transaction. Qaiser showed that he had provided complete facts relating to property to Maqbool, the price was market based, Maqbool had obtained advice from property dealers of his choice before finalising the contract. Held, the contract was valid and consent was not caused by undue influence.

► *Example 15:*

Asif, an agent agreed to sell stock of Sajid (the principal) @2% commission. Later, Asif demanded 5% commission being the market rate and on account that his consent was obtained by undue influence. There is no presumption of position to dominate and burden of proof lies on Asif.

► *Example 16:*

Adeel applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. Adeel accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

1.3.4 Effect on agreement [Section 19A]

The agreement is a contract voidable at the option of the party whose consent was caused by undue influence.

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

► **Example 17:**

Kanwar, a money lender advanced money to Sajid, an agriculturist in emergency situation and by undue influence made him to execute a bond of double the amount with high interest rate. The Court may set aside the bond, ordering Sajid to repay original amount with such interest as may seem just.

1.4 Difference between coercion and undue influence

S.no	Coercion	Undue influence
1	Consent Consent is obtained by giving a threat of an offence or committing an offence.	Consent is obtained by dominating the will.
2	Nature of pressure It involves physical pressure.	It involves moral pressure.
3	Relationship Parties to a contract may or may not be related to each other.	Parties to a contract are related to each other under some sort of relationship.
4	Reason The objective is to compel a person to enter into a contract.	The objective is to obtain an unfair advantage.
5	Criminal liability Criminal liability is incurred, therefore it is illegal.	Criminal liability is not incurred.
6	On whom Coercion may be employed on a stranger to the contract.	Undue influence may only be employed on the party whose consent is desired.
7	By whom It can be exercised by a stranger to the contract.	It can only be exercised by a party to the contract and not by a stranger.
8	Onus of proof The onus of proof is on the party who wants to relieve himself of the consequences of coercion.	The onus of proof is on the party in a position to dominate the will of the other party.
9	Restoration of benefit The aggrieved party has to restore the benefit received.	The party avoiding the contract may or may not restore benefit.

► **Practice Question 01:**

Jamal threatened Rafia to murder her son Atif if she did not sell her house to Mujahid. Rafia did as she was told. Under the provisions of the Contract Act, 1872 comment on the validity of the above contract.

► **Solution:**

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

► *Practice Question 02:*

Haroon was engaged to be married to Ghazala. Haroon wanted to establish his own business and therefore he entered into a contract with Ghazala for providing him all her jewellery and apartment by way of a gift and in return Haroon agreed to give her a small share in business profit. After some time, Ghazala filed a suit against Haroon, requesting for setting aside the gift deed as it was not made with her free will. Discuss whether Ghazala would succeed in her contention.

► *Solution:*

Ghazala may succeed to recover her jewellery and apartment from Haroon on the presumption of undue influence. A contract is said to be induced by undue influence where the relation subsisting between the parties is such that one of the parties is in a position to dominate the will of the other and uses that position to obtain unfair advantage over the other. Haroon in this case is a fiancé of Ghazala and is in a position to dominate her will.

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

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

► *Practice Question 03:*

Bromine Traders (BT) is engaged in the business of import, purchase and supply of electronic items. In one of BT's showrooms, a famous actor came to return an air conditioner purchased one month ago. He demanded for the replacement of his air conditioner with the latest model. The actor got upset when the showroom manager refused to replace the air conditioner with the latest model and threatened to damage the products displayed in the showroom. Considering the situation, the manager agreed to deliver the latest model of air conditioner to actor's house.

Discuss the status of the contract between BT and the customer.

► *Solution:*

Contract between BT and the customer was established under coercion as the customer threatened to damage BT's property. Here, manager's consent to deliver the latest model of air conditioner in replacement of earlier model was not obtained freely due to which the contract is voidable at the option of BT.

► *Practice Question 04:***Part (a)**

Karim, a 90 year old farmer, resides in a remote village. Karim's son Wajid, who resides abroad, has appointed Zain to look after his aging father. Zain's duties include managing Karim's household affairs and handling all the operations of Karim's farm.

Zain advised Karim to sell a portion of his barren land in the outskirts Karim's farm as it is losing its value with the passage of time. Karim sold the barren land to Zain for Rs. 500,000.

On 28 February 2026, Wajid visited his father and came to know that the land purchased by Zain from his father had a market value of Rs. 5 million at the time of sale. Wajid convinced Karim to file a suit against Zain. To support his father, Wajid agreed to pay the professional fees of lawyers and all related expenses.

Under the provisions of the Contract Act, 1872, discuss whether Karim can file a suit against Zain.

Part (b)

Assume that in (a) above, Karim gets the land back alongwith the damages equal to the expenses incurred in respect of the suit filed against Zain. Karim promised Wajid that he will transfer the land to him and will also reimburse him the expenses in respect of the suit.

Under the provisions of the Contract Act, 1872, discuss the validity of Karim's promises.

► *Solution:*

Part (a)

Karim may file a suit against Zain on the grounds of undue influence since Zain was in a position to dominate Karim's will and he used that position to obtain an unfair advantage over Karim.

Zain shall be deemed to be in a position to dominate Karim's will because:

- he stands in a fiduciary relation to Karim; or
- Karim's mental capacity may be affected due to old age.

Part (b)

The validity of Karim's promises is as follows:

Promise to transfer land

Since Karim made the promise without consideration on account of natural love and affection, it shall not be enforceable unless the land is actually transferred to Wajid or until the promise is expressed in writing, registered under the law for the time being in force for the registration of documents.

Promise to reimburse expenses of suit

Even though Karim made the promise without consideration to reimburse Wajid the expenses paid voluntarily in respect of the suit, the promise is still valid and enforceable.

2 CONSENT: FRAUD AND MISREPRESENTATION

2.1 Fraud

2.1.1 Definition [Section 17]

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

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

► Example 18:

Azam sells to Babar locally manufactured goods representing them to be imported goods charging a higher price, it amounts to fraud.

► Example 19:

Zia a furniture dealer conceals the cracks in furniture sold by him by using some packing material and polishing it in such a way that the buyer even after reasonable examination cannot trace the defect, it would amount to fraud through active concealment.

► Example 20:

Buying goods under a contract of sale with an intention of not paying the price is fraud.

► Example 21:

A company issued a prospectus containing a statement that company paid dividend between 2020 and 2025 implying that company has been profitable. In fact, the company suffered losses in those years and paid dividend out of reserves. Held, there was an intention to deceive.

► Example 22:

Ameer sold his house to Basit for Rs. 10 million. The house was mortgaged with Salman for Rs. 10 million. Ameer did not inform Basit about it, although it was his legal obligation to do so. Later, Salman claimed Rs. 10 million from Basit. Basit can avoid contract as Ameer is guilty of fraud.

► Example 23:

Abid knows that his watch is made in Pakistan but tells Babar that it has been made in Japan. Babar buys the watch for a large sum. The fraud was committed by party to the contract (Abid), it was false representation as to fact (origin of product), representation related to fact and there was clearly intention to deceive and Babar suffered loss by paying a larger sum.

2.1.2 Silence as Fraud [Section 17]

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless:

- a) the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak (e.g. parties stand in fiduciary relationship), or
- b) his silence is, in itself, equivalent to speech.

► Example 24:

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

► *Example 25:*

Ameer sells by auction to Bano a horse which Ameer knows to be unsound. Ameer says nothing to Bano about the horse's unsoundness. Bano is Ameer's daughter and has just come of age. Here, the relation between the parties would make it Ameer's duty to tell Bano if the horse is unsound. This is fraud by Ameer

► *Example 26:*

Ameer sells by auction to Bano a horse which Ameer knows to be unsound. Bano says to Ameer, "If you do not deny it, I shall assume that the horse is sound." Ameer says nothing. Here Ameer's silence is equivalent to speech. If the horse turns out to be vicious, Ameer can be held liable for fraud.

2.1.3 Effect on agreement [Section 19]**Voidable**

The agreement is a contract voidable at the option of the party whose consent was caused by fraud.

Insist on performance

A party to a contract, whose consent was caused by fraud may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.

► *Example 27:*

Abid knows that his watch is made in Pakistan but tells Babar that it has been made in Japan. Babar pays amount for the watch and Abid delivers it next day. Babar committed one of his client, Arslan, a made-in-Japan watch based on contract with Abid. On delivery, Babar discovered the fraud committed by Abid. The contract is voidable at the option of Babar. Babar may rescind the contract or may perform the contract and (in addition) may claim damages (for being unable to perform contract with Arslan).

Exceptions to voidability

The contract is not voidable if the consent was caused by fraudulent silence and the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

A fraud, which did not cause the consent to a contract of the party on whom such fraud was practiced, does not render a contract voidable.

► *Example 28:*

Kamran bought a car from Habib for Rs. 1,200,000. Habib did not tell that car was fully repainted. Kamran cannot rescind the contract. Although Habib's silence amounted to fraud, the repainting of car could have been discovered by ordinary diligence.

► *Example 29:*

Burhan Limited bought majority shares of Hussain Limited in order to gain control over new technological research being undertaken by Hussain Limited. Later, Burhan Limited discovered that financial statements were materially overstated (which he did not check) and he had paid unnecessarily higher price for shares. Under the Contract Act, he cannot rescind the contract as his purchase of shares was in ignorance of fraud.

2.2 Misrepresentation**2.2.1 Definition [Section 18]**

"Misrepresentation" means and includes:

- a) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- b) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

- c) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

► *Example 30:*

Anwar sold a mine to Munawar and told certain facts about the mine which were incorrect. Anwar believed them to be true. Later, Munawar discovered the real facts. This is a misrepresentation based on unwarranted statement.

► *Example 31:*

Azhar told Mazhar that the monthly sale of his business was Rs. 50 million before the contract was signed. Sales was decreased to Rs. 35 million. Azhar did not inform Mazhar about the decrease. Held, there was misrepresentation based on breach of duty.

► *Example 32:*

The seller told the buyer that the bike is free from defects but there was a built-in defect in it. There is a misrepresentation based on inducing mistake (innocently) about subject matter.

2.2.2 Effect on agreement [Section 19]

Voidable

The agreement is a contract voidable at the option of the party whose consent was caused by misrepresentation.

Insist on performance

A party to a contract, whose consent was caused by misrepresentation may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.

► *Example 33:*

Azam sold a machine to Babar under misrepresentation that it is made-in-Germany. The contract is voidable at the option of Babar. Babar may rescind the contract or may perform the contract.

Exceptions to voidability

The contract is not voidable if the consent was caused by misrepresentation and the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

A misrepresentation, which did not cause the consent to a contract of the party to whom such misrepresentation was made, does not render a contract voidable.

► *Example 34:*

Kamran bought a car from Habib for Rs. 1,200,000. Habib made an unwarranted statement believing it to be true regarding model of car. The model of car could have been discovered by ordinary diligence. The contract is not voidable.

► *Example 35:*

Burhan Limited bought majority shares of Hussain Limited in order to gain control over new technological research being undertaken by Hussain Limited and also hired a consultant who gave report on financial performance of Hussain Limited but this report was not considered while making decision to buy shares. Later, Burhan Limited discovered that report on financial performance contained some errors (not intentionally by the consultant). Under the Contract Act, he cannot rescind the contract as his purchase of shares was in ignorance of misrepresentation.

2.3 Difference between fraud and misrepresentation

S.no	Fraud	Misrepresentation
1	Intention Implies an intention to deceive.	Representation is innocent without intent to deceive.
2	Remedies It is civil wrong and aggrieved party can claim damages in addition to cancellation of contract.	Aggrieved party can only avoid the contract but damages are only payable at discretion of court.

► **Practice Question 05:**

Shafiq bought Abad's motorcycle factory in Faisalabad on Abad's representation that fifty thousand motorcycles are assembled at his factory annually. Shafiq later found that the factory has a capacity to manufacture thirty five thousand motorcycles only per annum. Shafiq now wants to rescind the contract on the ground that his consent was obtained by misrepresentation. Under the provisions of the Contract Act, 1872 list the circumstances under which Shafiq may not be able to rescind the contract.

► **Solution:**

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

- If Shafiq had the means of discovering the truth with ordinary diligence; or
- Abad's misrepresentation was not the basis for Shafiq's consent.

► **Practice Question 06:**

Ghaffar purchased a piece of land from Sharif who is an engineer by profession. During the discussion prior to the purchase, Sharif had told Ghaffar that in his opinion, the land would be able to support 2,500 mango trees. However, only 2300 trees could eventually be planted on the land. Under the provisions of the Contract Act, 1872 discuss whether Ghaffar can claim damages on the grounds of fraud.

► **Solution:**

Sharif's statement that in his opinion the land could support 2,500 mango trees clearly indicated that he was not sure about it and was just giving an opinion. Therefore, unless Ghaffar can show that the statement was made with the intention to deceive him and representation was as to fact and not mere an opinion, he cannot claim damages on the grounds of fraud.

► **Practice Question 07:**

Mughal and Dawood are trading in rice. Dawood entered into a contract with Mughal for the purchase of 50 tons of rice. Dawood had private information of change in prices which would have affected Mughal's willingness to enter into the contract. When Mughal, through his own resources, came to know about the prices, he accused Dawood of fraud and repudiated the contract. Under the provisions of the Contract Act, 1872 explain whether Mughal is justified in repudiating the contract.

► **Solution:**

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

► **Practice Question 08:**

Sultan bought electronic appliances worth Rs. 700,000 from Zameer on thirty days' credit. At the time of purchase, Sultan knew that he was in insolvent circumstances. Discuss the validity of the contract.

► **Solution:**

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

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

► **Practice Question 09:**

Under the provisions of the Contract Act, 1872:

- identify any five differences between coercion and undue influence.
- identify any two differences between fraud and misrepresentation.

► **Solution:****Part (a)**

S. No.	Coercion	Undue influence
(1)	Consent is obtained by giving a threat of an offence or committing an offence.	Consent is obtained by dominating the will.
(2)	Coercion involves physical pressure.	Undue influence involves moral pressure.
(3)	Parties to a contract may or may not be related to each other.	Parties to a contract are related to each other under some sort of relationship.
(4)	The objective is to compel a person to enter into a contract.	The objective is to obtain an unfair advantage.
(5)	Criminal liability is incurred, therefore, it is illegal.	Criminal liability is not incurred.

Part (b)

S. No.	Fraud	Misrepresentation
(1)	Fraud implies an intention or any other act fitted to deceive.	Representation is innocent without intent to deceive.
(2)	Fraud is civil wrong and aggrieved party can claim damages in addition to cancellation of contract.	Aggrieved party can only avoid the contract but damages are only payable at discretion of the Court.

► **Practice Question 10:**

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

► **Solution:**

A party cannot rescind the contract where:

- the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence
- the party gave the consent in ignorance of misrepresentation
- the party after becoming aware of the misrepresentation takes a benefit under the contract

► **Practice Question 11:**

Maria purchased a diamond necklace of Rs. 700,000 from Emerald Jewellers (EJ) and issued a cheque in favour of EJ fully knowing that she does not have enough funds to make the payment. Consequently, the cheque was dishonoured because of insufficient funds in Maria's bank account. EJ demanded to return the necklace.

Under the provisions of the Contract Act, 1872 discuss the status of the agreement between Maria and EJ.

► **Solution:**

A promise made without any intention of performing it tantamount to fraud. Since Maria knew that she did not have enough funds to make the payment, EJ's consent was caused by fraud.

Therefore, the contract is voidable at EJ's option.

► **Practice Question 12:**

Fatima, a doctor by profession, purchased a five-storey building for Rs. 50 million, owned and constructed by Hammad. At the time of purchase, Fatima asked Hammad to inform her of any structural issues with the building that might require repair. Hammad did not respond to the question, allowing Fatima to believe that the building is in good condition.

Fatima opened her hospital in the building. Shortly thereafter, she came to know about numerous structural issues in the building. An independent contractor has provided an estimate of Rs. 5 million to fix these issues.

Under the Contract Act, 1872, discuss the remedies available to Fatima.

► **Solution:**

Fatima has the option to pursue legal action against Hammad on the grounds of fraud for the following reasons:

- In the specific circumstances of this case, Hammad's silence tantamount to an affirmative statement. This effectively assured Fatima of the building's structural soundness, even though Hammad concealed material facts.
- Under ordinary due diligence, it was not possible for Fatima to ascertain the structural integrity of the building on her own.

Since Fatima's consent for the building purchase was obtained through fraud, it cannot be considered freely given. Consequently, the sale is voidable at the option of Fatima. However, she retains the right to consider the sale valid, on the condition that she is placed in the position she would have occupied had the building been as represented. This could mean Hammad compensating her for the repair costs, which amount to Rs. 5 million.

► **Practice Question 13:**

Rashid, a renowned barista, held a coffee extraction demonstration session at his café. He showcased a particular model of coffee machine, mentioning it as the most common model used by various coffee shops in Italy. Impressed by the demonstration, Aisha purchased the machine for Rs. 200,000. Rashid congratulated Aisha and stated that the machine would brew 5,000 coffee cups before needing maintenance.

Within a month of purchase, Aisha noticed a significant decline in the machine's performance after just 500 coffee cups. Upon consulting a service centre, she was informed that the machine required maintenance at an exorbitant service charge of Rs. 100,000. Aisha was deeply disappointed by this unexpected expense believing that Rashid had misguided her.

Under the provisions of the Contract Act, 1872, discuss Rashid's position and the remedies available to Aisha, if any.

► **Solution:****Rashid's position**

Rashid's statement regarding the number of cups that could be brewed did not cause Aisha's consent in the first place since the statement was made after the machine was already purchased, therefore, the contract is valid and cannot be rendered voidable at Aisha's option.

Remedies available to Aisha

Aisha has no remedies available against Rashid because he cannot be held liable towards her unless she can prove that any of statements made by Rashid, based on which she decided to give her consent to purchase the coffee machine, were made with fraudulent intent or misrepresentation.

► *Practice Question 14:*

Under the Contract Act, 1872, define 'fraud' and discuss the enforceability of an agreement when consent to the agreement is caused by fraud.

► *Solution:*

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

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

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

Enforceability of an agreement when consent is caused by fraud

When consent to an agreement is caused by fraud, the agreement is a contract voidable at the option of the party whose consent was so caused unless such fraud did not cause the consent of the party on whom such fraud was practiced or where the contract was caused by fraudulent silence and party to the contract whose consent was caused by such fraudulent silence had the means of discovering the truth with ordinary diligence.

However, a party to a contract, whose consent was caused by fraud, may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true.

3 CONSENT: MISTAKE

3.1 Mistake

3.1.1 Definition

The term “mistake” has not been defined in the Contract Act, 1872. In the context of contract law, it can be defined as an erroneous belief, at contracting, that certain facts are true.

3.1.2 Effect on agreement

Bilateral mistake as to matter of fact [Section 20]

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

► **Example 36:**

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

► **Example 37:**

Asif agrees to buy from Bakar all his horses believing that Bakar has three horses but Bakar actually has two horses. The agreement is void because there is bilateral mistake as to the quantity of subject matter.

► **Example 38:**

Arif agrees to buy a particular horse from Baqir. Both believe it to be a race horse but it turns to be a cart horse. The agreement is void because there is bilateral mistake as to the quality of the subject matter.

► **Example 39:**

Ameer agrees to buy a particular horse from Basit who mentioned (due to typing error) in his letter the price as Rs 1,150 instead of 5,150. The agreement is void because there is bilateral mistake as to the price of the subject matter.

► **Example 40:**

Azam agrees to buy from Babar a certain horse. Babar has one race horse and one cart horse. Azam thinks that he is buying race horse but Babar thinks that he is selling cart horse. The agreement is void because there is bilateral mistake as to the identity of subject matter.

► **Example 41:**

Adeel agrees to buy a particular horse from Mazhar. Unknown to both parties, that horse is already owned by Adeel. The agreement is void because there is bilateral mistake as to the title of the subject matter.

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

► **Example 42:**

Taj bought a plot of land from Raj for a large sum as they both were of the opinion that the property prices will surge in few days. Unexpectedly, the property prices fell significantly in that particular area. Taj cannot rescind the contract as the erroneous opinion as to value is not deemed a mistake as to a matter of fact.

Unilateral mistake as to matter of fact [Section 22]

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

► *Example 43:*

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

Mistake as to law [Section 21]

A contract is not voidable because it was caused by a mistake as to any law in force in Pakistan; but a mistake as to a law not in force in Pakistan has the same effect as a mistake of fact.

► *Example 44:*

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

► *Example 45:*

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

Repayment and return [Section 72]

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

► *Practice Question 15:*

Explain what effects following have on the validity of the contract:

- Unilateral mistake of law in force in Pakistan
- Unilateral mistake as to matter of fact
- Mutual mistake of foreign law

► *Solution:*

The effects on the validity of the contract are given below:

- In case of unilateral mistake of law in force in Pakistan the contract is not voidable.
- In case of unilateral mistake of fact the contract is not voidable
- In case of mutual mistake of foreign law the agreement is void.

► *Practice Question 16:*

Under the provisions of the Contract Act, 1872, discuss the enforceability of an agreement when consent is caused by mistake.

► *Solution:*

The enforceability of an agreement when consent is caused by any of the following types of mistakes is as follows:

Bilateral mistake

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, or are under a mistake as to a law not in force in Pakistan, the agreement is void.

However, an erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not deemed to be a mistake as to a matter of fact.

Unilateral mistake

A contract remains valid if it was caused by one of the parties to it being under a mistake as to a matter of fact or under a mistake as to a law not in force in Pakistan.

Mistake as to any law in force in Pakistan (Local Law)

A contract is not voidable because it was caused by a mistake as to any law in force in Pakistan. In case of such mistake, the contract will be valid.

4 EXPRESSLY DECLARED VOID AGREEMENTS

4.1 Restraint of marriage [Section 26]

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

► *Example 46:*

Bushra promises with Azam for good consideration that she will not marry Salman. It is a void agreement.

4.2 Restraint of trade [Section 27]

4.2.1 Basic Rule

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

► *Example 47:*

Azhar and Mazhar carried on business in a certain locality in Karachi. Azhar promised to stop business in that locality if Mazhar paid him Rs. 1,000. Azhar stopped his business but Mazhar did not pay him the promised money. It was held that Azhar could not recover anything from Mazhar because the agreement was in restraint of trade and was thus void.

4.2.2 Exception: Sale of goodwill

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

However, such limits must appear to the Court reasonable, regard being had to the nature of the business.

► *Example 48:*

Adeel sells his bakery to Badar with goodwill of Rs. 100,000 and agrees not to open a bakery anywhere in Pakistan. The agreement is unreasonable and so void.

► *Example 49:*

Salman sells his business of imitation jewellery in Multan to Dawood and promises that for two years he will not deal in imitation jewellery in Multan. The promise is held valid and enforceable.

4.3 Restraint of legal proceedings [Section 28]

4.3.1 Basic Rule

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

► *Example 50:*

Anwar agrees to sell sugar to Bashir and both agree that in case of breach of contract by any party, none of them will go to the court. The agreement is void.

► *Example 51:*

Azam gives Babar Rs. 100,000 as a loan for 1 year and agrees that if Babar fails to return the loan, Azam must sue within 2 years (although period of limitation as per law of limitation is 3 years) otherwise Babar will not be liable. The agreement is void.

The following are not absolute restrictions of legal proceedings:

- a) An agreement whereby the parties agree not to file an appeal in upper court of law.
- b) An agreement whereby the parties select one court of law between two courts equally competent.

► *Example 52:*

Adeel contracts to sell books to Naeem. In case of dispute they decide that the matter shall be taken to district civil courts as per law but no party shall appeal against the decision to High Court. The agreement is valid.

► *Example 53:*

Atif sells sports goods from Sialkot to Naeem in Lahore. In case of dispute they may sue in Sialkot's court or Lahore's court. Both agree that they will sue in Lahore's court only. The agreement is valid as the restriction is not absolute.

4.3.2 Exception: Refer to arbitration dispute that may arise

Two or more persons may agree that any dispute which may arise between them shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

A suit may still be brought by a party in the court for specific performance or recovery of the amount so awarded in the arbitration.

► *Example 54:*

Naeem and Saleem, while forming a contract, agreed that in case of breach by any of them. The matter shall be referred to an arbitrator mutually selected by them. They also agreed that only the amount of damages as may be awarded by such arbitrator shall be payable. Such an agreement is valid.

4.3.3 Exception: Refer to arbitration questions that have already arisen

Two or more persons may agree in writing to refer to arbitration any question between them which has already arisen.

► *Example 55:*

Naeem had filed a suit against Kareem in court for breach of contract. Kareem contacted Naeem and requested out of court settlement. Naeem agreed and both of them signed and submitted a written arbitration agreement to court. Such an agreement is valid.

4.4 Uncertain agreements [Section 29]

Agreements, the meaning of which is not certain, or capable of being made certain, are void.

► *Example 56:*

Salim agrees to sell to Babar "a hundred ton of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

► *Example 57:*

Dawood, who is a dealer in coconut oil, agrees to sell to Babar "one hundred ton of oil." The nature of Dawood's trade affords an indication of the meaning of the words, and that he has entered into a contract for the sale of one hundred tons of coconut oil.

► *Example 58:*

Salim agrees to sell to Babar "all the grain in my granary at Peshawar." There is no uncertainty here to make the agreement void.

► *Example 59:*

Salim agrees to sell to Babar "one thousand mounds of rice at a price to be fixed by Kashif." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

► *Example 60:*

Salim agrees to sell to Babar "my white horse for Rupees five hundred or Rupees one thousand." There is nothing to show which of the two prices are to be paid. The agreement is void.

4.5 Wagering agreement**4.5.1 Meaning**

A wager is a bet, an agreement, by which two or more parties agree that a certain sum of money, or other thing, shall be paid or delivered to one of them, on the happening or not happening of an uncertain event.

4.5.2 Basic Rule [Section 30]

Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

► *Example 61:*

Hamid promises to pay Rs. 10,000 to Arif if it rained today, and Arif promises to pay Rs. 10,000 to Hamid if it did not. The agreement is void being a wagering agreement.

► *Example 62:*

An agreement to enter into a wrestling event in which winner was to be rewarded by the entire sale proceeds of tickets is not a wagering agreement.

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

4.5.3 Agreements collateral to wagering agreements [Section 30A]

All agreements knowingly made to further or assist the entering into, effecting or carrying out, or to secure or guarantee the performance, of any void wagering agreement, are void.

► *Example 63:*

Asim agreed with Qasim to provide him credit to bet on a cricket match with the stipulation that if Qasim won, he will share half the proceeds with Asim. This agreement being collateral to a wagering agreement is void.

4.5.4 No suit for recovery allowed [Section 30B]

No suit or other proceeding shall lie for the recovery of:

- any sum of money paid or payable in respect of any void wagering agreement; or
- any commission, brokerage, fee or reward in respect of void wagering agreement; or
- any sum of money knowingly paid or payable on account of any person by way of commission, brokerage, fee, reward or other claim in respect of any void wagering agreement.

► *Example 64:*

Sajid and Majid deposited Rs. 5,000 each with Nawaz for betting, winner to take whole amount. Sajid won the bet but Nawaz refused to pay any amount to him. Sajid cannot file a suit for recovery of the amount.

► *Example 65:*

Naseem and Kareem deposited Rs. 5,000 each for a bet on a card game. Naseem agreed to give Shahbaz 20% commission for his support during the game. Naseem won the bet but refused to give any money to Shahbaz. Shahbaz cannot sue for recovery of the amount.

4.5.5 Payment by guardian, executor etc. for void agreements not to be allowed credit [Section 30C]

A person shall not be allowed any credit in his account for making any payment if:

- a) such person is
 - guardian of the minor on whose behalf he made payment; or
 - heir or personal representative of a deceased person on whose behalf he made payment; and
- b) such payment relates to void wagering agreement, or agreement collateral to void wagering agreement.

► **Example 66:**

Naseer is guardian of Kabeer, a minor. Kabeer lost a bet and Naseer paid Rs. 7,000 from his pocket for the bet. Naseer shall not be entitled to any credit in his account in respect of such payment.

► **Practice Question 17:**

Two wrestlers Goga and Sheeda agreed to play a wrestling match on the condition that if any of them would fail to appear for the match, he would have to pay Rs. 5,000 to the other party. The winner was to receive Rs. 20,000 out of the sale proceeds of the tickets. Goga failed to appear in the match and Sheeda sued him for Rs. 5,000. Goga however, refused to pay claiming that being wagering in nature, the contract is not enforceable by law.

Under the provisions of the Contract Act, 1872 describe whether Sheeda can recover the amount from Goga.

► **Solution:**

All agreements knowingly made to further or assist the entering into, effecting or carrying out, or to secure or guarantee the performance, of any agreement void being in nature of wager, are void.

But in this case, Goga and Sheeda were not going to win or lose in terms of money as a result of wrestling match (i.e. uncertain event). The winning amount had not to be given out of their pockets, but had to be paid from the gate money which was provided by the public. As for the condition of payment for non-appearance, no uncertain event provided the equal chances of winning or losing.

Therefore, Sheeda is entitled to recover the amount from Goga as the agreement between Goga and Sheeda is not a wagering agreement and therefore, it is enforceable at law.

► **Practice Question 18:**

Until recently Mansoor and Arif were independently engaged in the business of selling sweets at Multan railway station. Mansoor incurred a loss due to competition. Arif, in view of his friendship with Mansoor, agreed to move his business to the old city area.

They reached an agreement that Arif would not engage in any competing business with Mansoor. It was also agreed that in case of a breach, none of them would have recourse to a court of law for the enforcement of their rights.

Subsequently, due to economic downturn, Arif in addition to the old city area has also started to sell sweets at Multan railway station. Mansoor, in order to restrain Arif from selling sweets has filed a suit against him.

Under the provisions of the Contract Act, 1872 analyse the above situation and explain the following:

- i. whether Arif is justified in starting sweets business at Multan railway station.
- ii. what would be your answer in (i) above, if Mansoor had bought the goodwill of Arif's business.
- iii. whether Mansoor is justified in filing a suit in the court of law.
- iv. what would be your answer in (iii) above, if both Arif and Mansoor had agreed to refer their disputes to arbitration and not to the court of law.

► *Solution:***Part (i) Agreement in restraint of trade**

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

Part (ii) Exception:

Arif in this case would not be justified to start similar business at Multan railway station. An agreement which restrains the seller of a goodwill from carrying on a business is valid if all the following conditions are fulfilled:

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

Part (iii) Agreement in restraint of legal proceedings:

Yes, Mansoor is justified in filing a suit against Arif. Every agreement, by which any party is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, is void to that extent.

Part (iv) Exception

An agreement between Arif and Mansoor to refer to arbitration any dispute which may arise between them is not void. However, parties right to seek remedy from court of law cannot be absolutely restrained.

► *Practice Question 19:*

On 1 July 2025 Basit agreed to buy 500 grams of silver from Taimure after two months at a price of Rs. 65 per gram. On the due date the price of silver was Rs. 62 per gram. Under the provisions of the Contract Act, 1872 discuss the validity of the above contract if both Basit and Taimure had an intention to settle the transaction by paying the difference between the contract price and the market price without making any delivery.

► *Solution:*

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

► *Practice Question 20:*

Bromine Traders (BT) is engaged in the business of import, purchase and supply of electronic items. Hafnium Limited (HL), a new customer, approached BT for the purchase of 5 television sets. BT agreed to supply the television sets on 6 March 2026 at a discount of either 10% or 15% on retail price to be finalised at the time of delivery. Upon delivery, HL demanded a discount of 15% on retail price which BT refused to provide.

Discuss whether HL can hold BT liable for breach of contract.

► *Solution:*

HL cannot hold BT liable for breach of contract because the agreement entered into between them was void for uncertainty as the price of the television sets is not capable of being made certain.

► *Practice Question 21:*

Under the provisions of the Contract Act, 1872 explain the circumstances in which a person may be restricted from carrying on a business.

► *Solution:*

A person may be restricted from carrying on a business if the:

- person being restricted is seller of a goodwill;
- restriction relates to similar business;
- restriction is within specified local limits;
- restriction is for the time so long as the buyer or any person deriving title to goodwill from him, carries on a like business in specified local limits. Provided that such limits are reasonable having regard to the nature of the business.

► *Practice Question 22:*

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

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

► *Solution:*

The contract between Salman and Rehan is partly valid to the extent of supply of cotton yarn and partly void where it restricts them absolutely from enforcing their rights by legal proceeding.

Under the Contract Act, 1872 the remedy available to Rehan is that he may approach the Court if there is any dispute with Salman.

► *Practice Question 23:*

Under the provisions of the Contract Act, 1872, identify the agreements that are expressly declared to be void.

► *Solution:*

An agreement not enforceable by law is said to be a void agreement. Following agreements have been expressly declared as void agreements:

- i. Agreement in restraint of marriage of any person, other than a minor.
- ii. Agreement that restrains someone from exercising a lawful profession, trade or business except selling a business's goodwill, where the seller agrees to refrain from carrying on a similar business, within the specified local limits.
- iii. Agreement, by which any party is restricted absolutely from enforcing contractual rights, by the usual legal proceedings in ordinary courts, or limits the time within for enforcing these rights, except where parties agree not to appeal in an upper court or select one court of law over another when both have equal jurisdiction.
- iv. Agreements, meaning of which is not certain, or capable of being made certain.
- v. Wagering agreements; no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.
- vi. Agreements knowingly made to promote or assist the conclusion, execution or performance of, or to secure or guarantee the performance of, any wagering agreement that is void.

► *Practice Question 24:*

Malik deals in real estate and has opened his offices in all major cities of Pakistan. Below are some of the recent events related to Malik's business for which he requires your advice:

Malik advised his son Hamid to start his own real estate business. To help cover expenses for running the business, Malik promised to transfer a commercial vehicle to Hamid, by 31 December 2024. Subsequently, Hamid promised to Malik that he would not deal in Karachi properties for two years since his family was well-known there, and it could be mistaken that he was running his father's business instead of establishing his own identity.

Under the Contract Act, 1872, evaluate the validity of the promises made by Malik and Hamid.

► *Solution:*

Malik's promise to transfer a commercial vehicle to Hamid is void/not binding on him for lack of consideration. However, since Malik and Hamid stand in a near relation to each other, if the promise is made on account of natural love and affection, is expressed in writing, and registered under the law for the time being in force for the registration of documents then it may be enforced. Nevertheless, if the commercial vehicle is transferred to Hamid by 31 December 2024, it would be considered as a completed gift and would constitute a valid transfer.

Hamid's promise to refrain from dealing in Karachi properties for two years is not valid. Firstly, because there is no consideration against the promise. Secondly, no person can be restrained from exercising lawful trade or business, unless there is a sale of goodwill which is not the case here since Hamid intends to establish a separate business identity of his own. Accordingly, if Hamid involves himself in dealing with Karachi properties, Malik cannot hold him liable.

5 OBJECTIVE BASED Q&A

- 1 Relation between the parties must exist to use
 - a) Fraud
 - b) Undue influence
 - c) Coercion
 - d) Mistake
- 2 Undue influence implies
 - a) It involves mental and moral pressure
 - b) Criminal liability is incurred
 - c) Pressure of money
 - d) Physical pressure on the party
- 3 Coercion may be directed upon
 - a) The party whose consent is being caused
 - b) Any other party
 - c) Either (a) or (b)
 - d) None of the above
- 4 Fraud exists if it is shown that false statement has been made
 - a) Knowingly
 - b) Without belief in its truth
 - c) Recklessly without caring it be true and false
 - d) All of the above, if done, with an intention to deceive
- 5 Undue influence is legally not presumed in case of
 - a) Guardian and ward
 - b) Creditor and debtor
 - c) Solicitor and client
 - d) Trustee and beneficiary
- 6 Which of the following is not true
 - a) Undue influence must be exercised by or against the party to a contract
 - b) Coercion can be exercised by a stranger to the contract
 - c) A contract is not voidable if it was caused by a mistake as to any law in force in Pakistan
 - d) Duty to speak does not make silence as fraud

- 7 A person threatens to commit a suicide, if his wife and son did not contract with his brother to release certain disputed property in his favour. What is the legal status of this agreement?
- a) The contract was caused by coercion
 - b) The contract was caused by undue influence
 - c) The contract was caused by moral pressure
 - d) None of the above
- 8 Bilal is a manufacturer of colour television sets. He gives an advertisement that in his opinion television sets manufactured by him is the best available in the market. Such statement
- a) Will amount to misrepresentation
 - b) Will amount to active concealment
 - c) Will amount to fraud
 - d) Will not amount to fraud
- 9 Unlawful detaining or threatening to detain any property with an intention of causing any person to enter into a contract is
- a) Misrepresentation
 - b) Bilateral mistake of fact
 - c) Fraud
 - d) Coercion
- 10 A young widow was forced to adopt the boy, under threat of preventing the dead body of her husband from being removed and getting cremated. Can widow set aside adoption deed?
- a) No because the adoption deed was made by her free will
 - b) No because the adoption deed was made by fraud
 - c) Yes because the adoption deed was made by undue influence
 - d) Yes because the adoption deed was made by coercion
- 11 Coercion is the committing or threatening to commit any act which is forbidden by
- a) Pakistan Penal Code
 - b) The Contract Act
 - c) The Partnership Act
 - d) None of the above
- 12 Which of the following does not affect free consent of parties
- a) Fraud
 - b) Misrepresentation
 - c) Undue influence
 - d) Unsoundness of mind

- 13 In case of sale of goodwill, restraint to similar business for the seller of goodwill is valid if it is for
- Specified local limits
 - Particular period of time
 - Restriction must be reasonable
 - All of the above
- 14 Which one of the following is not void
- Agreement to marry a particular person
 - Agreement not to marry at all
 - Agreement to prevent the person from getting married
 - Agreement to marry in heaven
- 15 Which one of the following is not a restraint to trade
- Agreement to sell all produce to a certain party with a stipulation that buyer is bound to accept whole quantity
 - Agreement to stop rival shop-keeper in particular locality from doing business in consideration of money
 - Agreement to sell all produce to a certain party and the buyer is free to reject the goods
 - Partial restraint in trade
- 16 In case of sale of goodwill of business, the vendor of goodwill may be lawfully restricted from doing similar business
- Anywhere in that particular area
 - Within specified local limits
 - Within that particular district
 - Within that particular province
- 17 Agreements in restraint of legal proceedings include
- Agreements which tend to prevent course of justice
 - Agreement to refer present dispute to an arbitration
 - Agreement to settle dispute out of the court
 - Agreement to refer future dispute to arbitration
- 18 Which of the following agreements is valid
- Agreement limiting the time allowed by the law of limitation
 - Agreement which contains vague or ambiguous terms which cannot be made certain
 - Agreement, meaning of which seems to be uncertain but is capable of being made certain
 - Agreement to agree in future

- 19 Parties of wagering agreement do not have
- Any interest in the happening or non-happening of future uncertain event
 - Interest in the non-happening of the events
 - Some other interest in the happening of the event
 - Some other interest in the non-happening of the event
- 20 Which one of the following is void agreement
- Agreement to buy ticket of lottery sponsored by the Government
 - Agreement to pay more than Rs. 500/- to the winner of a horse race
 - Crosswords puzzle based on application of skill and talent
 - Athlete competition
- 21 Void agreement do not create any rights and obligations between parties and cannot be enforced in the court either by the parties in addition, there are many agreement which have also expressly being declared as void by the law, which of the following is not a void agreement
- Agreement in restraint of trade
 - Agreement in restraint of marriage
 - Agreement in restraint of marriage of a minor
 - Agreement in restraint by way of wager
- 22 According to the relevant section of the Contract Act, agreement by way of wager is void. Which of the following transaction is not included in wagering agreement?
- Transactions of lotteries
 - Gambling transaction
 - Purchase of shares and debentures
 - None of the above
- 23 To constitute a wager, which of the following elements should NOT be present in the agreement?
- Uncertain event
 - Each party must be in a win or lose situation
 - Neither party should have any control over the event
 - There should be a promise to pay money only
- 24 Jalil is indebted to Kamran but due to financial crisis, he is not able to pay him. At Jalil's request, Kamran agreed to sell further goods to Jalil on very stringent terms. Subsequently, Jalil approaches the Court demanding relief from contractual obligations on grounds of undue influence. Which of the following statements is true?
- Kamran will have to prove that he did not exercise any undue influence
 - Jalil will have to prove that the contract was induced by undue influence
 - Both Jalil and Kamran will have to prove the presence or absence of undue influence respectively
 - The contract entered into between Kamran and Jalil is void ab-initio

- 25 Haris has two horses, one of the horse is purebred. He agrees to sell one horse to Abdullah who gives his consent believing that he will receive a purebred horse whereas Haris thinks that he would sell the other horse. What is the status of the contract between Haris and Abdullah?
- Void on account of unilateral mistake regarding material fact
 - Voidable on account of unilateral mistake regarding material fact
 - Void on account of bilateral mistake regarding material fact
 - Voidable on account of bilateral mistake regarding material fact
- 26 A mistake of law:
- has same effect as mistake of fact if it relates to mistake of Pakistani law
 - has same effect as mistake of fact if it relates to mistake of foreign law
 - has same effect as mistake of fact whether it relates to mistake of Pakistani law or foreign law
 - is never treated as a mistake of fact
- 27 Which of the following statements regarding wagering agreements is NOT true?
- Wagering agreements are void
 - Parties cannot file suit to recover money won under the wagering agreements
 - Parties to a wagering agreement have no control on the happening of event
 - Prize competitions involving games of skill are considered as wagering agreements
- 28 In order to store valuables, Mariam agreed to purchase a safety cabinet from her friend Noureen for Rs. 800,000. Mariam was of the impression that it was manufactured in Japan and is fireproof. However, she did not confirm her understanding from Noureen.
- On delivery day, Mariam expressed her excitement about owning a Japanese-origin fireproof safety cabinet. Noureen corrected her and mentioned that the only safety cabinet she owned and agreed to sell was purchased from Japan but it was neither fireproof nor manufactured in Japan. Mariam got upset and refused to make the payment.
- The contract between Mariam and Noureen:
- is valid on account of unilateral mistake regarding quality of subject matter
 - is voidable on account of unilateral mistake regarding quality of subject matter
 - is void on account of unilateral mistake regarding quality of subject matter
 - is void on account of bilateral mistake regarding quality of subject matter
- 29 Fareeha was operating a home-based salon in her flat. The salon was well-known and famous for modern hairstyling trends. Aliya, a certified hairdresser, opened her own salon in the same building and offered to give Rs. 700,000 to Fareeha if she stops providing salon services in the same building. Fareeha accepted the offer and Aliya paid the amount. Subsequently, Aliya discovered that Fareeha never stopped providing salon services as agreed.
- Which of the following statements is correct?
- Aliya can sue Fareeha for fraud and force her to stop providing salon services
 - Aliya can claim damages from Fareeha due to non-performance
 - Aliya cannot demand performance from Fareeha as the agreement was void
 - Aliya cannot claim damages as there was no penalty clause in the agreement

- 30 Jamal told Rehan that he wants to spend his retired life in a peaceful area with green surroundings. Rehan offered to sell his ancestral home to Jamal located in an area known for abundant parks and peaceful atmosphere. On Jamal's query, Rehan told him that he is not aware of any planned commercial developments in the area despite the fact that he knew from a reliable source that construction of a large inter-city bus terminal was about to commence on the land opposite his ancestral home.
- Can Rehan be held liable if Jamal purchases his ancestral home?
- a) No, Rehan is not required to disclose such information to Jamal
 - b) Yes, Rehan has committed a fraud against Jamal
 - c) Yes, there is fiduciary relationship between the contracting parties
 - d) No, Rehan has not forced Jamal to buy his house
- 31 On 5 February 2026, Nadia agreed to sell her Mercedes Benz to her brother Fahad. Nadia wanted to sell the car at market price and Fahad wanted to purchase it at cost price. They decided that the sale price shall be determined by their eldest brother Noman. On 20 February 2026, Noman decided the price in Fahad's favour. In the above scenario, can Nadia refuse to sell her car to Fahad?
- a) Yes, because Nadia was unduly influenced to make the contract
 - b) Yes, because Nadia has not given consent to the sale price
 - c) No, Nadia is bound to sell the car under the contract dated 5 February 2026
 - d) No, Nadia is bound to sell the car under the contract dated 20 February 2026
- 32 With reference to 'coercion', as explained in the Contract Act, 1872, which of the following statements is NOT true?
- a) It must be applied in a place where the Pakistan Penal Code is enforced
 - b) It includes threatening to commit an act forbidden by the Pakistan Penal Code
 - c) It must be applied with the intention of causing a person to enter into an agreement
 - d) It includes unlawfully detaining any property to the prejudice of a person
- 33 With reference to 'undue influence', as explained in the Contract Act, 1872, which of the following statement is NOT correct?
- a) The contract is voidable at the option of the party whose consent was caused through exercise of undue influence
 - b) A person is deemed to be in a position to dominate the will of another where he holds apparent authority over the other person
 - c) Consent is said to be free when it is not caused by undue influence
 - d) The burden of proving that undue influence was not applied shall lie upon the person whose will was dominated by the other person

ANSWERS

1	b)	Parties to a contract are related to each other under some sort of relationship
2	a)	Undue influence implies unfair use of dominating position and some kind of mental and moral pressure.
3	c)	Coercion may be exercised from any person and may be directed against any person, even a stranger
4	d)	If an act is done, with an intention to deceive because fraud is an intentional misrepresentation of the facts.
5	b)	There is no presumption that a person is in position to dominate the will of another person in case of creditor and debtor.
6	d)	Duty to speak does not make silence as fraud because it is the duty of the person keeping silence to speak.
7	a)	The threat to commit a suicide is an offence under Pakistan Penal Code.
8	d)	Will not amount to fraud because it is a mere expression of opinion for making self- praise of his own goods.
9	d)	A contract is set to be caused by coercion when it is obtained by unlawful detaining or threatening to detain the property
10	d)	Yes because the adoption deed was made by coercion because coercion implies use of physical force or threat to cause consent.
11	a)	A contract is said to be caused by coercion when it is obtained by committing or threatening to commit any act which is forbidden by Pakistan Penal Code
12	d)	Unsoundness of mind comes within the ambit of contractual capacity and not in free consent of parties.
13	d)	One who sells the goodwill of the business may agree with the buyer to refrain from carrying on a similar business, provided that such restrictions are reasonable
14	a)	A promise to marry a particular person does not imply restraint of marriage.
15	a)	Agreement to sell all produce to a certain party with a stipulation that buyer is bound to accept whole quantity
16	b)	Provided the restriction is reasonable, restriction can be made with the consent of both the parties.
17	a)	Jurisdiction of court of law cannot be restricted by any agreement.
18	c)	Agreement, meaning of which seems to be uncertain but is capable of being made certain.
19	a)	They simply look at the possibility of happening of the event for their gain or loss.
20	a)	Agreement to buy ticket of lottery sponsored by the Government. A lottery is a game of chance. An agreement to buy a lottery ticket is void.
21	c)	Agreement in restraint of marriage of a minor. Agreement, which prevents a minor from getting married, is valid.
22	c)	Transaction of real and genuine sale and purchase of share and other securities in a stock exchange is not of a wagering nature.

23	d)	There should be a promise to pay money only
24	b)	Jalil will have to prove that the contract was induced by undue influence
25	c)	Void on account of bilateral mistake regarding material fact
26	b)	has same effect as mistake of fact if it relates to mistake of foreign law
27	d)	Prize competitions involving games of skill are considered as wagering agreements is untrue.
28	a)	is valid on account of unilateral mistake regarding quality of subject matter
29	c)	Aliya cannot demand performance from Fareeha as the agreement was void
30	b)	Yes, Rehan has committed a fraud against Jamal
31	c)	No, Nadia is bound to sell the car under the contract dated 5 February 2026
32	a)	It must be applied in a place where the Pakistan Penal Code is enforced
33	d)	The burden of proving that undue influence was not applied shall lie upon the person whose will was dominated by the other person

STICKY NOTES

Consent: Definitions

1. Two or more persons are said to “consent” when they agree upon the same thing in the same sense.
2. Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake (with certain exceptions).
3. “Coercion” is the committing, or threatening to commit, any act forbidden by the Pakistan Penal Code or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.
4. A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
5. “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:
 - a) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
 - b) the active concealment of a fact by one having knowledge or belief of the fact;
 - c) a promise made without any intention of performing it;
 - d) any other act fitted to deceive;
 - e) any such act or omission as the law specially declares to be fraudulent.
6. “Misrepresentation” means and includes:
 - a) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
 - b) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;
 - c) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.
7. In the context of contract law, “mistake” can be defined as an erroneous belief, at contracting, that certain facts are true.

Expressly declared void agreements

Void agreement	Exception
1. Restraint of marriage	With a minor
2. Restraint of trade	Sale of goodwill
3. Restraint of legal proceedings	Refer to arbitration
4. Uncertain agreements	
5. Wagering agreements	Contribution to horse race winner

CONTINGENT CONTRACTS

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Introduction
- 2 Rules regarding Contingent Contract
- 3 Objective Based Q&A

STICKY NOTES

AT A GLANCE

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

A contingent contract is to be performed if an uncertain future event happens. It cannot be enforced until that event has happened. If it is to be performed if a particular event does not happen, its performance can be enforced if the event becomes impossible.

If a contingent contract depends for its performance on doing of an act by the promisor, the contract becomes void where the promisor makes the performance impossible.

If a contingent contract contemplates doing of a thing if a specified event happens within a fixed time, it becomes void if the event does not happen within that time.

If a contingent contract contemplates to do anything if an impossible event happens, it is void.

1 INTRODUCTION

1.1 Definition [Section 31]

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

The following contracts are best examples of contingent contracts:

- Contracts of indemnity e.g. insurance contract
- Contract of guarantee (surety is liable to pay creditor in case of default of principal debtor)

► Example 01:

Akram contracts to indemnify Basit upto Rs. 1 million in consideration of Rs. 20,000 annual premium if Basit's house is burnt. This is a contingent contract.

1.2 Characteristics of contingent contracts

The following are the characteristics of contingent contracts:

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

► Example 02:

Javed contracts to pay Rs. 50m to Farhan (a contractor) for constructing a building, provided the construction is approved by an architect. It is a contingent contract because the consideration of the promise to pay Rs. 50m is the construction of the building, and the event, namely, approval by an architect is a collateral event.

► Example 03:

Azam agrees to construct a building for Babar for Rs. 5 million, on the terms that no payment shall be made till the completion of the work. This is not a contingent contract because the uncertain event (i.e. Azam's completing the work) is not collateral to the contract but is the very thing contracted for and is thus an integral part of the contract.

1.3 Contingent contract vs wagering agreement

The main points of the distinction between the two are as under:

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

Contingent contract	Wagering agreement
Reciprocal promises It consists of reciprocal promises.	It may or may not consist of reciprocal promises.

Promises which form the consideration or part of the consideration for each other are called “reciprocal promises”. [Section 2(f)]

► **Practice Question 01:**

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

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

► **Solution:**

The contract between Vazir and Saulat is a contingent contract whose performance is based on the happening of uncertain event collateral to the contract, i.e. arranging of license for Vazir. If such event has not happened the performance of the contract does not become due. It does not matter at all that Saulat had applied for the license and also paid processing fee of Rs. 100,000 to the authorities. Thus Vazir is not bound to purchase the boats from Saulat.

► **Practice Question 02:**

Zubair agrees to construct a bungalow for Ubaid for Rs. 20 million on the condition that payment will only be made after Muneer, an architect, certifies that the bungalow has been constructed in accordance with the layout plan. Under the provisions of the Contract Act, 1872 describe the nature and validity of the above contract.

► **Solution:**

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

► **Practice Question 03:**

Asim agreed to construct a bungalow for Ali at a cost of Rs. 50 million. However, it was agreed that payment would only be made on completion of the project. Is this a contingent contract under the Contract Act, 1872? Give reasons. Also list the requisite characteristics of a contingent contract.

► **Solution:**

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

Essentials of a contingent contract

The following are the essential characteristics of a contingent contract:

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

► *Practice Question 04:*

Under the Contract Act, 1872, identify any four differences between 'contingent contract' and 'wagering agreement'.

► *Solution:*

	Contingent Contracts	Wagering Agreements
1.	Contingent contracts are valid contracts.	Wagering agreements are void and illegal contracts.
2.	In a contingent contract, parties have a real interest in the occurrence or non-occurrence of the event (e.g. insurable interest in the property insured).	Parties are not interested in the occurrence or non-occurrence of the event, except for the winning or losing the amount.
3.	The future uncertain event is merely collateral.	The uncertain event is the sole determining factor of the agreement.
4.	Contingent contracts consist of reciprocal promises.	Wagering agreements may or may not consist of reciprocal promises.
5.	Suit can be filed and damages can be claimed in case of breach of contingent contract.	Suit cannot be filed and damages cannot be claimed in case of breach of wagering agreements.

2 RULES REGARDING CONTINGENT CONTRACTS

2.1 Enforcement of contingent contracts [Section 32, 33, 35 & 36]

Contingent on	Time fixed	When enforceable	When void
Happening of uncertain future event	No	If the event happens.	If the event becomes impossible.
	Yes	If the event happens within time fixed.	If time expires or event becomes impossible before time expires.
Non-happening of uncertain future event	No	If the event becomes impossible.	If the event happens.
	Yes	If time expires or event becomes impossible before time expires.	If the event happens within time fixed.
Happening of an impossible event	Such agreements are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.		

► **Example 04:**

Aslam makes a contract to sell a horse to Baqir, if Chand (to whom the horse has been offered) refuses to buy it. Chand rejected the offer. The contract is enforceable.

► **Example 05:**

Andrew contracts to pay a sum of money to Becca, if Becca marries Christopher. Christopher dies before getting married. The contract becomes void.

► **Example 06:**

Azam promises to pay a sum of money to Babar, if a certain ship returns within a year. The contract becomes enforceable when the ship returns within a year.

► **Example 07:**

Adeel promises to pay a sum of money to Badar, if a certain ship returns within a year. The contract becomes void if the ship sinks within a year or if it returns after a year.

► **Example 08:**

Arslan agrees to pay a sum of money to Burhan, if a certain ship does not return. The ship is sunk. The contract becomes enforceable when the ship is sunk.

► **Example 09:**

Amjad agrees to pay a sum of money to Basit, if a certain ship does not return. The ship returns. The contract becomes void.

► **Example 10:**

Alia promises to pay a sum of money to Beenish, if a certain ship does not return within a year. The contract becomes enforceable when the ship does not return within a year or is sunk earlier.

► **Example 11:**

Aasman promises to pay a sum of money to Badil, if a certain ship does not return within a year. The contract becomes void when the ship returns within a year.

► **Example 12:**

Adam agrees to pay Rs. 1,000 to Boris, if he can run at 500 kilometres per hour. The agreement is void.

► **Example 13:**

Asma agrees to pay Rs. 1,000 to Basheer if he marries Asma's daughter, Chanda. Chanda is not alive at the time of the agreement. The agreement is void.

2.2 When event based on future conduct is deemed impossible [Section 34]

If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

► **Example 14:**

Kamal agrees to pay Sarmad a sum of money to Sarmad, if Sarmad marries Shazia. Shazia marries Dawood. The marriage of Sarmad to Shazia must now be considered impossible, although it is possible that Dawood may die and that Shazia may afterwards marry. If later Sarmad actually marries Shazia (Dawood's widow), it will not revive the old obligation.

► **Practice Question 05:**

Under the provisions of the Contract Act, 1872 describe contingent contracts and identify the circumstances in which a contingent contract cannot be enforced.

► **Solution:**

Contingent contract may be described as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

In following circumstances, a contingent contract cannot be enforced:

- Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law if the event does not happen or contract becomes void due to the event becoming impossible.
- Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time cannot be enforced if such event does not happen within fixed time or becomes impossible before time expires.
- Contingent contracts to do or not to do anything if an uncertain future event does not happen cannot be enforced if the event happens.
- Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time cannot be enforced by law when the event happens within the fixed time.
- If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, then such contract cannot be enforced when such person does anything which renders it impossible that he should so act within definite time or otherwise than under further contingencies.

► **Practice Question 06:**

Part (a)

After graduating from Pelican College of Arts and Design (PCAD), Kamran Shah opened an art gallery in Karachi to showcase his paintings. However, the gallery did not generate much public interest despite his extensive efforts. Kamran discussed the matter with his professor, Adil Adeeb, the owner of PCAD, emphasizing on his aspirations to achieve recognition for his paintings. Kamran requested Adil to display his paintings in the PCAD's upcoming annual exhibition scheduled for 31 March 2023.

Adil informed Kamran that he has already invited various artists for displaying their work in the exhibition, however, one of the artists namely Sohail Khan has still not responded. Adil proposed to Kamran that if Sohail refuses to participate in the exhibition, then Kamran can display his paintings on the following terms:

- Kamran will pay Rs. 50,000 to PCAD for every painting sold.
- Subsequent to the exhibition, Kamran will not sell any of his paintings in Karachi.
- In case of any dispute, the decision taken by Adil shall be final which cannot be challenged by Kamran in any manner.
- Kamran must submit the details of his paintings fifteen days before the exhibition, which is a compulsory requirement to be adhered to by all the participating artists.

Kamran agreed to the above terms and signed the contract on 5 March 2023. Adil did not receive any response from Sohail till that date.

Under the provisions of the Contract Act, 1872, discuss the enforceability of the contract between PCAD and Kamran.

Part (b)

Assume that in (a) above, Kamran subsequently comes to know before the date of exhibition that his paintings would be displayed in the exhibition without any mention of his credentials, despite the fact that at the time of signing the contract, Adil had promised to display his paintings under the category of 'Emerging artists' along with prominent credentials.

Under the provisions of the Contract Act, 1872, discuss the possible effect(s) of the information subsequently received by Kamran, on the enforceability of the contract.

► Solution:

Part (a)

Contract between PCAD and Kamran is a contingent contract which can only be enforced if Sohail does not participate in the exhibition.

Sohail's non-participation can be confirmed either through an express response or by his conduct i.e. non-submission of the details of his paintings fifteen days before the exhibition which is a compulsory requirement for all the participating artists.

Payment for every painting sold

Requirement to pay Rs. 50,000 to PCAD for every painting sold is lawful and can be enforced.

Restriction to sell paintings after exhibition

Kamran cannot be restricted from undertaking lawful business to sell paintings in any locality including Karachi because he has not sold the goodwill of his business and is merely a participant of the exhibition. Although Kamran has signed the agreement, it shall be void to that extent.

Restriction to enforce legal rights

Kamran cannot be absolutely restricted from enforcing his rights under or in respect of the contract by the usual legal proceedings in the ordinary tribunals. Therefore, Adil cannot restrain Kamran in this regard. However, although Kamran has signed the agreement, the same shall be void to that extent.

Submission of details prior to exhibition

The requirement of submitting the details of paintings by Kamran 15 days prior to exhibition is lawful and in case of non-submission Kamran shall not be entitled to participate in the exhibition.

Part (b)

Kamran had made it clear that he aspired to achieve recognition for his paintings and Adil had promised to display his painting with prominent credentials. Therefore, if Kamran's credentials are not displayed prominently, it means Kamran's consent was not freely obtained due to the following possibilities:

1. If Adil innocently caused, Kamran to make a mistake as to the substance of the subject matter of the contract, Kamran's consent would be considered to have been obtained by way of misrepresentation.
2. If Adil made the promise without the intention of performing it or had the intention to deceive, Kamran's consent would be considered to have been obtained by way of fraud.

Effect on the contract

As Kamran's consent was not freely obtained, the contract would be voidable at the option of Kamran.

Kamran, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true. Therefore, Kamran may either insist that his credentials are displayed prominently or he may choose to withdraw from the contract by refusing to participate in the exhibition and claim damages.

However, the contract shall not become voidable, if Kamran had the means of discovering the truth with ordinary diligence.

Further, if it is established that Adil's promise did not cause Kamran's consent to the contract, then the contract shall be considered valid and enforceable.

► *Practice Question 07:*

Square Research (SR) is in the process of developing a medical device with radio sensor technology. In January 2026, SR entered into an agreement with Crescent Pharmaceuticals (CP) under which CP agreed to purchase 500,000 units of that medical device from SR in June 2026, if SR obtains regulatory approvals from the Drug Regulatory Authority of Pakistan (DRAP). CP paid an advance of Rs. 10 million to SR.

In February 2026, SR initiated the approval process with DRAP. However, before the approval was granted, the Ministry of Health revised its guidelines and banned the use of radio sensor technology for medical purposes. SR incurred Rs. 12 million for obtaining the approval from DRAP.

Under the provisions of the Contract Act, 1872, evaluate CP's position and identify the remedies available to it, if any.

► *Solution:*

As the supply of the medical devices with radio sensor technology is contingent upon SR obtaining the required regulatory approval from DRAP, the performance of the contract would not become due for either party until the approval is obtained within the specified timeframe i.e., by June 2026.

The Ministry of Health's act of revising the guidelines and banning use of radio sensor technology for medical purposes was unforeseen and beyond SR's control which has significantly impacted the feasibility of fulfilling the collateral event to the contingent contract rendering the contract performance impossible.

Considering the principles of impossibility, it is apparent that with the radio sensor technology banned, the contract between CP and SR becomes void.

Accordingly, CP is entitled to recover the advance of Rs. 10 million paid to SR, whereas CP would not be liable towards the cost incurred by SR i.e., Rs. 12 million.

► *Practice Question 08:*

Under the Contract Act, 1872, describe contingent contracts and identify the circumstances in which a contingent contract can be enforced.

► *Solution:*

A contingent contract may be described as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

In the following circumstances, a contingent contract can be enforced:

- i. Contingent contracts to do or not to do anything if an uncertain future event happens can be enforced only when the event has happened.
- ii. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time can be enforced only when the event has happened within such a fixed time.
- iii. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced only after the happening of that event becomes impossible.
- iv. Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time can be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed has expired, it becomes certain that such event will not happen.
- v. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, then such contract can be enforced when such person so acts / conducts himself in desired manner.

3 OBJECTIVE BASED Q&A

- 1 Contingent contracts are
 - a) Always valid
 - b) May be valid
 - c) May be voidable
 - d) May be unenforceable

- 2 Performance of contingent contract depends on
 - a) Happening of some future event
 - b) Non-happening of some future event
 - c) Happening or Non-happening of some uncertain event
 - d) Happening or Non-happening of some uncertain event collateral to such contract

- 3 Agreement to pay money without having any other interest on the happening or non-happening of some future event is
 - a) Contingent contract
 - b) Insurance contract
 - c) Wagering agreement
 - d) Quasi contract

- 4 Contingent contracts are
 - a) Absolute contracts
 - b) Partly absolute contracts
 - c) Conditional contracts
 - d) None of the above

- 5 Which one of the following statement is true
 - a) All contingent contracts are not wagering in nature
 - b) Contingent contracts and wagering contracts are one and same
 - c) Contingent contracts are absolute contracts
 - d) Contingent contracts are not conditional contract

- 6 Contingent contract is based on an event
- Which is uncertain
 - Which is certain to happen
 - Which is partly uncertain
 - Which is partly certain
- 7 A contract of insurance is a
- Contract of guarantee
 - Contingent contract
 - Wagering agreement
 - Unilateral agreement
- 8 Mr. X agrees to pay a certain sum to Mr. Y, if Mr. Y brings on earth a star from the sky. It is
- Valid contract
 - Void agreement
 - Voidable contract
 - Void contract
- 9 Mr. A contract to pay Mr. B sum of Rs.20000. If his house gets on fire. It is
- Wagering agreement
 - Contingent contract
 - Unilateral agreement
 - Bilateral agreement
- 10 In a contract, contingent on non-happening of uncertain future event within the time fixed by parties, the contract is enforceable:
- Only if the event happens within time fixed.
 - Only if time expires or event becomes impossible before time expires.
 - Only if the event becomes impossible.
 - Only if the event happens.

- 11 Which of the following would be classified as contingent contract?
- a) Insurance
 - b) Indemnity
 - c) Wagering
 - d) Both a) and b)
- 12 On 1 August 2025, Jahangir Sports (JS) offered to sell a vintage rubber raft to Nadim for Rs. 250,000. Subsequently, on 5 August 2025, Wasim, upon learning about the raft, expressed interest in purchasing it. JS then offered to sell the raft to Wasim for Rs. 275,000, provided that the sale to Nadim does not occur by 20 August 2025. Wasim accepted this offer.
- However, on 20 August 2025, JS sold the raft to an expedition team for Rs. 400,000. On the same day, JS sent a revocation letter to Nadim and also informed Wasim about the sale to the expedition team.
- Under the Contract Act, 1872, can Wasim hold JS liable for non-performance?
- a) Yes, because the contract between JS and Wasim became enforceable on 20 August 2025
 - b) Yes, because JS sold the raft to the expedition team at a higher price
 - c) No, because the contract between JS and Wasim became void on 20 August 2025
 - d) No, because there was no contract between JS and Wasim

ANSWERS

1	b)	May be valid. That depends upon the situation of contingent contract that it may be valid or it may not be
2	d)	Happening or Non-happening of some uncertain event collateral to such contract. The performance of the contingent contract depend on the happening or non-happening of an uncertain event in future and that event must be collateral to the main contract.
3	c)	Wagering agreement. Wagering agreement is one in which money is to be paid by one to another party without having any other interest. It is void
4	c)	The performance of a contingent contract depends upon the happening or non-happening of some condition.
5	a)	If the object of a contingent contract is valid then it is perfectly a valid contract and not a wagering agreement.
6	a)	Which is uncertain. The event must be uncertain, and contingency will arise only if it's happening or non-happening is quite uncertain
7	b)	Contingent contract. Insurance contract is a contract whereby the insurance company in consideration of payment of premium from the insured promises to compensate his losses arising out of insured cause.
8	b)	Void agreement. Any agreement which is impossible to perform is void from the beginning i.e. void ab-initio.
9	b)	Contingent contract. Payment of money by Mr. A will be made on breaking of fire in the house of Mr. B. the performance of this agreement depends on breaking of fire in Mr. B's house.
10	b)	If time expires or event becomes impossible before time expires.
11	d)	Both a) and b)
12	a)	Yes, because the contract between JS and Wasim became enforceable on 20 August 2025

STICKY NOTES

Definition of Contingent Contract

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

Characteristics of Contingent Contract

The following are the characteristics of contingent contracts:

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

Summary of Rules on Contingent Contracts

Contingent on	Time fixed	When enforceable	When void
Happening of uncertain future event	No	If the event happens.	If the event becomes impossible.
	Yes	If the event happens within time fixed.	If time expires or event becomes impossible before time expires.
Non-happening of uncertain future event	No	If the event becomes impossible.	If the event happens.
	Yes	If time expires or event becomes impossible before time expires.	If the event happens within time fixed.
Happening of an impossible event	Such agreements are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.		

AT A GLANCE

SPOTLIGHT

STICKY NOTES

PERFORMANCE OF CONTRACTS - I

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Contracts which must be Performed
- 2 Appropriation of Payments
- 3 Contracts which need not be Performed
- 4 Objective Based Q&A

STICKY NOTES

AT A GLANCE

As a general rule, the parties to a contract must either perform or offer to perform their respective promises. It means there are two types of performance:

- i. Actual performance
- ii. Attempted performance or tender

Where a debtor, owing several distinct debts to one person, makes a payment the rules of appropriation apply as follows:

- i. The debtor has, at the time of payment, right of choice of appropriating the payment.
- ii. In default of the debtor, the creditor has the right to appropriate.
- iii. In default of either, the debts will be appropriated in order of time.

A contract need not be performed in following circumstances:

- i. When it has been rescinded, altered or substituted with a new contract.
- ii. When the promisee dispenses with or remits performance.
- iii. When promisee neglects to afford promisor reasonable facilities for performance.
- iv. When performance becomes, afterwards, impossible or unlawful.

1 CONTRACTS WHICH MUST BE PERFORMED

1.1 Obligation to perform [Section 37]

The parties to a contract must either perform (actual performance), or offer to perform (attempted performance), their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

1.2 Types of performances

There are two types of performance, actual performance and attempted performance.

1.2.1 Actual performance

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

► *Example 01:*

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

1.2.2 Attempted performance [Section 38]

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

► *Example 02:*

Azam contracted to deliver to Babar at his warehouse on 1st November, 500 bales of cotton of a particular quality. Azam brought the cotton of requisite quality to the appointed place on the appointed day during the business hours, and Babar refused to take the delivery of goods; it is a case of attempted performance because Azam has done what he was required to do under the contract.

1.3 Essentials of a valid offer of performance [Section 38]

An offer of performance is valid if it fulfils following conditions:

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

► *Example 03:*

Anum, who is a debtor of ABC Limited, offers to pay the amount due if ABC Limited also allots her 500 shares at par value. It is not a valid tender of money due to condition specified by Anum.

► *Example 04:*

Adeel ordered a cake from Shangrilla Bakers for his daughter's birthday on 17th August. Shangrilla Bakers brought the cake on 15th August for delivery. Adeel is not bound to accept the cake as the tender is not made at a proper time.

► *Example 05:*

Azam is tenant of Babar. He offers him rent at a marriage party. Babar is not bound to accept as the tender is not made at a proper place.

► *Example 06:*

Waqas is debtor of Babar. Waqas offers to pay in instalments to Babar while the contract stipulated payment in full. It is not a valid tender as it not for the whole obligation as agreed.

► *Example 07:*

Kamran delivered the goods to Waqas at 2 pm as agreed but did not allow him any time for inspection of goods. It is not a valid tender.

► *Example 08:*

Akmal contracts to deliver to Basit at his warehouse, on the 1st March 2026, 100 bales of cotton of a particular quality. In order to make a valid offer of a performance, Akmal must bring the cotton to Basit's warehouse, on the appointed day, under such circumstances that Basit may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

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

► *Example 09:*

Ashraf owes Rs. 15,000 to Rizwan and Tanveer jointly. He offered to pay the amount to Tanveer on a proper time and place who refused to receive it. It shall be considered valid tender of performance by Ashraf.

1.4 Effect of refusal to accept offer of performance [Section 38]

Where a promisor has made a valid offer of performance to the promisee, and the offer has not been accepted the promisor is not responsible for non-performance, nor does he thereby lose his rights (of compensation and rescission) under the contract.

► *Example 10:*

Naeem properly tendered goods to Asim in accordance with the terms of contract but Asim refused to accept the goods. Naeem does not have to deliver goods later and can sue Asim for damages caused by non-acceptance of goods.

1.5 Obligation of representatives of the promisors [Section 37]

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract e.g. contract is of personal nature.

► *Example 11:*

Ajmal promises to deliver goods to Bano on a certain day on payment of Rs. 1,000. Ajmal dies before that day. Ajmal's representatives are bound to deliver the goods to Bano, and Bano is bound to pay the Rs. 1,000 to Ajmal's representatives.

► *Example 12:*

Anwar promises to paint a picture for Saleem by a certain day, at a certain price. Anwar dies before the day. The contract cannot be enforced either by Anwar's representatives or by Saleem.

1.6 Effect of refusal to perform promise wholly [Section 39]

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

► **Example 13:**

Asma, a singer enters into a contract with Babar, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and Babar engages to pay her Rs.100 for each night's performance. On the sixth night, Asma wilfully absents herself from the theatre. Babar is at liberty to put an end to the contract.

► **Example 14:**

Asma, a singer enters into a contract with Babar, the manager of a theatre, to sing at his theatre two nights every week during the next two months and Babar engages to pay her at the rate of Rs.100 for each night. On the sixth night, Asma wilfully absents herself. With the assent of Babar, Asma sings on the seventh night. Babar has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for damage sustained by him through Asma's failure to sing on the sixth night.

► **Practice Question 01:**

In accordance with the contract entered into by Masoom and Mubarak, Masoom has offered to deliver 300 Rolex watches to Mubarak on 1 March 2026. Under the provisions of the Contract Act, 1872 advise Masoom about the conditions which must be satisfied for constituting a valid offer of performance.

► **Solution:**

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

- i. The offer must be unconditional;
- ii. It must be made at a proper time and place, and under such circumstance that Mubarak may have a reasonable opportunity of ascertaining that Masoom is able and willing there and then to deliver 300 Rolex watches;
- iii. Mubarak (the promisee) must have a reasonable opportunity of satisfying himself that the watches offered are the Rolex watches and are 300 in numbers which Masoom (the promisor) was bound by his promise to deliver.

► **Practice Question 02:**

Mehboob, a promisor and Saulat, a promisee, entered into a valid contract. However, when Mehboob made an offer of performance, Saulat refused to accept the same. Briefly state the rights and responsibility of Mehboob against such refusal. Also state the essentials of a valid offer of performance under the provisions of Contract Act, 1872.

► **Solution:****Rights and responsibilities of Mehboob:**

Mehboob would not be responsible for non-performance; he will not lose his rights to claim damages under the contract, for instance he will be entitled to compensation and contract will become voidable at his option; in case of performance by Saulat on Mehboob's demand, Mehboob will be responsible to perform his promise.

Essentials of a valid offer of performance:

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

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

2 APPROPRIATION OF PAYMENTS

Appropriation of payment means application of payment to a particular debt or debts where a debtor owes several distinct debts to one person. The various rules are as under:

2.1 Where debt to be discharged is indicated [Section 59]

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

► *Example 15:*

Azam owes to Babar, among other debts; the sum of Rs. 567. Babar writes to Azam and demands payment of this sum. Azam sends to Babar Rs. 567. This payment is to be applied to the discharge of the debt of which Babar had demanded payment.

► *Example 16:*

Azam owes Babar, among other debts, Rs.1,000 related to invoice # 27, which falls due on the first June. He owes Babar no other debt of that amount. On the first June, Azam pays to Babar Rs.1,000. The payment is to be applied to the discharge of the invoice # 27.

2.2 Where debt to be discharged is not indicated [Section 60]

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor has option to apply the payment to any lawful debt due from the debtor even if it is a time barred debt but he cannot apply the payment to a disputed debt.

► *Example 17:*

Azam owes several debts to Babar, one of them of Rs. 100,000 is time barred. Azam sends Rs. 200,000 to Babar without indicating the debt which is to be appropriated. Babar may appropriate Rs. 100,000 against the time barred debt.

2.3 Neither party makes an appropriation [Section 61]

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

If the debts are of equal standing, the payment shall be applied in discharge of each, proportionately.

► *Example 18:*

Azam owes Babar three debts, Rs. 150,000 (18 April), Rs. 300,000 (18 April) and Rs. 400,000 (25 April). Azam sends Rs. 90,000 to Babar on 20th May. It will be appropriated against the two debts of 18 April proportionately, as Rs. 30,000 and Rs. 60,000.

2.4 When interest and principal both are due

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

► *Example 19:*

Azam owes Rs. 100,000 as principal amount and Rs. 20,000 as interest. Azam sends Rs. 30,000 to Babar. Babar can apply Rs. 20,000 towards interest and Rs. 10,000 towards principal amount.

► *Practice Question 03:*

Following is the statement of sums payable by Nisar to Mairaj on 4 March 2026:

Date of invoice	Rupees	Remarks
01/01/2025	200,000	Guaranteed by Imran.
08/06/2025	150,000	
	350,000	

Nisar sent a cheque for Rs. 100,000 on 5 March 2026. As there were no instructions from Nisar, Mairaj adjusted the payment against the amount of Rs. 150,000. The guarantor (Imran) objected to such appropriation and claimed that adjustment should be made in the order of the date of invoices. Under the provisions of the Contract Act, 1872 discuss whether the objection of Imran is justified.

► *Solution:*

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

► *Practice Question 04:*

Following is the statement on August 4, 2026 of sums payable by Ubaid on account of cloth supplied by Bilal:

Date of transaction	Rupees	Remarks
01/01/2023	37,000	Time barred under Limitation Act.
02/03/2024	20,000	
30/08/2025	50,000	Guaranteed by Wasim.
28/04/2026	63,000	
	170,000	

Ubaid sent a cheque for Rs. 70,000 on August 5, 2026. There being no instructions from Ubaid, Bilal adjusted the payment against the following:

Date of transaction	Rupees
01.1.2023	37,000
02.3.2024	20,000
28.4.2025	13,000
	70,000

The guarantor (Wasim) objected to such appropriation and claimed that since the amount of Rs. 37,000 was time barred, it should not be adjusted and the full amount guaranteed by him should be fully adjusted.

- a) Is the objection of Wasim valid?
- b) Discuss how the above payment of Rs. 70,000 should be applied under each of the following independent circumstances, according to the provisions of the Contract Act, 1872:
 - i. The following words were written on the back of the cheque: (20,000 + 50,000 = 70,000)
 - ii. No instructions about appropriation of payment were given by Ubaid. Bilal did not make any appropriation either.

► *Solution:***Part (a)**

The payment is correctly applied by Bilal and the objection of Wasim is not valid. In the absence of any intimation from debtor or circumstances indicating to which debt payment is to be applied, the creditor is free to use his discretion and apply it to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Part (b)**(i)**

The payment should be applied in discharging the following debts:

Debt of	Rupees
March 2, 2024	20,000
August 30, 2025	50,000
	70,000

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

(ii)

The payment should be applied in discharging the debts in the order in which they became due. It is irrelevant whether the debts are or are not barred by the law in force for the time being as to limitation of suits.

► *Practice Question 05:*

Effective 1 July 2024, Arowana Power Limited (APL) started purchasing fuel from Sauger Limited (SL). Up to 31 May 2026, APL did not make any payment to SL due to which late payment surcharge was invoiced to APL. APL refused to acknowledge the surcharge and asked for its cancellation but SL never responded. APL stopped purchasing fuel from SL with effect from 15 June 2026.

In July 2026, APL made two bulk payments equivalent to the cost of fuel purchased from 1 July 2024 to 15 June 2026 but did not mention the invoices against which the payments were to be adjusted.

In August 2026, APL came to know that SL had first adjusted the late payment surcharge and balance amount had been adjusted against cost of fuel. APL demands that SL should adjust the payments against cost of fuel only and not against the surcharge.

Under the provisions of the Contract Act, 1872 discuss the validity of APL's demand and adjustment made by SL.

► *Solution:*

Although APL did not send instructions for appropriation that the payments should be adjusted against cost of fuel only, APL's payment of two bulk amounts equivalent to the cost of fuel purchased from 1 July 2024 to 15 June 2026 are indicative of the fact that APL intends to have the payments applied against the cost of fuel only as intimation given by a debtor may be given impliedly. Further, APL refused to acknowledge the surcharge and asked for its cancellation, hence it cannot be considered as lawful debt.

Considering the above, APL's demand is valid as SL was not justified in first adjusting the late payment surcharge and then adjusting the cost of fuel.

► *Practice Question 06:*

Sultan imports mulberry silk and receives repetitive orders from regular customers. The invoices are generated on the dispatch date and payment becomes due on the last date of the subsequent month.

Wajahat is a regular customer of Sultan. Following are the extracts from Wajahat's statement of receivables as on 30 June 2022:

Date of invoice	Amount (Rs.)	Due date	Comments noted by Sultan
31 January 2017	60,000	28 February 2017	Time barred under local law
10 May 2021	100,000	30 June 2021	Overdue for one year
10 March 2022	90,000	30 April 2022	Overdue for two months
31 March 2022	200,000	30 April 2022	Overdue for two months
30 June 2022	50,000	31 July 2022	Not yet due
Total	500,000		

Wajahat sent a cheque of Rs. 220,000 on 31 July 2022 but did not mention the invoices against which the payment was to be adjusted. Sultan sent several reminders to Wajahat in this regard but did not receive a response.

Under the provisions of the Contract Act, 1872 discuss how the proceeds of the cheque can now be adjusted against Wajahat's statement of receivables.

► *Solution:*

In the absence of any intimation from Wajahat regarding application of payment to debts, following are the two possibilities to determine the settlement:

- Sultan may apply the payment at his discretion to any lawful debt actually due and payable to him from Wajahat, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.
- If Sultan does not make an appropriation, then the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits.

Further, where the debts are of equal standing, the payment shall be applied in discharge of each outstanding debt in equal proportion.

Accordingly, invoices dated 31 January 2017 amounting Rs. 60,000 and 10 May 2021 amounting to Rs. 100,000 will be settled first against the payment received.

Further, the invoices dated 10 March 2022 and 31 March 2022 are of equal standing i.e. both matured on 30 April 2022, therefore, remaining payment shall be applied in discharge of these invoices in equal proportion i.e. Rs. 18,621 against invoice dated 10 March 2022 and Rs. 41,379 against invoice dated 31 March 2022.

► *Practice Question 07:*

Babar owns Steel Electronics (SE), a retail store of electronic equipment. He typically buys the equipment from wholesale suppliers on credit and pays invoices by cheque within 60 days, always attaching a letter specifying which invoice(s) the cheque covers.

When Babar fell ill, his son, Junaid, managed SE. Upon returning, Babar learned that Junaid had sent several cheques to Farrukh, a major supplier, without specifying the relevant invoices.

Under the Contract Act, 1872, advise Babar how the cheques sent by Junaid should be applied to Farrukh's outstanding invoices.

► *Solution:*

When SE makes a payment to Farrukh, and the circumstances imply that the payment is intended for a particular debt, Farrukh's acceptance of the payment suggests that it will be applied towards that particular debt.

In the absence of clear instructions from Junaid and with no other factors indicating which debt the payment should be applied to, Farrukh has the discretion to apply the payment to any valid debt owed by SE. This holds true even for debts that may be time-barred under current laws governing the limitation of legal action for debt recovery.

If Farrukh does not allocate the payment to a specific debt, Junaid's payments will be applied to the debts in order of time. This is the case regardless of whether the debts are or are not time-barred by the laws on the limitation of legal action for debt recovery.

When multiple debts are of equal standing, Junaid's payments will be divided proportionally among these debts to discharge them.

3 CONTRACTS WHICH NEED NOT BE PERFORMED

A contract is said to be discharged either by performance or when contractual relations between the parties are terminated or comes to an end otherwise, in which case it need not be performed.

3.1 Novation, rescission and alteration [Section 62]

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

► *Example 20:*

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

► *Example 21:*

Azam owes Babar Rs.10,000. Azam enters into an agreement with Babar, and gives Babar a mortgage of his (Azam's) estate for Rs.5,000 in place of the debt of Rs. 10,000. This is a new contract and extinguishes the old.

► *Example 22:*

Ajmal owes Boris Rs. 10,000 under a contract. Boris owes Chandra Rs. 10,000. Boris orders Ajmal to credit Chandra with Rs. 10,000 in his books, but Chandra does not assent to the arrangement. Boris still owes Chandra Rs. 10,000, and no new contract has been entered into.

► *Example 23:*

Asif promises Beenish to sell and deliver 500 Bales of cotton on 1st November at her warehouse and Beenish promises to pay for goods on 1st December. Later Asif and Beenish mutually decide not to perform the contract. Asif and Beenish need not perform the contract.

► *Example 24:*

Zahid promises to sell and deliver 500 bales of cotton, on 1st November and Yasir promises to pay for goods on 1st December. Afterwards, Zahid and Yasir mutually decide that the goods shall be delivered in five equal instalments at Zahid's warehouse. Now, the parties need not perform the original contract and must perform the contract as altered.

3.2 Promisee may dispense with or remit performance [Section 63]

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

► *Example 25:*

Adeel promises to paint a picture for Saleem. Saleem afterwards requested Adeel not to do so. Adeel, if agreed is no longer bound to perform the promise.

► *Example 26:*

Azam owes Babar Rs. 5,000. Azam pays to Babar, and Babar accepts, in satisfaction of the whole debt Rs. 2,000 paid at the time and place at which the Rs. 5,000 were payable. The whole debt is discharged.

► *Example 27:*

Anum owes Bilal Rs.5,000. Sohail pays to Bilal Rs.1,000, and Bilal accepts the amount in satisfaction of his claim on Anum. This payment is a discharge of the whole claim.

► *Example 28:*

Ahmad owes Rizwan, under a contract, a sum of money, the amount of which has not been ascertained. Ahmad, without ascertaining the amount, gives to Rizwan, and Rizwan, in satisfaction thereof, accepts, the sum of Rs. 20,000. This is a discharge of the whole debt, whatever may be its amount.

► *Example 29:*

Ashraf owes Habib Rs. 20,000, and is also indebted to other creditors. Ashraf makes an arrangement with his creditors, including Habib, to pay them a composition of 50% upon their respective demands. Payment of Rs. 10,000 is a discharge of Habib's demand.

3.3 Promisee refusal or neglect [Section 67]

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

► *Example 30:*

Adeel contracts with Sajid to repair Sajid's house. Sajid neglects or refuses to point out to Adeel the places in which his house requires repair. Adeel is excused for the non-performance of the contract caused by such neglect or refusal.

3.4 Impossible acts [Section 56]**3.4.1 Void agreement**

An agreement to do an act impossible in itself is void.

► *Example 31:*

Arslan agrees with Habib to discover treasure by magic. The agreement is void.

3.4.2 Subsequent impossibility or illegality

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

The following are acceptable grounds of supervening impossibility:

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

► *Example 32:*

A music hall was rented out for a series of concerts. The hall caught fire before the date of first concert. It was held, the contract has become void on the ground of supervening impossibility.

► *Example 33:*

Atif agreed to sing on a specified day. Atif fell seriously ill and could not perform on that day. The contract was discharged.

► *Example 34:*

Zahid contracts to take in cargo for Yasir at a foreign port. Zahid's government afterwards declares war against the country in which the port is situated. The contract becomes void when the war is declared.

► *Example 35:*

Alex and Boris contract to marry each other. Before the time fixed for the marriage, Alex goes mad. The contract becomes void.

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

- The performance of contract becoming difficult, more costly or less beneficial than that agreed at the time of its formation.

- b) The contract becomes commercially unviable.
- c) There is default by third party, on whose work the promisor was relying.
- d) Strikes, lockouts and civil disturbances.
- e) Partial impossibility of some of the objects of the contract.

► **Example 36:**

Asim agreed to supply gold within a specified time. He failed to supply in time because of government's restriction on the transport of gold from collieries. Here Asim will not be discharged because the gold was available in the open market from where Asim could have obtained it.

► **Example 37:**

Ajay, a furniture retailer, agreed to supply certain furniture to Sanjay at an agreed rate. Afterwards, there was a sharp increase in the rates of the timber and rates of wages. Since, it was no longer profitable to supply at the agreed rate, Ajay did not supply. Ajay will not be discharged on the ground of supervening impossibility.

► **Example 38:**

Alex entered into a contract with Boris for the sale of goods to be manufactured by Catherine, a manufacturer of those goods. Catherine did not manufacture those goods. Alex will not be discharged and will be liable to Boris for damages.

► **Example 39:**

Austin agreed to supply to Bashir certain goods to be imported from America. The goods could not be imported due to riots in that country. It was held that this was no, excuse for non-performance of the contract.

► **Example 40:**

HB agreed to let out a boat to Harry (a) for viewing a naval review of on the occasion of coronation of King Edward VII, and (b) to sail around the fleet. Owing to the King's illness, the naval review was abandoned but the fleet was assembled. The boat, therefore, could be used to sail around the fleet. Held, the contract was not discharged.

3.4.3 Compensation in certain circumstances

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

► **Example 41:**

Avin contracts to marry Pooja, being already married to Champakali, and being forbidden by the law to which he is subject to practise polygamy. Avin must make compensation to Pooja for the loss caused to her by the non-performance of his promise.

3.5 Consequences of rescission of voidable contract [Section 64 & 66]

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

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall if he have received any benefit there under from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

► **Example 42:**

Jameel employed coercion on Talat to sell his goods to Talat above market price. Jameel also delivered the goods and payment is due on Talat. Later, Talat proved in court of law that coercion was employed and rescinded the contract. Talat must also return the goods to Jameel.

3.6 Advantage received under void agreement or void contract [Section 65]

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

► *Example 43:*

Azam pays Basit Rs. 100,000 in consideration of Basit's promising to marry Chanda, Azam's daughter. Chanda is dead at the time of the promise. The agreement is void, but Basit must repay Azam the Rs. 100,000.

► *Example 44:*

Adeel contracts with Babar to deliver to him 250 kg of rice before the first of May. Adeel delivers 130 kg only before that day, and none after. Babar retains the 130 kg after the first of May. He is bound to pay Adeel for them.

► *Example 45:*

Alia, a singer, contracts with Bisma, the manager of a theatre, to sing at her theatre for two nights in every week during the next two months, and Bisma engages to pay her Rs. 10,000 for each night's performance. On the sixth night, Alia wilfully absents herself from the theatre, and Bisma, in consequence, rescinds the contract. Bisma must pay Alia for the five nights on which she had sung.

► *Example 46:*

Atif contracts to sing for Bilal at a concert for Rs. 1 million, which are paid in advance. Atif is too ill to sing. Atif is not bound to make compensation to Bilal for the loss of the profits which Bilal would have made if Atif had been able to sing, but must refund to Bilal the Rs. 1 million paid in advance.

► *Practice Question 08:*

What is meant by discharge of a contract? Briefly describe the modes of discharging a contract by act of parties to the contract under the provisions of the Contract Act, 1872.

► *Solution:*

A contract is said to be discharged either by performance or when contractual relations between the parties are terminated or comes to an end otherwise, in which case it need not be performed.

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

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

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

► *Practice Question 09:*

Talib was indebted to Bashir for Rs. 10,000. On Talib's request Bashir agreed to accept Jahangir as his debtor, in place of Talib. Jahangir failed to make payment on due date. Under the provisions of Contract Act, 1872 you are required to explain whether Bashir can now demand payment from Talib.

► *Solution:*

If the parties to a contract agree to substitute a new contract for it, the original contract need not be performed.

Since Bashir accepted Jahangir as his debtor in place of Talib, so now he cannot demand payment from Talib. Consent of all the parties is essential.

► *Practice Question 10:*

Lalchi Traders agreed to supply cotton yarn to Farzi Textile Limited at a fixed price for one year. Three months after the formation of the contract the price of yarn increased sharply, making it commercially unviable for Lalchi Traders to continue the supply at the agreed price. Therefore, they terminated the contract on the ground of difficulty/impossibility of performance.

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

- i. whether the contract would be discharged under the above circumstances.
- ii. what would be your decision if Lalchi Traders were importing yarn and Government has imposed a ban on its import.

► *Solution:*

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

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

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

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

► *Practice Question 11:*

Imran Traders entered into a one-year contract with Minhas Oils Limited for the supply of gravels for their extraction project in Badin at a fixed price of Rs. 30,000 per dumper. Six months after the contract, the diesel prices increased sharply, making it non-profitable for Imran Traders to continue the supply at the agreed price. Therefore, they terminated the contract on the ground of impossibility of performance. Describe whether the contract is discharged in the above situation.

► *Solution:*

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

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

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

► *Practice Question 12:*

Bromine Traders (BT) is engaged in the business of import, purchase and supply of electronic items. BT agreed to supply 900 automatic washing machines to Osmium Limited (OL). Machines were to be imported from Singapore. However, the machines could not be imported due to political unrest in Singapore. BT informed OL that import from Singapore is impossible, therefore, machines may instead be imported from Taiwan.

Discuss whether BT's excuse is valid and whether OL is bound to accept the machines imported from Taiwan.

► *Solution:*

BT's excuse is not valid as political unrest/civil disturbances do not render a contract void on account of supervening impossibility. BT will be held liable to pay damages suffered by OL due to breach of contract.

OL is not bound to accept the machines imported from Taiwan as it will result in alteration of original contract.

► **Practice Question 13:**

On 1 December 2025, Sparrow Traders (ST) decided to install a solar energy system at its factory in an effort to reduce operational expenditures. On 4 December 2025, ST entered into a contract with Parrot Electrics (PE) for the acquisition of an imported solar system at a price of Rs. 12 million. The project details agreed by both the parties are as follows:

Project milestone	Due Date	Payment terms
Delivery of solar panels	31 December 2025	50% of contract price
Commissioning of the system	31 January 2026	20% of contract price
Smooth running of the system for one month	28 February 2026	30% of contract price

Under the agreement, PE agreed to pay Rs. 5,000 per day, on the failure to meet any of the project milestones. Similarly, ST agreed to pay a penalty of 1% per month, on the failure to pay the amount on due dates.

On the date of the agreement, there were no statutory taxes levied on the import of solar panels. However, effective from 10 December 2025, the Government imposed 16% custom duty on the import of solar panels. On 26 December 2025, the consignment of solar panels arrived in Pakistan. PE shared the new duty structure with ST and demanded an additional amount of Rs. 1.5 million to proceed further.

Under the provisions of the Contract Act, 1872, discuss the relative positions of ST and PE under each of the following independent situations. Also identify the remedies, if any, available to both ST and PE.

- On 27 December 2025, ST refused to pay the custom duty and barred PE from accessing the commissioning site due to the price dispute.
- PE threatened to cancel the contract if ST fails to reimburse the custom duty to PE. ST, with no other option available, reimbursed custom duty of Rs. 1.5 million to PE after which PE installed the solar system on agreed date. On 28 February 2026, ST informed PE that it will make the final payment only after PE agrees to the deduction of Rs. 1.5 million as PE had employed coercion by threatening to cancel the contract.

► **Solution:****Part (I) Position of the parties to the contract****PE's demand for additional payment of Rs. 1.5 million on account of custom duty**

- PE's demand for Rs. 1.5 million on account of custom duty over and above the contract was not justified. It may be considered as conditional offer of performance which renders the offer of performance invalid.
- PE's demand was tantamount to an alteration of the contract by increasing the contract price.

ST barring PE from accessing the commissioning site due to the price dispute

- Contract between ST and PE contain reciprocal promises. If PE is willing to deliver the solar system at ST's commissioning site despite the price dispute, then ST's action of barring PE from accessing the commissioning site shall be considered as preventing PE from performing its promise. As a result, the contract is voidable at the option of PE.
- Further, if PE has made a valid offer of performance to ST, and the offer was not accepted, PE shall not be responsible for the non-performance of the contract and shall have the right to claim compensation and rescind the contract.

Remedies available to PE due to ST's fault

PE is entitled to claim reasonable compensation from ST for any loss which it may sustain in consequence of the non-performance of the contract. However, it cannot claim penalty from ST since the project milestones were not achieved.

Remedies available to ST due to PE's fault

ST is entitled to claim reasonable compensation from PE for any loss which it may sustain in consequence of the non-performance of the contract.

Part (II) Position of the parties to the contract

PE's demand for additional amount to proceed further does not fall under the definition of coercion since PE did not commit, or threaten to commit, any act forbidden by the Penal Code with the intention of causing ST to enter into an agreement. Therefore, ST's claim of coercion is not valid.

By reimbursing import duties, it is established that ST altered the original contract and now has to abide by payment terms i.e. pay the remaining amount.

Remedies available to the parties to the contract

PE may obtain reasonable compensation for damages to the extent of accrued penalty @1% per month for each day of delayed payment.

ST does not have any remedy against PE since it agreed to the alteration of the contract.

► Practice Question 14:

Under the provisions of the Contract Act, 1872, list the acceptable grounds of supervening impossibility.

► Solution:

Supervening impossibility

Following are the acceptable grounds of supervening impossibility:

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

► Practice Question 15:

Squash Management (SM) specializes in organising large-scale destination events, managing all aspects including travel, accommodation and event venue management such as catering and decoration arrangements.

On 3 September 2025, a team of four employees of SM reached Paragliding Club (PC) at 8:30 am to set-up its auditorium for PC's annual members' meeting, scheduled at 3:00 pm sharp. However, due to administrative mishandling by PC, access to the venue will not be provided to SM until 2:00 pm. SM's team believes that proper arrangements cannot be made in respect of venue decor, live food station set-up and photography in such a limited timeframe and consequently this will disrepute SM in the market. PC has already paid Rs. 5 million in advance. Under the Contract Act, 1872, suggest possible course(s) of action for SM.

► Solution:

The contract between SM and PC contains reciprocal promises. In the given situation, SM is ready and willing to perform the promise of arranging the decor and other tasks, as evident by the fact that the team arrived at the venue well before the event's scheduled time. However, PC's administrative mishandling is actively preventing SM from performing its promise. As a result, the contract becomes voidable at SM's option.

Possible courses of action for SM

- i. SM may proceed to perform the contract and where it falls short in any aspect of performance, it would be considered an effect of PC's neglect and apparent failure to provide reasonable facilities to SM for the performance of the contract, as PC failed to give adequate time for reasonable performance of the promise.
- ii. SM may rescind the contract as the contract is voidable at its option. Since time was of the essence of the contract, it was PC's duty to ensure adequate arrangements. In such a case, SM would be entitled to recover ordinary damages from PC. However, SM must ensure that the means available to remedy the inconvenience caused by the non-performance of the contract have been taken into account i.e., reasonable steps are taken to minimize the loss, so that it may claim reasonable compensation from PC for breach of contract.

Moreover, SM would also be entitled to special damages that were known to the parties at the time of making the contract. Such damages may include SM's contracts for arranging services from third party vendors for managing the event.

Where SM opts to rescind the contract and the contract becomes void, then it must restore any benefits received from PC in respect of the contract that may involve returning the advance payment of Rs. 5 million.

- iii. SM may communicate the challenges to PC and offer alteration of the contract to cover specific areas of performance as per PC's priority. In the given case, PC may agree to dispense with, or remit, in part, the performance of the promise made to it in respect of venue decor, catering, and photography, or may extend time of performance, if possible. However, all such changes must be mutually agreed.

► **Practice Question 16:**

Maaz offered to sell a cricket bat to Furqan, who agreed to purchase it for Rs. 0.5 million after being told by Maaz that the cricket bat was autographed by Wasim Ahmed, a rising cricket star. Furqan paid the contract price in advance, and Maaz promised to deliver the cricket bat by 30 September 2025. Subsequently, Maaz showed the cricket bat to his friend Rashid, who informed him that the cricket bat was actually autographed by Wasim Akram, a cricket legend, and offered to purchase it for Rs. 25 million.

Realising his error, Maaz sent an apology letter to Furqan, stating that he cannot sell the cricket bat, and enclosed a cheque for Rs. 0.5 million. The letter was delivered to Furqan on 2 September 2025.

Under the Contract Act, 1872, evaluate Maaz's position and discuss the remedies available to Furqan, if any.

► **Solution:**

Maaz's position

Furqan's consent to purchase the cricket bat was obtained through misrepresentation by Maaz who had innocently caused Furqan to make a mistake that the cricket bat contained the autograph of Wasim Ahmed, a rising cricket star. Such information was essential to the contract being the subject matter of the agreement and Maaz's statement in this regard was not true, though he believed it to be true.

Accordingly, when the contract was entered between Maaz and Furqan; Maaz being the promisor made a unilateral mistake about subject matter due to which Furqan's consent to the contract was caused by misrepresentation.

While there is no effect of Maaz's unilateral mistake on the validity of the contract, however due to the misrepresentation, the contract becomes voidable at Furqan's option and therefore it cannot be rescinded by Maaz on his own. Maaz's act of sending an apology letter thereby refusing to sell the cricket bat does not invalidate the contract and, therefore, if he does not deliver the bat by 30 September 2025, it would constitute breach of contract.

Remedies available to Furqan

Furqan after becoming aware of the facts, may choose to rescind the contract and accept the payment returned by Maaz signifying his agreement to terminate the contract. In such case, the contract will be considered terminated by mutual consent as the acceptance of refund releases both parties from their contractual obligations. This acceptance indicates that Furqan has decided not to enforce the contract or seek further remedies.

Also, Furqan may insist on a specific performance asserting that the cricket bat must be delivered to him or he may claim damages for the breach of contract. It is pertinent to mention that Furqan may decide to void the contract now and claim remedies or he may wait for the actual delivery date i.e., 30 September 2025 to take the final decision whether to ask for performance or cancel the contract.

4 OBJECTIVE BASED Q&A

- 1 Contract is said to be performed when
 - a) One party fulfils his promise
 - b) Both promisors perform their respective promises
 - c) Law dispenses with performance
 - d) One of the promisor makes attempted performance

- 2 Valid tender requires
 - a) To be unconditional
 - b) To be made at proper place and time
 - c) To be made for whole quantity / obligation
 - d) All of the above factors

- 3 Mr. A agrees to supply 100 bags of tea to Mr. B @ Rs.1000/- per Bag on a particular date. Mr. B was to pay subsequently after the supply of tea. On due date Mr. A supplies tea and Mr. B makes payment. But, if on due date, Mr. A takes the contracted quantity of tea to Mr. B's warehouse and Mr. B refuses to accept the delivery. State the legal position.
 - a) 1st case is attempted performance and 2nd is voidable contract
 - b) 1st case is voidable contract and 2nd is attempted performance
 - c) 1st case is actual performance and 2nd is attempted performance
 - d) 1st case is attempted performance and 2nd is actual performance

- 4 Payment received by the creditor must be appropriated for discharging debt
 - a) Which has been borrowed at last
 - b) According to instruction given by the debtor
 - c) In a logical sequence of the debts
 - d) Which has been borrowed at first

- 5 Mr. X promises to sell standing timber to Mr. Y. As per the terms of a contract Mr. X will cut and cord the timber, whereupon Mr. Y will take it away and pay for it. Mr. X cords only a part of timber and neglects to cord the rest. Mr. Y wants to initiate legal proceedings. Suggest him the legal action.
 - a) Mr. Y may avoid contract
 - b) Mr. Y may claim compensation from Mr. X
 - c) Mr. Y does not have any legal remedy
 - d) Mr. Y may avoid the contract and claim compensation from Mr. X

- 6 Mr. Karam owes several debts to Mr. Karim, which are of distinct amount and payable on different dates. One of the debts has become time-barred which Mr. Karim cannot legally recover from Mr. Karam. On a particular date Mr. Karam makes a payment, but does not give any instruction. State the legal position with regard to the appropriation of payment.
- a) Mr. Karim has no right to apply this payment for time-barred debt
 - b) Mr. Karam's instruction has to be followed
 - c) Mr. Karim has to obtain court's advice
 - d) Mr. Karim has a right to apply this payment for time-barred debt
- 7 Contract is said to be discharged (not needed to be performed) by mutual agreement when:
- a) Change in a contract is made without free consent of the parties
 - b) Change in a contract is made by one of the parties
 - c) Old contract is substituted by new contract
 - d) New contract is substituted by old one
- 8 Mr. A agreed to supply 100 tonnes of iron-ore to Mr. B on 1st January. On the due date of supply he took stipulated quantity of iron-ore to Mr. B's Residence at 12:00 am. This is the case of attempted performance. This offer of performance or attempted performance is
- a) Valid because the promisor is fulfilling the terms of the contract
 - b) Invalid because the place and time of supply is not reasonable
 - c) Valid because the performance is unconditional
 - d) Invalid because the time of supply is not reasonable
- 9 Acceptance of lesser performance by promisee is
- a) Void
 - b) Invalid
 - c) Valid
 - d) Not allowed
10. Remission means
- (a) Giving up some rights in favour of promisor
 - (b) Acceptance of a lesser performance than due in contract
 - (c) Avoidance of contract by one party
 - (d) Avoidance of contract by both the parties

- 11 Mr. A entered to an agreement with Mr. B for selling 100 tonnes of wheat at specified price to him on 15th March. But, before the due date of delivery the President of Pakistan has passed an Ordinance, debarring the individuals from supplying more than 5 tonnes of wheat. State the legal position of the contract between Mr. A and Mr. B.
- The contract between Mr. A and Mr. B comes to an end because its performance has becomes unlawful.
 - The contract between Mr. A and Mr. B comes to an end because the subject matter of the contract is destroyed.
 - The contract between Mr. A and Mr. B comes to an end because of the personal incapacity of the party.
 - The contract between Mr. A and Mr. B comes to an end because certain state of things gets changed.
- 12 Contract will not be discharged on account of supervening impossibility in case of:
- Change in law
 - Death of promisor in the contract of personal nature
 - Failure of third party relied upon by the promisor
 - Non-existence of particular state of thing essential for the performance of a contract
- 13 Supervening impossibility means
- Subsequent impossibility
 - Initial impossibility
 - Irrelevant impossibility
 - Relevant impossibility
- 14 Which of the following statement is true
- Partial impossibility does not invalidate a contract
 - Impossibilities due to conduct of third party will discharge contract
 - Commercial impossibility affects validity of a contract
 - Difficulty in performance is a valid ground of supervening impossibility
- 15 Mr. H hired a room in some hotel of Lahore to witness PSL Final Match on 22nd March but due to the emergency declared by government in the wake of Pandemic Coronavirus, the match was cancelled. Examine the legality of this contract
- Mr. H is liable to pay the rent to the hotel
 - Mr. H is excused from the obligation of paying rent to the hotel
 - Mr. H is liable to pay the rent along with interest
 - Mr. H is excused from the obligation due to the personal incapacity

- 16 The contract is a mutual exchange of promises between two parties when both the promisor do what they have promised to do, the contract is set to be performed and contract comes to an end. Performance of contract may be of two types
- Legal performance and illegal performance
 - Conditional performance and unconditional performance
 - Attempted performance and offer of performance
 - Actual performance and attempted performance
- 17 On 27 February 2026, Bilal as owner of Bloodstone Sugar Mills (BSM) entered into a contract with Amber Bakers to supply 1,000 kgs of sugar on 5 March 2026 at Rs. 70 per kg. On 3 March 2026, Government issued a notification directing sugar mills to sell all their output to the Government at fixed rate of Rs. 75 per kg. On the promised date of delivery, Bilal refused to honour the agreement. Can Amber Bakers recover damages from BSM?
- Yes, because the contract was enforceable since it was made before the date of notification
 - No, because the contract became void on the date of notification
 - Yes, because BSM earned a profit of Rs. 5 per kg at the expense of Amber Bakers
 - No, because the contract became voidable on the date of notification
- 18 Maria borrowed Rs. 500,000 from Amir and promised to repay on 5 January 2026. She used the funds for giving loan to her brother Junaid. On the due date, Maria requested Amir to take payment directly from Junaid instead of her. Junaid promised to pay Rs. 500,000 to Amir on 15 March 2026 and Amir agreed. If Junaid makes default, then:
- Amir can claim Rs. 500,000 from Maria
 - Amir can claim Rs. 500,000 from both Maria and Junaid
 - Amir cannot claim Rs. 500,000 from Maria as there is no contract between them
 - Amir cannot claim Rs. 500,000 from Junaid as Maria is the principal debtor
- 19 Shahid owns an antique lamp. On 15 February 2026, he agreed to sell and deliver the lamp to Zoya for Rs. 150,000 on 31 March 2026. Subsequently, Zoya came to know that Shahid had sold and delivered the lamp to his friend Ahsan on 5 March 2026.
- Can Zoya claim damages from Shahid for non-performance of the contract before 31 March 2026?
- Yes, because Shahid has made it impossible for himself to perform the contract
 - Yes, because Shahid has made a misrepresentation to Zoya
 - No, because Shahid can purchase any similar lamp and perform the contract
 - No, because Zoya can enforce the contract on or after 31 March 2026

- 20 Asbestos Aerospace (AA) plans to introduce a new spaceship model. AA engaged Usama, a renowned aeronautical engineer, to design the structure of the new model. On 10 March 2026, Usama promised to deliver the design by 21 August 2026. AA informed Usama that a delay cost of Rs. 80,000 would be imposed if the design was not received by the agreed-upon date.

Tragically, on 10 August 2026, Usama suffered a severe accident resulting in the loss of his children and significant personal injuries. Due to the trauma and its impact on his mental health, Usama was unable to fulfil his commitment. Consequently, AA incurred a delay cost of Rs. 250,000.

Under the Contract Act, 1872, can AA claim damages of Rs. 250,000 from Usama?

- a) Yes, because AA had informed Usama of the damages on 10 March 2026
 - b) Yes, because Usama was competent to enter the contract on 10 March 2026
 - c) No, because Rs. 250,000 cannot be considered as reasonable damages when compared to the initially agreed upon Rs. 80,000
 - d) No, because the contract subsequently became void due to unforeseen circumstances
- 21 Waqar agreed to purchase a piece of land from Bilal for Rs. 50 million, to be used for industrial purposes due to its location. However, a subsequent change in the zoning law reclassified the land for agricultural use only. Consequently, Waqar has refused to make the payment as the land is no longer useful for his intended purpose.

Under the Contract Act, 1872, determine the status of contract between Waqar and Bilal.

- a) The contract would become void due to supervening impossibility
- b) The contract has become void due to bilateral mistake of fact
- c) The contract is voidable at Waqar's option as the land does not suit his purposes
- d) The contract is valid as the law changed after the contract was made

ANSWERS

1	b)	Both promisors perform their respective promises. After having made promises, the parties are legally bound to fulfil what they have promised to perform.
2	d)	Tender must be unconditional, be made at proper place and time and be made for whole quantity.
3	c)	1st case is actual performance and 2nd is attempted performance. Under both ways of performance, the promisors get released from their obligations in that contract and the contract comes to an end.
4	b)	According to instruction given by the debtor. In such case appropriation must be made according to those instructions given by the debtor.
5	d)	Mr. Y may avoid the contract and claim compensation from Mr. X. if one party prevents another from performing a promise the contract becomes voidable at the option of the party so prevented. He can also claim compensation
6	d)	Mr. Karim has a right to apply this payment for time-barred debt. When the debtor does not give any instruction, the creditor has a discretion to apply such payment for discharging any lawful debt even for time barred debt
7	c)	A contract is formed when the parties are mutually agreed. In a same way both the parties of a contract by mutual agreement can discharge that contract.
8	b)	Attempted performance to be legally effective, must be made within usual business hours and at a reasonable place.
9	c)	Remission means accepting a less amount than the initial amount agreed
10	b)	Acceptance of a lesser performance than due in contract. Sometimes, the promisor may perform only a part of his promise and promisee accepts it for the performance of the whole promise.
11	a)	The contract between Mr. A and Mr. B comes to an end because its performance has becomes unlawful. Change of law, after the formation of a contract, if renders performance of contract unlawful, such contract is discharged.
12	c)	Failure of third party or his inability will not be considered sufficient ground for discharging a contract.
13	a)	When a contract is valid at the time of formation and becomes impossible to perform subsequently it is called effected by supervening impossibility
14	a)	The contract may be made for achieving more than one objectives. In case one object fails, contract will not be discharged.
15	b)	Mr. H is excused from the obligation of paying rent to the hotel. The contract cannot be performed due to the reasons beyond the control of both parties.
16	d)	Actual performance and attempted performance. When both the promisor do what they have promised to do, the contract is set to be performed
17	b)	No, because the contract became void on the date of notification
18	c)	Amir cannot claim Rs. 500,000 from Maria as there is no contract between them
19	a)	Yes, because Shahid has made it impossible for himself to perform the contract
20	d)	No, because the contract subsequently became void due to unforeseen circumstances
21	d)	The contract is valid as the law changed after the contract was made

STICKY NOTES

Types of Performance

1. Actual
2. Attempted (tender)

Essentials of valid tender of performance

1. Unconditional
2. Proper time
3. Proper place
4. Reasonable opportunity of inspection
5. Reasonable opportunity to ascertain circumstances of performance

Appropriation of payments (rules to be applied in order)

1. As indicated by the debtor
2. As may be allocated by the creditor
3. In order of time (for equal standing debts, proportionately)

Allocate the amount to interest first and then remaining (if any) to principal amount.

Circumstances when contract need not be performed

1. When it has been rescinded, altered or substituted with a new contract.
2. When the promisee dispenses with or remits performance.
3. When promisee neglects to afford promisor reasonable facilities for performance.
4. When performance becomes, afterwards, impossible or unlawful.

PERFORMANCE OF CONTRACTS - II

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 By Whom Contracts must be Performed
- 2 Time and Place for Performance
- 3 Performance of Reciprocal Promises
- 4 Objective Based Q&A

STICKY NOTES

AT A GLANCE

The contract must be performed by the promisor himself only when it is the intention of the parties. In other cases, contract may be performed by promisor himself, by his legal representatives (in case of death) or they may employ a competent person to perform it.

It is only the promisee, and in case of his death, his legal representatives, who can demand performance. In case of several joint promisee, all of them (or legal representatives in case of death) jointly can demand performance.

Time and place of performance of a contract are matters to be determined by agreement between the parties themselves. Where no time for performance is specified, the promisor must perform the promise within a reasonable time. If no time and place is fixed for the performance of the promise, the promisor must apply to the promisee to fix the day and time for performance.

Time for the performance of a contract may be fixed in the contract itself. In that case the contract must be performed within that time when time is of the essence of contract.

Promises which form the consideration or part of the consideration for each other are called 'reciprocal promises'. The reciprocal promises must be performed in the order fixed by the contract. When reciprocal promises have to be simultaneously performed, the promisor is not bound to perform unless the promisee is ready and willing to perform his promise.

1 BY WHOM CONTRACTS MUST BE PERFORMED

1.1 Person by whom promise is to be performed

1.1.1 Promisor himself [Section 40]

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

► *Example 01:*

Arif promises to marry Bisma, Arif must perform this promise personally.

► *Example 02:*

Azam promises to paint a picture for Babar, Azam must perform the promise personally.

1.1.2 Legal representative [Section 37]

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

► *Example 03:*

Azam promises to deliver goods to Babar on a certain day on payment of Rs. 1,000. Azam dies before that day. Azam's representatives are bound to deliver the goods to Babar and Babar is bound to pay Rs. 1,000 to Azam's representatives.

► *Example 04:*

Azam promises to marry Bushra. Azam dies. Azam's legal representatives cannot perform this promise being a contract of personal nature.

1.1.3 Other competent person [Section 40]

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

► *Example 05:*

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

1.1.4 Effect of accepting performance from third person [Section 41]

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

► *Example 06:*

Kamran borrows Rs. 200,000 from Babar and promises to repay within a month. Akmal, the father of Kamran, pays Rs. 200,000 to Babar. Kamran is discharged from his liability.

1.1.5 Devolution of Joint liabilities [Section 42]

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

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

► *Example 07:*

Azam and Babar jointly promise to repay a loan of Rs.10,000 on a specified day. Azam dies before that specified day. Azam's representative jointly with Babar must perform the promise on the specified day.

► *Example 08:*

Aslam, Bashir and Sahil jointly promise to pay Rs. 3,000 to Dawood. Aslam, Bashir and Sahil must contribute Rs. 1,000 each. If Aslam dies, then legal representative of Aslam are liable to pay Rs. 1,000 along with Bashir and Sahil.

1.2 Rules regarding performance of joint promises**1.2.1 Joint and several liability [Section 43]**

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

► *Example 09:*

Azam, Babar and Saqlain jointly promise to pay Dawar Rs. 3,000. Dawar may compel either Azam or Babar or Saqlain to pay him Rs. 3,000.

1.2.2 Right to claim contribution [Section 43]

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract.

► *Example 10:*

Azam, Babar and Saqlain jointly promise to pay Dawar a sum of Rs. 3,000. Saqlain is compelled to pay the whole. Azam is insolvent, but his assets are sufficient to pay one-half of his debts. Saqlain is entitled to receive Rs.500 from Azam's estate and Rs.1,250 from Babar.

1.2.3 Sharing of loss by default in contribution [Section 43]

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

► *Example 11:*

Azam, Babar and Saqlain are under a joint promise to pay Dawar Rs.3,000. Saqlain is unable to pay anything and Azam is compelled to pay the whole. Azam is entitled to receive Rs.1,500 from Babar.

1.2.4 Effect of release of one joint promisor [Section 44]

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

► *Example 12:*

Azam, Babar and Saqlain jointly promise to pay Dawar Rs.3,000. Dawar releases Azam from his liability and sues Babar and Saqlain for payment. Here, neither Babar and Saqlain are released from their liability to Dawar nor is Azam released from his liability to Babar and Saqlain for contribution.

1.2.5 Devolution of joint rights [Section 45]

When a person has made a promise to two or more persons jointly, then, unless contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

► *Example 13:*

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

► *Practice Question 01:*

Binyamin borrowed Rs. 1 million from Hatim and Tahir jointly and promised to repay the amount on March 1, 2011. With reference to the Contract Act, 1872, state who can claim performance in the following situations.

- Both Hatim and Tahir are alive on due date
- Hatim dies before due date
- Both Hatim and Tahir die before the due date

► *Solution:*

Unless a contrary intention appears from the contract, the right to claim performance rests:

- with Hatim and Tahir jointly
- after the death of Hatim, with the representative of Hatim jointly with Tahir
- after the death of both Hatim and Tahir, with the representative(s) of both, jointly.

► *Practice Question 02:*

Sohail and Afaq lent Rs. 2.0 million to Mohsin, Laila and Faizan jointly. On due date Laila became insolvent. Without informing Sohail, Afaq wants Mohsin to repay the full amount to him. Under the provisions of Contract Act, 1872 explain:

- whether Mohsin can be compelled to pay the full amount to Afaq; and
- what rights are available to Mohsin if he repays the full amount.

► *Solution:***Part (a)**

Afaq alone cannot compel Mohsin to make payment unless a contrary intention appears from the contract. The right to claim performance rests with all the promisees jointly and a single promisee cannot demand performance.

Part (b)

Mohsin may compel every other joint promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract.

Therefore, Faizan must share the loss arising from default of Laila equally with Mohsin.

► *Practice Question 03:*

Faheem, Saleem and Jameel jointly borrowed Rs. 50 million for a business project from a common friend Kamal. They jointly promised to repay the borrowed amount. Under the provisions of the Contract Act, 1872 comment on the following:

- in the absence of express agreement, what would be the rights and liabilities of joint promisors. Also explain their rights and liabilities if Kamal releases Jameel from the joint liability.
- how the liability would devolve in case of death of one or more of the joint promisor.

► *Solution:***Part (a) Any one of joint promisors may be compelled to perform**

In absence of express agreement to the contrary, Faheem, Saleem and Jameel are jointly liable to fulfil the promise. However, Kamal, may compel anyone (Faheem/Saleem/Jameel) or more of them to perform whole of the promise.

Each joint promisor (Faheem/Saleem/Jameel) may compel every other joint promisor to contribute equally with himself to the performance of the promise. If anyone of joint promisor (Faheem/Saleem/Jameel) or more of them makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal share.

Effect of release of one joint promisor: If Kamal releases Jameel, it will not discharge the other joint promisors Faheem and Saleem; neither would it free Jameel from responsibility to Faheem and Saleem.

Part (b) Devolution of Joint Liabilities

In case of death of one or more of joint promisors, the liability would devolve as follows:

- i. to representatives of the deceased promisor jointly with the surviving promisor(s) in case of death of any of the joint promisors; and
- ii. to representatives of all of them jointly in case of death of all joint promisors.

► *Practice Question 04:*

In November 2021, Farhan, Noman and Salman established a hotel in Swat. For the day-to-day operations of the hotel they jointly borrowed Rs. 600,000 from Danish for a period of six months. Under the provisions of the Contract Act, 1872 discuss the following:

- a) Can Danish recover the loan only from Noman on the due date?
- b) Can Danish recover the loan if Farhan, Noman and Salman die before the due date?
- c) Can Farhan be held liable for the loan, if Danish releases him before the due date?

► *Solution:*

- a) Since Noman is one of the joint promisors, Danish can recover the loan of Rs. 600,000 from Noman only unless there exists between them an express agreement restricting his right to do so.
- b) Since all joint promisors have died, Danish can recover the loan from the legal representatives of Farhan, Noman and Salman jointly, who must fulfil the promise and repay the loan unless a contrary intention appears by the contract.
- c) Release of Farhan will discharge him from his liability towards Danish and subsequently Danish will not be able to hold Farhan liable against the loan. However, he will still remain liable towards the other joint promisors i.e. Noman and Salman.

► *Practice Question 05:*

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

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

► *Solution:*

Munaf will not succeed in his case. He must be joined by Muslim as the right to claim performance rests with all the promisees (i.e. Munaf and Muslim) jointly and a single promisee (i.e. Munaf) cannot claim performance.

► *Practice Question 06:*

Saiqa and Alia decided to open a tailoring shop. To manage the opening expenses, they jointly borrowed Rs. 300,000 from Faizan on 28 February 2025. The loan was to be repaid on 28 February 2026.

Under the provisions of the Contract Act, 1872, advise the respective positions of Faizan and Saiqa in respect of the loan amount, in each of the following independent situations:

- i. On the due date, Saiqa approached Faizan and paid back Rs. 150,000 mentioning that she has paid her share and now he should claim the remaining amount from Alia. Faizan met Alia for recovery of the remaining loan amount but she refused to pay it.
- ii. On the due date, Alia approached Faizan and informed him that she cannot pay the loan as the entire amount was utilized by Saiqa. Alia also mentioned that Saiqa has refused to give Alia her share in the shop. Considering the situation, Faizan released Alia in respect of the loan.

► *Solution:***Part (I)**

Since Saiqa and Alia are joint promisors, Faizan may, in the absence of express agreement to the contrary, compel any one of the joint promisors to perform the whole of the promise and recover the remaining amount from Saiqa. This is because if a joint promisor makes a default, then other joint promisors must bear the loss arising from such default, unless a contrary intention appears from the contract.

Saiqa is compelled to pay the remaining amount to Faizan. However, she can subsequently recover the money from Alia, since a joint promisor can compel other joint promisor to contribute equally, unless a contrary intention appears from the contract.

Part (II)

Since Saiqa and Alia made a joint promise, Faizan may, in the absence of express agreement to the contrary, release Alia being one of such joint promisors. However, such release would not discharge Saiqa, and Faizan would be able to recover the entire loan amount from her.

Further, release of Alia by Faizan would not free her from her obligation towards Saiqa. Therefore, Saiqa may subsequently recover Rs. 150,000 from Alia.

► *Practice Question 07:*

Under the Contract Act, 1872, state the rules regarding performance of joint promises and devolution of joint rights.

► *Solution:***Rules regarding the performance of joint promises**

- In the absence of express agreement to the contrary, when a joint promise is made by two or more persons, the promisee may, compel any one or more of such joint promisors to perform the whole of the promise.
- Unless a contrary intention appears from the contract, each of the joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise.
- If any one of two or more joint promisors makes default in contribution, the remaining joint promisors must bear the loss arising from default in equal share.
- Where two or more persons have made a joint promise, a release of any of such joint promisors by the promisee, does not discharge the other joint promisor or joint promisors; neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors.

Devolution of joint rights

Unless a contrary intention appears from the contract, in case of several promisees, the following persons may claim performance of the joint promise:

- all the promisees jointly in case all of them are alive;
- representatives of the deceased promisee jointly with the surviving promisee(s) in case of death of any of the joint promisees;
- representatives of all promisees jointly; in case of death of all joint promisees.

2 TIME AND PLACE FOR PERFORMANCE

2.1 Rules regarding time and place of performance

The various rules regarding the time and place of performance are given below:

2.1.1 No time specified and no application to be made [Section 46]

Circumstances	No time for performance is specified; and The promisor is to perform his promise without application by the promisee.
Rule of performance	The promise must be performed within a reasonable time. The question “what is a reasonable time” is, in each particular case, a question of fact.

► *Example 14:*

Hamid ordered a large flag to celebrate Independence Day but did not specify the time for performance. The flag must be delivered before the Independence Day.

2.1.2 Certain day specified and no application to be made [Section 47]

Circumstances	Promise is to be performed on a certain day; and The promisor has undertaken to perform it without application by the promisee.
Rule of performance	The promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

► *Example 15:*

Azam promises to deliver goods at Babar’s warehouse on 1st January. Azam brings the goods to Babar’s warehouse but after the usual hour of business. Thus, the goods are not received. Azam has not performed his promise.

2.1.3 Certain day specified and application to be made [Section 48]

Circumstances	Promise is to be performed on a certain day; and The promisor has not undertaken to perform it without application by the promisee.
Rule of performance	It is the duty of the promisee to apply for performance at a proper place and within the usual hours of business. The question “what is a proper time and place” is, in each particular case a question of fact.

► *Example 16:*

Adeel ordered decorations to be installed on 17th August on occasion of his daughter’s birthday. Adeel must apply for performance and specify proper time and place for the decorations to be installed.

2.1.4 No place fixed and no application to be made [Section 49]

Circumstances	No place is fixed for the performance; and The promise is to be performed without application by the promisee.
Rule of performance	It is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

► *Example 17:*

Adeel undertakes to deliver 1,000 kg of rice to Bilal on a fixed day. Adeel must apply to Bilal to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

2.1.5 Prescribed or sanction by promisee [Section 50]

Circumstances	The manner or time prescribed or sanctioned by the promisee
Rule of performance	The performance should be made in the manner and at the time which the promisee prescribes or sanctions.

► *Example 18:*

Azam and Babar are mutually indebted. Azam and Babar settle an account by setting off one item against another, and Babar pays Azam the balance found to be due from him upon such settlement. This amounts to payment by Azam and Babar, respectively, of the sums which they owed to each other.

► *Example 19:*

Azam owes Babar Rs. 2,000. Babar accepts some of Azam's goods in reduction of the debt. The delivery of the goods operates as a part payment.

► *Example 20:*

Azam desires Babar, who owes him Rs. 100, to send him a cheque for Rs.100 by post. The debt is discharged as soon as Babar posts a letter containing the cheque duly addressed to Azam.

► *Example 21:*

Bilal owes Ameen Rs. 2,000. Ameen desires Bilal to pay the amount to Ameen's account with XYZ Bank. Bilal, who also banks with XYZ Bank, orders the amount to be transferred from his account to Ameen's credit, and this is done by XYZ Bank. Afterwards, and before Ameen knows of the transfer, XYZ Bank fails and Ameen cannot get anything from his account. There has been a good payment by Bilal.

2.2 Failure to perform at fixed time [Section 55]**2.2.1 When time is essential?**

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

► *Example 22:*

Adeel ordered Yum Bakers for a Birthday cake to be delivered on 22nd February. The nature of transaction clearly indicates that time is the essence of the contract.

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

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

► *Example 23:*

Azam agreed to deliver 20 books to Babar on 12th May 2026 in which delivery time was important as books were required for an exhibition. Azam failed to deliver by that time. The contract is voidable at the option of Babar.

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

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

► *Example 24:*

Azam promises to deliver a car to Babar on 1st May, the time not being essential. Azam delivers it on 9th May. Babar will have to accept the delivery but he can claim damages.

2.2.4 Effect of acceptance of delayed performance

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

► *Example 25:*

Mahad promised to supply bricks to Nadeem on 4th May. Mahad delivers on 8th May. Nadeem accepts the delayed delivery while clearly stating his intention to claim compensation for the delay. Nadeem can claim damages.

► *Example 26:*

Mahad promised to supply bricks to Nadeem on 4th May. Mahad delivers on 8th May. Nadeem accepts the delayed delivery and did not give any indication as to claiming compensation for the delay. Later, Nadeem cannot claim damages.

► *Practice Question 08:*

Golden Foods (GF) agreed to supply 2,500 cans to Riaz Grocery Stores (RGS). According to the agreement, the date of delivery was 31 August 2025. However, on the due date GF refused to supply the cans.

- Under the provisions of the Contract Act, 1872 discuss the rights of RGS in the above situation assuming that time was the essence of the contract.
- What would be your answer to (a) above, if GF supplied the cans on 12 September 2025 and RGS accepted the performance; but suffered a loss on account of delayed supply?

► *Solution:***Part (a) Rights when time is essence of the contract**

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

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

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

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

► *Practice Question 09:*

- On 19 January 2026, Potassium Farms (PF) agreed to supply 500 kg of strawberries to Niobium Industries Limited (NIL) on 15 February 2026 at a discounted price to be paid in advance. NIL agreed to the conditions and paid the amount to PF in advance on 20 January 2026. NIL had a plan to introduce strawberry flavoured milk in March 2026. On 15 February 2026, PF failed to deliver the strawberries to NIL.

Under the provisions of the Contract Act, 1872 discuss the remedies available to NIL.

- What would be your answer in (a) above, if PF offers to deliver only 300 kg of strawberries to NIL on the due date.

► *Solution:***Part (a)**

Under the given situation, since time was essence of the contract between PF and NIL, where PF failed to deliver the strawberries to NIL, following remedies are available to NIL:

- Contract becomes voidable at the option of NIL.
- NIL may insist that PF should deliver the strawberries and claim compensation on account of the delayed supply if, at the time of acceptance, NIL gives notice to PF of its intention to claim damages.
- NIL may decide not to accept performance beyond the stipulated time and claim compensation for any damages which it may have sustained due to non-fulfilment of the contract by PF.

Part (b)

If PF offers to deliver only 300 kg of strawberries on 15 February 2026, it will not constitute a valid offer of performance. NIL will have all the remedies available in (a) above.

However, NIL has the right to accept part performance of the promise made to him by PF. In that case, if NIL accepts delivery of 300 kg on 15 February 2026 then it cannot sue PF later as it will be considered as remission of the contract.

► *Practice Question 10:*

Under the provisions of the Contract Act, 1872 briefly describe the rules in respect of time and place for the performance of a promise where both of them have not been specified in the contract.

► *Solution:*

Where time and place for the performance of a promise have not been specified in the contract and the promisor is to perform promise without application by the promisee in that situation following rules shall apply:

- where no time for performance is specified, the engagement must be performed within a reasonable time.
- where no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

► *Practice Question 11:*

- a) Kazim agreed to supply 500,000 cotton fabric rolls of a specific design to Zainab's workshop on 4 September 2025 between 10 am to 9 pm. Zainab informed Kazim that she requires the rolls urgently as she has to cater her orders.

On 4 September 2025, Kazim brought the rolls to Zainab's workshop at 8:30 pm and asked her to take delivery quickly as he was in a rush to make another delivery before 9 pm in nearby locality. Zainab wanted to check one roll from each of the 1,000 boxes to ensure that they are of the same design which she had ordered. Kazim threatened Zainab that if she does not sign the goods receiving note within next 10 minutes, he will not deliver the rolls to her and will take the delivery truck away to unload next order.

Under the provisions of the Contract Act, 1872 discuss whether Kazim is justified in his contention. Also discuss Zainab's position if Kazim does not deliver the rolls to her.

- b) Assume that in (a) above, Kazim brought the cotton fabric rolls for delivery to Zainab's workshop on 5 September 2025 at 10:30 am but Zainab refused to take the delivery. However, Zainab offered to take the delivery if she is given a special discount of 20% on the invoice amount.

Under the provisions of the Contract Act, 1872 discuss Kazim's position if he:

- refuses to give the discount and sues Zainab for breach of the contract.
- agrees to give the discount and makes the delivery but later sues Zainab to pay the full amount.

► **Solution:****Part (a)**

Kazim's offer of performance to Zainab is not valid because it does not fulfil the following conditions:

- An offer of performance must be unconditional. Kazim's condition that goods receiving note should be signed within next 10 minutes invalidates his offer of performance;
- Since contract is to deliver cotton fabric rolls in specific designs, Zainab must have a reasonable opportunity of checking that rolls pertain to the specific designs she ordered. She cannot possibly inspect 1,000 boxes in 10 minutes.

Due to the above reasons Kazim is not justified in his contention since his offer of performance is not fulfilling all the requirements.

Zainab's position:

Zainab's urgency to receive the order on time was in Kazim's knowledge which he tried to use to his advantage threatening to leave without delivery. If Kazim does not deliver the rolls to her, Zainab can claim compensation for breach of contract because non-delivery on the agreed date shall render the contract voidable at Zainab's option.

Part (b)

- Kazim already knew about Zainab's urgent orders due to which time was the essence of contract and non-delivery on the agreed date has made the contract voidable at Zainab's option. Accordingly, Kazim cannot hold Zainab responsible for breach of contract as she has the right to declare the contract void due to any reason and hence she can refuse to take delivery.
- If Kazim agrees to Zainab's demand of 20% discount, it will be considered as accepting alteration of contract. Consequently, he will not be able to demand full payment from Zainab afterwards.

► **Practice Question 12:**

Lime Cement (LC) operates as a medium-scale cement manufacturer and distributor.

Daniyal, recently appointed as a delivery supervisor at LC, has been tasked with overseeing the following orders:

- An order from Rubber Paints (RP) for 50 bags of cement, scheduled for delivery on 30 September 2025. Upon reviewing the order details, he noted the absence of specific information regarding the time and place of delivery. Under the Contract Act, 1872, advise Daniyal about time and place of delivery for RP's order.
- An order jointly placed by Fahim Hussain and Karim Hussain for 60 bags of cement, for building a farm house in Faisalabad. Under the Contract Act, 1872, identify the conditions that Daniyal must fulfil to make a valid delivery offer.

► **Solution:****Part (I)**

The delivery date specified is 30 September 2025. Daniyal needs to verify whether LC has committed to deliver the order as per RP's request.

If LC's commitment is contingent on RP's input, then it is RP's responsibility to request performance at an appropriate place and during usual business hours.

If LC has committed to deliver the order without requiring RP's input, then:

- LC must deliver the order during the usual business hours on 30 September 2025.
- LC is obligated to ask RP to designate a reasonable place for the delivery of the order and must then arrange for delivery at that place.

Part (II)

To ensure a valid delivery offer, Daniyal must satisfy the following conditions:

- i. The delivery offer must be unconditional.
- ii. The delivery offer must be made at an appropriate time.
- iii. The delivery offer must be made at an appropriate place.
- iv. The delivery offer must be made under circumstances that allow Fahim Hussain or Karim Hussain, the intended recipients, to reasonably ascertain that Daniyal, on behalf of LC, is able and willing to deliver 60 bags of cement.
- v. Fahim Hussain or Karim Hussain must have a reasonable opportunity to verify the contents of 60 bags.
- vi. The delivery offer must be made to either Fahim Hussain or Karim Hussain, as an offer to one of several joint promisees carries the same legal consequences as an offer made to all of them.

► **Practice Question 13:**

Assume that the date today is 30 November 2025.

Part (a)

Snowboarding Dealers (SD) manufactures and sells winter sports equipment. SD entered into a contract with Alpine Skiing Resort (ASR) to deliver 100 customised snowboards by November 2025 for Rs. 1 million at the resort in Malam Jabba. ASR intends to use the snowboards for the upcoming snow season in December 2025.

SD manufactured the snowboards in early November 2025. However, the weather conditions and the resort's high altitude have made it difficult to deliver the order to ASR. SD does not have specialized vehicles capable of delivering snowboards in such weather conditions. Considering the delivery challenges, on 30 November 2025, SD has asked ASR to either pick up the order from its factory, or wait until the weather conditions improve.

Under the Contract Act, 1872, discuss SD's position and identify the remedies available to ASR, if any.

Part (b)

Assume that in (a) above, ASR agrees to pick 60 snowboards directly from the factory, for a proportionate contract price of Rs. 0.6 million. Since the snowboards have been customised, SD cannot sell the remaining snowboards to other customers.

Under the Contract Act, 1872, identify the course(s) of action available to SD.

Part (c)

Being SD's regular customer, ASR's account has two outstanding invoices, of Rs. 1 million each, against the orders delivered in July 2025 and September 2025. In October 2025, SD has received a payment of Rs. 1.5 million from ASR; however, no intimation was given by ASR as to which invoice the payment should be settled against.

Under the Contract Act, 1872, advise how the payment would be adjusted.

► **Solution:**

Part (a)**SD's position**

SD's offer of performance has not been made at a proper place i.e., the agreed place of delivery in Malam Jabba, and further, the alternate delivery option given is conditional which makes SD's offer of performance invalid. The challenging delivery conditions making the performance of the promise difficult due to weather conditions is not an acceptable excuse of non-delivery by SD.

SD promised to deliver 100 snowboards by November 2025, however, as snowboards were not delivered till 30 November 2025, SD has committed a breach of contract, since time was the essence of the contract considering that the snowboards are to be used by ASR for the snow season activities in December 2025.

SD's offer asking ASR to either pick the order directly from its factory or extend the timeline for the delivery is an attempt for alteration to the original terms of the contract which requires ASR's consent in order to become binding on both parties. Until such time, SD's offer would constitute a proposal for which there is no valid acceptance.

Since SD failed to perform its promise within the specified time, the contract for the delivery of the snowboards has become voidable at the option of ASR and if ASR decides to rescind the contract, SD would be liable to pay compensation for damages sustained because of non-fulfilment of the contract.

Remedies available to ASR

ASR may choose to accept delayed performance from SD agreeing to take delivery of the snowboards after the weather conditions improve. However, in such scenario, ASR would not be able to claim compensation for any losses resulting from the delay, unless ASR notifies SD of its intention to claim such compensation at the time of accepting the delayed performance.

Alternatively, ASR can refuse to accept delayed performance and seek compensation for damages incurred due to breach of the contract.

Part (b)

Considering the Malam Jabba resort's seasonal weather patterns, time was of the essence in this contract. SD's non-delivery on the agreed date constituted a material breach, making the contract voidable at ASR's option. Due to the breach of contract, SD cannot compel ASR to fulfil the original contract terms including the delivery of the remaining snowboards.

ASR's willingness to pick 60 snowboards is indicating a willingness to accept delayed performance at a proportionate price and is a modification of the original contract terms.

In case SD concurs with ASR's offer to pick partial delivery, the original contract need not to be performed and SD would not be liable to pay any compensation for non-performance of the original contract.

If SD rejects ASR's offer, SD would have to bear the loss for the entire 100 snowboards and would have to pay damages to ASR. Nevertheless, SD may choose to pay damages for the non-delivery of snowboards and turn down ASR's offer to accept delivery of 60 snowboards.

Part (c)

In the absence of any intimation from ASR regarding the application of payments to debts, the following are the two possibilities to determine the settlement:

- i. SD may apply the payment at its discretion to any of the two lawful debts actually due and payable to it from ASR pertaining to the orders delivered in July and September.
- ii. If SD does not make an appropriation, then the payment shall be applied in discharge of the debts in order of time, which means that the outstanding dues in respect of the invoice pertaining to the order delivered in July would be adjusted in full and the remaining Rs. 0.5 million would be adjusted against the September invoice.

3 PERFORMANCE OF RECIPROCAL PROMISES

3.1 Definition [Section 2(f)]

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

► *Example 27:*

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

3.2 When promisor is not bound to perform [Section 51]

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

► *Example 28:*

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

► *Example 29:*

Azam and Babar contract that Azam shall deliver goods to Babar at a price to be paid in instalments, the first instalment to be paid on delivery. Azam need not deliver unless Babar is ready and willing to pay the first instalment on delivery. Babar needs not pay the first instalment, unless Azam is ready and willing to deliver the goods on payment of the first instalment.

3.3 Order of performance [Section 52]

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

► *Example 30:*

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

► *Example 31:*

Azam and Babar contract that Azam shall make delivery of his stock-in-trade to Babar at a fixed price, and Babar promises to give security for the payment of the money. Azam's promise need not be performed until the security is given, because the nature of the transaction requires that Azam should have security before he delivers up his stock.

3.4 Liability of party preventing the performance [Section 53]

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

► *Example 32:*

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

3.5 Effect of default of promise which should be first performed [Section 54]

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

► *Example 33:*

Ajmal hires Bilal's ship to take in and convey, from Karachi to Mauritius, a cargo to be provided by Ajmal, Bilal receiving a certain freight for its conveyance. Ajmal does not provide any cargo for the ship. Ajmal cannot claim the performance of Bilal's promise, and must make compensation to Bilal for the loss which Bilal sustains by the non-performance of the contract.

► *Example 34:*

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

► *Example 35:*

Azam contracts with Babar to deliver to him, at a specified price, certain merchandise on board of a ship which cannot arrive for a month, and Babar engages to pay for the merchandise within a week from the date of the contract. Babar does not pay within the week. Azam's promise to deliver need not be performed, and Babar must make compensation.

► *Example 36:*

Azam promises Babar to sell him 1000 bales of merchandise to be delivered next day, and Babar promises Azam to pay them within a month. Azam does not deliver according to his promise. Babar's promise to pay need not be performed, and Azam must make compensation.

3.6 Reciprocal promises to do things legal, and also other things illegal [Section 57]

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

► *Example 37:*

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

3.7 Alternative promise, one branch being illegal [Section 58]

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

► *Example 38:*

Zahid and Yasir agree that Zahid shall pay Yasir Rs. 1 million for which Yasir shall afterwards deliver to Zahid either rice or smuggled opium. This is a valid contract to deliver rice, and a void agreement as to the opium.

► *Practice Question 14:*

Maimar promised to manufacture and deliver to Nasir, remote-controlled toy helicopters of agreed specifications in first week of March 2026. Nasir in turn promised to pay for them by second week of March 2026. Maimar did not deliver the toys according to his promise. Should Nasir keep his promise and what remedy, if any, is available to him?

► **Solution:**

No, Nasir need not perform his promise to pay and Maimar must compensate Nasir for any loss which Nasir may sustain due to Maimar's non-performance.

► **Practice Question 15:**

Bromine Traders (BT) is engaged in the business of import, purchase and supply of electronic items. BT agreed to supply 250 rice cookers to Francium & Co. (FC) against an advance payment of Rs. 500,000. BT specified that the rice cookers would either be imported or smuggled from Korea.

Discuss status of contract between BT and FC.

► **Solution:**

The contract between BT and FC is partly valid because in case of alternative promises if one branch of contract is legal i.e. imported goods and the other branch is illegal i.e. smuggled goods, then, only legal branch can be enforced as illegal branch is void.

► **Practice Question 16:**

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

► **Solution:**

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

- Simultaneous performance:** When contract consists of reciprocal promises to be simultaneously performed, the promisor needs not perform his promise unless the promisee is ready and willing to perform his reciprocal promise.
- Order of performance:** Where the order in which reciprocal promises are to be performed is expressly fixed by contract, they must be performed in that order as fixed by the contract, and where the order is not expressly fixed by the contract, they must be performed in that order which the nature of the transaction requires.
- Preventing the performance:** When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of non-performance of the contract.
- Mutual and dependent reciprocal promises:** Where the performance of one party depends on the prior performance of the other party and party who is liable to perform first, fails to perform it, then such party cannot claim the performance from the other party and must make compensation to the other party for any loss which the other party may sustain by non-performance of the contract.
- Promise to do legal and illegal things:** Where persons reciprocally promise, firstly, to do certain things which are legal, and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

► **Practice Question 17:**

Under the provisions of the Contract Act, 1872, explain any four rules regarding the performance of reciprocal promises.

► **Solution:**

The rules regarding the performance of reciprocal promises are as follows:

i. **Simultaneous performance**

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

ii. Order of performance

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

iii. Preventing the performance

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

iv. Mutual and dependent reciprocal promises

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

v. Promise to do legal and illegal things

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

► **Practice Question 18:**

Rizwan engaged Bamboo Designers (BD) to completely renovate his bungalow by 31 August 2025 for Rs. 5 million. The renovation work included civil works, painting, plumbing and tiling. Rizwan informed BD that he would arrange imported marble tiles to be fixed in the bungalow.

BD completed the renovation work on 31 August 2025 except for fixing of the tiles. Due to transit issues, the cargo of tiles ordered by Rizwan reached Pakistan on 5 September 2025. Upon receiving the tiles, Rizwan asked BD to proceed with the completion of the renovation work.

However, BD refused to deploy labour until the contract price to the extent of work completed is paid, and Rizwan declined to make the payment as the bungalow was not ready as per agreed specifications.

Under the Contract Act, 1872, evaluate BD's position, and discuss the remedies available to BD.

► **Solution:****BD's position**

The contract between Rizwan and BD includes reciprocal promises concerning the execution of tiling works.

However, Rizwan failed to provide the tiles as agreed, thereby preventing BD's ability to fulfil its end of the contract within the stipulated timeline.

Remedies available to BD

Since Rizwan breached the contract, BD has the option to consider the contract voidable.

BD is entitled to claim compensation from Rizwan for any losses sustained due to Rizwan's failure to perform his part of the contract. This is in addition to the contract price proportionate to the extent of work already completed by BD.

If BD agrees to proceed with the work, contingent upon Rizwan paying a partial contract price, this implies that BD accepts completing the tiling work within the same initial contract price.

Such an agreement would also open the door to potential modifications to the original contract terms, provided that Rizwan consents to the proposed changes.

4 OBJECTIVE BASED Q&A

- 1 Which one of the following is not a joint promise:
 - a) Several joint promisors with a single promisee
 - b) Single promisor with several joint promisees
 - c) Several joint promisors with several joint promisees
 - d) Single promisor with single promisee
- 2 Mr. X borrowed sum of Rs. 100,000/- from Mr. Y for two years. After one year Mr. X dies and Mr. Z, who is a legal representative inherits property of Rs. 60,000/- from him. On the due date of repayment Mr. Y will call upon Mr. Z to repay. But the capacity of Mr. Z is limited up to the value of Rs. 60,000/-. State the legal position.
 - a) Mr. Z is liable to pay only Rs.60,000/-
 - b) Mr. Z is liable to pay only Rs.100,000/-
 - c) Mr. Z is liable to pay only Rs.40,000/-
 - d) Mr. Z is liable to pay only Rs.160,000/-
- 3 For the performance of joint promise
 - a) All joint promisors are jointly liable
 - b) All of them are severally liable
 - c) All joint promisors are individually liable
 - d) All joint promisors are jointly and severally liable
- 4 Contract should be performed
 - a) By promisor
 - b) By his legal representative
 - c) By the agent of promisor
 - d) Any of the above
- 5 Mr. A and Mr. B have borrowed sum of Rs.10,000/- from Mr. C. On due date both parties i.e. Mr. A and Mr. B are jointly liable to pay. If before the payment Mr. A dies, who will be liable to pay Rs.10,000/-?
 - a) Mr. B is liable to pay Rs.10,000/-
 - b) Mr. B is liable to pay Rs.15,000/-
 - c) The legal representative of Mr. A along with Mr. B is liable to pay Rs.10,000/-
 - d) The legal representative of Mr. A is liable to pay Rs.10,000/-
- 6 Contractual obligation involving personal skill of the promisor
 - a) Becomes obligation of legal representative of the promisor during his life time
 - b) Never becomes obligation of legal representative of the deceased promisor
 - c) Becomes obligation of legal representative of the deceased promisor
 - d) Becomes obligation of legal representative of the deceased promisor

- 7 When the time is an essence of a contract, promisor fails to perform his promise on time,
 - a) Contract becomes voidable at the option of promisee
 - b) Contract becomes void
 - c) Contract becomes unenforceable
 - d) Promisor must pay compensation to the promisee

- 8 Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee:
 - a) Does not discharge the other joint promisor(s), neither does it free the joint promisor so released from responsibility to the other joint promisor(s).
 - b) Discharges the other joint promisor(s) but it does not free the joint promisor so released from responsibility to the other joint promisor(s).
 - c) Discharges the other joint promisor(s) and also frees the joint promisor so released from responsibility to the other joint promisor(s).
 - d) Release of one of such joint promisors is not allowed under the law.

- 9 Where a contract consists of reciprocal promises and such reciprocal promises are to be simultaneously performed:
 - a) Promisor need not perform his part of promise at all.
 - b) Promisor need not perform his part of promise unless promisee is ready and willing to perform his reciprocal promise.
 - c) Promisor has to compel promisee to perform his promise first.
 - d) There is not valid contract between the parties.

- 10 Which one of the following statements is incorrect regarding the time of performance?
 - a) Where time is of the essence of a contract, a slight delay shall not allow the aggrieved party the right to terminate the contract.
 - b) Where the contract does not provide that performance must be completed by a certain date, the parties must perform their respective obligations within a reasonable time.
 - c) Parties can mutually decide whether the time is essence of the contract or not.
 - d) Time shall be of the essence of the contract where the subject matter of the contract indicates that time shall be of the essence.

- 11 When two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, the promise shall be performed, during their joint lives by:
 - a) Any one of the joint promisors
 - b) By a majority of joint promisors
 - c) By all of them jointly.
 - d) By any of the above ways.

- 12 Where time for performance is specified in a contract:
- The promisor has to perform without application by the promisee.
 - The promisor shall perform after specified time in the contract as per his own choice.
 - Either of the above
 - The promisor should wait for the application by the promisee and need not perform before that.
- 13 In a contract where time is not specified for performance, the promisor can perform the contract:
- At any time he wishes
 - Within the shortest possible time
 - Within a reasonable time
 - Within the latest time
- 14 Amjad, Babar and Chand jointly promise to pay Dawood the sum of Rs. 6,000. Chand is compelled to pay the whole. Amjad is insolvent, but his assets are sufficient to pay one-half of his debts. Which of the following is correct?
- Chand is entitled to receive Rs. 1,000 from Amjad's estate and Rs. 2,500 from Babar
 - Chand is entitled to receive Rs. 1,000 from Amjad's estate and Rs. 2,000 from Babar
 - Chand is entitled to receive Rs. 1,000 from Amjad's estate and Rs. 3,000 from Babar
 - None of above
- 15 Anwar promises Bunty to sell him 100 bales of cotton, to be delivered next day and Bunty promises Anwar to pay for them within a month. Anwar does not deliver according to promise. Which of the following is correct?
- Bunty's promise to pay need not be performed, and he may claim compensation from Anwar
 - The contract becomes void and ceases to be enforceable on non-delivery.
 - Bunty's promise to pay need not be performed, and but he cannot claim compensation from Anwar
 - Bunty must pay after a month and only then he can sue for compensation.
- 16 On 5 September 2025, Shakeel entered into a contract with Basim, representing Basim Tanners (BT), for the supply of 1,000 kg of salt for BT's leather tanning operations by 20 September 2025. The contract does not specify the place of delivery. Shakeel has addresses of BT's head office and all 10 active tanning stations. Shakeel should:
- deliver 100 kg of salt to each of BT's tanning stations
 - wait for Basim to specify the place where he wants delivery
 - deliver 1,000 kg of salt to BT's head office
 - ask Basim to confirm the place of delivery

- 17 Promises which form the consideration for each other are:
- joint promises
 - unenforceable promises
 - reciprocal promises
 - quasi promises
- 18 On 20 February 2026, Saad agreed to provide 500 custom-made shirts to Jalil for a match. Saad was unable to deliver the order on the agreed date due to fire incident in one of his factories. He sent the delivery to Jalil after the agreed date and requested him to accept the order as the shirts were customized and could not be sold in the market.
- Which of the following statements is correct?
- Jalil can accept the delivery as contract is voidable at his option
 - Jalil must accept the delivery as delay was due to supervening impossibility
 - Jalil cannot accept the delivery because time was essence of the contract
 - Jalil cannot accept the delivery as the contract became void
- 19 Ali owed Rs. 500,000 to Bilal which was due on 26 February 2026. Bilal requested Ali to send the payment through cheque by post to his residential address in Hyderabad. On 26 February 2026, Ali posted the cheque to Bilal on the given address.
- On 1 March 2026, Bilal received the cheque and deposited it in the bank on the same day. The funds were credited to Bilal's bank account on 2 March 2026. Bilal, on the same day, sent a letter to Ali by post, acknowledging the receipt of payment. The letter was received by Ali on 6 March 2026.
- Under the provisions of the Contract Act, 1872, Ali's debt would be considered to have been discharged on:
- 26 February 2026
 - 1 March 2026
 - 2 March 2026
 - 6 March 2026
- 20 Glass Sea (GS), the operator of multiple aquariums, entered into a contract with Timber Fishes (TF) on 5 August 2025 and made a payment of USD 5 million. TF agreed to supply either 8 dolphins locally sourced from Indus River or 5 dolphins imported from Japan. The contract stipulated a delivery date of 30 September 2025.
- However, on 5 September 2025, TF communicated to GS that the contract cannot be performed due to a government-imposed ban on capturing dolphins from Indus River, which became effective on 10 August 2025.
- Under the Contract Act, 1872, can GS hold TF liable for non-performance of the contract?
- No, because part of the contract's object is unlawful
 - No, because the contract cannot be enforced in light of government directives
 - Yes, because the legal branch of the alternative promise is enforceable
 - Yes, because it is a valid contingent contract

- 21 Zubair purchased 5,000 kg of basmati rice from Shakir and promised to pay Rs. 500,000 after two months. However, due to a fire incident at his shop, he incurred huge loss rendering him unable to pay the amount to Shakir on due date.

Mohsin, who is a friend of Zubair, intending to help him out in the crisis, sent a letter to Shakir along with a cash cheque of Rs. 475,000, requesting Shakir to accept the payment in full settlement of Zubair's debt. Shakir immediately encashed the cheque on 1 March 2026, fearing that his debt would not otherwise be recovered. He now demands the remaining payment of Rs. 25,000 and damages of Rs. 30,000 incurred by him on account of delayed payment.

Under the Contract Act, 1872, which of the following statements is correct?

- a) Shakir can sue Zubair for the recovery of Rs. 25,000 only
- b) Shakir can sue Zubair for the recovery of Rs. 55,000
- c) Shakir can sue either Mohsin or Zubair for the recovery of Rs. 55,000
- d) Shakir can neither sue Mohsin nor Zubair for the recovery of Rs. 55,000

ANSWERS

1	d)	Single promisor with single promisee. When the promise is made by one promisor and accepted by one promisee, this is known as single promise
2	a)	Mr. Z is liable to pay only Rs.60000/-. The liability of a legal representative of the deceased promisor is limited to the value of property he inherits from the deceased and not more than that
3	d)	All joint promisors are jointly and severally liable. When two or more persons jointly make a promise, they are jointly and severally liable to perform the promise.
4	d)	Contract is to be performed by promisor or by his legal representative or by his agent
5	c)	The legal representative of Mr. A along with Mr. B is liable to pay Rs.10000/-. In case of death of any one of joint promisors, his legal representative along with remaining promisors will perform the promise
6	b)	If it is a contractual obligation involving personal skill or ability than the contract becomes impossible to perform on death of the promisor
7	a)	Contract becomes voidable at the option of promisee. Being an aggrieved party, it depends upon the promisee either to continue the contract or to rescind the contract.
8	a)	Does not discharge the other joint promisor(s), neither does it free the joint promisor so released from responsibility to the other joint promisor(s).
9	b)	Promisor need not perform his part of promise unless promisee is ready and willing to perform his reciprocal promise.
10	a)	Where time is of the essence of a contract, a slight delay shall not allow the aggrieved party the right to terminate the contract.
11	c)	By all of them jointly.
12	a)	The promisor has to perform without application by the promisee.
13	c)	Within a reasonable time
14	a)	Chand is entitled to receive Rs. 1,000 from Amjad's estate and Rs. 2,500 from Babar
15	a)	Bunty's promise to pay need not be performed, and he may claim compensation from Anwar
16	d)	ask Basim to confirm the place of delivery
17	c)	reciprocal promises
18	a)	Jalil can accept the delivery as contract is voidable at his option
19	a)	26 February 2026
20	c)	Yes, because the legal branch of the alternative promise is enforceable
21	d)	Shakir can neither sue Mohsin nor Zubair for the recovery of Rs. 55,000

STICKY NOTES

Persons by whom the promise is to be performed

1. Promisor himself only (in case of personal nature contracts)
2. Legal representatives (in case of death of promisor)
3. Other competent person (unless there is intention to contrary)
4. Promisors jointly (or their legal representatives) in case of joint promise

Rules regarding performance of joint promises

1. Joint and several liability
2. Right to claim contribution
3. Sharing of loss by default in contribution
4. Effect of release of one joint promisor
5. Performance to be demanded jointly (in case of joint promise)

Summary of Rules regarding time and place of performance

1.	No time specified and no application to be made.	Perform within reasonable time
2.	Certain day specified and no application to be made.	Perform at any time during usual hours of business.
3.	Certain day specified and application to be made.	Promisee must apply for performance at proper place and within the usual hours of business.
4.	No place fixed and no application to be made	Promisor must apply to promisee to appoint reasonable place.
5.	Time and place prescribed or sanctioned by promisee	Perform accordingly.

Failure to perform at fixed time

1. When time is essential, the contract becomes voidable.
2. When time is not essential, the contract is not voidable.

The notice of intention to claim compensation must be given in case of acceptance of delayed performance.

Performance of reciprocal promises

1. Order of performance should be as fixed by parties or as the nature of transaction requires.
2. No need to perform unless promisee is ready to perform his promise too, in case of simultaneous performance.
3. Contract becomes voidable at the option of the party prevented from performance.
4. Reciprocal promises to do things legal (a contract) and also other things illegal (void agreement)
5. Alternative promises, legal branch (enforceable) and illegal branch (cannot be enforced)

CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Quasi Contracts
- 2 Objective Based Q&A

STICKY NOTES

AT A GLANCE

In certain cases, the law imposes an obligation and allows an action to be brought on it as if it arose out of an agreement, though none was present in fact. Such cases, strictly speaking, are not contracts, but the law recognises them as 'certain relations resembling those created by contracts'. In English law, such relations are called quasi-contracts.

Quasi-contracts rest on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another.

The Contract Act deals with the following quasi-contracts:

- i. Claim for necessities supplied to a person incapable of contracting or on his account.
- ii. Reimbursement of a person paying money due by another in payment of which he is interested.
- iii. Obligation of person enjoying benefit of a non-gratuitous act.
- iv. Responsibility of finder of goods.
- v. Liability of person to whom money is paid or thing delivered by mistake or under coercion.

1 QUASI CONTRACTS

In certain situations, the law of contract imposes obligations on a person in absence of any agreement. These obligations resemble those as created by a contract. These are called quasi contract or constructive contract. The concept of quasi contract is that of a contract that should have been formed even though in actuality it was not.

1.1 Supply of necessities [Section 68]

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

▶ *Example 01:*

Habib supplies necessities to the wife and children of Arslan, a minor. Habib can recover expenses from Arslan's property, if any.

▶ *Example 02:*

Habib supplied a coat with diamond buttons to Arslan, a minor. Habib cannot demand the price of coat from Arslan's property.

▶ *Example 03:*

A minor purchased 11 coats. He had sufficient clothes at that time. It was held that coats were not necessities of life and minor was not liable to pay for them.

▶ *Example 04:*

Azam supplies Habib, a lunatic, with necessities suitable to his condition in life. Azam is entitled to be reimbursed from Habib's property, if any.

▶ *Example 05:*

Waseem supplies the wife and children of Saeed, a lunatic, with necessities suitable to their condition in life. Waseem is entitled to be reimbursed from Saeed's property, if any.

Notice that such claim is against the property of the minor or person of unsound mind and they are not personally liable.

▶ *Example 06:*

Maryam, a minor buys medicines from Zain. Maryam has no property. Maryam cannot be held personally liable for payment. She cannot be declared insolvent.

1.2 Reimbursement of payment by interested person [Section 69]

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

▶ *Example 07:*

Babar holds land in Sindh, on a lease granted by Azam, a Zamindar. Due to revenue payable by Azam to the Government being in arrears, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of Babar's lease. Babar, to prevent the sale and the consequent annulment of his own lease, pays the Government the sum due from Azam. Azam is bound to make good to Babar for the amount so paid.

▶ *Example 08:*

Azam pays arrears of rent of Babar voluntarily to avoid dispute between Babar and his landlord. Azam cannot recover from Babar as he has no interest in the payment.

► *Example 09:*

Bilal imported goods and stored in Anum's warehouse without paying the custom duty. The custom authorities recovered custom duty from Anum. Anum can recover the amount from Bilal.

1.3 Person enjoying benefit of non-gratuitous act /goods [Section 70]

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

► *Example 10:*

Awais, a tradesman, leaves goods at Afaq's house by mistake. Afaq treats the goods as his own. Afaq is bound to pay Awais for the goods.

► *Example 11:*

Azam saves Babar's property from fire. Azam is not entitled to compensation from Babar, if the circumstances show that he intended to act gratuitously.

1.4 Responsibility of finder of goods [Section 71]

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

He is bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his own goods. He must also take reasonable steps to trace its owner - if he does not, he will be guilty of wrongful conversion of the property. Until the true owner is found, he has right to retain possession of the goods. [Section 151]

A finder of goods may sell the goods when the goods are of perishable nature or when the lawful charges for finding the true owner amount to two-third or more of the value of the goods. [Section 169]

► *Example 12:*

Adeel found a diamond ring at wedding reception of Bilal. Adeel told Bilal and other guests about it with an intention to find the true owner. If he is not able to find the owner he can retain the ring as bailee.

1.5 Payment or delivery by mistake or under coercion [Section 72]

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

► *Example 13:*

Anum and Bilal jointly owe Rs. 100 to Saima. Anum alone pays the amount to Saima, and Bilal, not knowing this fact, pays Rs. 100 over again to Saima. Saima is bound to repay the amount to Bilal.

► *Example 14:*

A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an undue charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was excessive.

► *Practice Question 01:*

Under the provisions of the Contract Act, 1872 briefly describe various types of quasi-contracts.

► *Solution:***Supply of necessities:**

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

Payment by interested person:

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

Person enjoying benefit of non-gratuitous act/goods:

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

Finder of goods:

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

Payment by mistake or under coercion:

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

► **Practice Question 02:**

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

- i. Baqir supplied a jacket to Sultan in order to save him from cold weather. Sultan who was a minor agreed to pay Rs. 2,000 for the jacket although its market price was Rs. 1,500.
- ii. Rohi, who paid the electricity bill of Saulat without being asked, is now demanding payment from Saulat.
- iii. Sami, a coolie picked up the goods purchased by Nadia from the supermarket and took them to her car. Nadia did not object to it. Sami demanded service charges from Nadia.

► **Solution:****Part (i) Claim for necessities supplied to person incapable of contracting, or on his account:**

Baqir can recover the amount from Sultan if following conditions were satisfied:

- the jacket supplied was the necessity suited to Sultan's condition in life.
- Baqir can recover the reasonable market value of Rs. 1,500 only from Sultan's property.

He cannot recover Rs. 2,000 which Sultan had agreed to pay to Baqir as Sultan, being an incompetent person was not in the capacity to contract.

Part (ii) Reimbursement of person paying money due by another in payment of which he is interested:

Rohi can recover the amount of electricity bill from Saulat only if the following two conditions were satisfied:

- Rohi who made the payment had interest in such payment.
- the payment must be such which Saulat was bound by law to pay.

Part (iii) Obligation of person enjoying benefit of non-gratuitous act:

Sami can recover the amount of service charges from Nadia if following conditions were satisfied:

- Sami had lawfully done the service for Nadia, i.e. Nadia had the option to accept or reject the services rendered by Sami.
- Sami did not have an intention to act gratuitously and Nadia had enjoyed the benefits of the service so provided by Sami.

► *Practice Question 03:*

Sami rented his house to Qurban for a period of one year at an agreed sum of Rs. 10,000 per month. After the first two months, Qurban defaulted in making payment of the rent. Baqir, a neighbour, being concerned with the strained relationship between Sami and Qurban, paid the rent with good intention. Subsequently, on Qurban's refusal to reimburse the amount, Baqir filed a suit against him on the grounds that he made the payment to Sami which Qurban was legally bound to make and being a quasi-contract Baqir is entitled to the reimbursement.

Explain whether Baqir is justified in his suit.

► *Solution:*

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

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

Baqir does not seem to have any interest in the payment and therefore, he is not justified in his suit.

► *Practice Question 04:*

Mohsin acquired a piece of agricultural land in Moro, Sindh from a local landlord, Qasim, on a lease term of twenty years. The revenue payable by Qasim on his land to the Provincial Government was in arrears. As a result, the land was advertised for sale by the Provincial Government. Mohsin, in order to prevent the sale of land, paid the sum due by Qasim to the Provincial Government.

Under the provisions of Contract Act, 1872 explain whether Mohsin can recover such amount from Qasim.

► *Solution:*

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

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

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

► *Practice Question 05:*

Under the provisions of the Contract Act, 1872 describe constructive contracts and identify the circumstances in which a constructive contract may be formed.

► *Solution:*

Constructive contract may be described as a contract that should have been formed even though in actuality it was not.

In the following circumstances, a constructive contract may be formed:

- a) **Supply of necessities:** If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
- b) **Reimbursement of payment by interested person:** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.
- c) **Person enjoying benefit of non-gratuitous act:** Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

- d) **Finder of goods:** A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibilities as a bailee.
- e) **Payment or delivery by mistake or under coercion:** A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

► *Practice Question 06:*

Under the provisions of the Contract Act, 1872, describe quasi-contracts and explain the circumstances in which a quasi-contract may be formed.

► *Solution:*

In certain situations, the law of contract imposes obligations on a person in absence of any agreement. These obligations resemble those as created by a contract. These are called quasi-contracts i.e., those contracts that should have been formed even though in actuality they were not.

A quasi-contract may be formed, in the following circumstances:

- i. **Supply of necessities:** If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
- ii. **Reimbursement of payment by interested person:** A person who is interested in the payment of money which another is bound by law to pay, and who therefore, pays it, is entitled to be reimbursed by the other.
- iii. **Person enjoying benefit of non-gratuitous act:** Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.
- iv. **Finder of goods:** A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibilities as a bailee.

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

2 OBJECTIVE BASED Q&A

- 1 Quasi-contract means
 - a) Obligations imposed by law resembling those created by contract
 - b) Obligation partly created by contract and partly by law
 - c) Obligation partially enforceable by the law
 - d) Obligation imposed by contract
- 2 Quasi-contracts are based on
 - a) Surrounding circumstances
 - b) Naturally created rights and obligation
 - c) Principal of equity and justice
 - d) Principal of reasonableness and fairness
- 3 In case, articles of necessities are supplied to the person having no contractual capacity or to his dependent, the supplier is entitled to be reimbursed
 - a) From the property of that incapable person
 - b) From the property of dependent
 - c) Personal liability of that capable person
 - d) From none of these
- 4 Compensation for non-gratuitous act is valid provided
 - a) Party doing act has an intention to get compensation
 - b) The person for whom the act is done must have got benefit
 - c) Act done by the party is lawful
 - d) All of the above
- 5 In case, necessities are supplied to the person having no contractual capacity, which of the following is recoverable from his property
 - a) Market price
 - b) Contracted price
 - c) Reasonable price
 - d) Cost plus price
- 6 Finder of goods is under legal obligation for taking
 - a) Reasonable care of the goods
 - b) Required care of the goods
 - c) Little care of the goods
 - d) That much care, which he can take

- 7 When one party under a mistake pays money to the other party, which is not due by contract, then
- That other party should refuse to repay it
 - That other party must repay it to the party paying it
 - That other party may repay it to the party paying it
 - That other party may refuse to repay it
- 8 Quasi-contract implies creation of legal rights and obligations between parties without making any formal contract which one of the following is not the type of Quasi-contract
- Supply of necessities to the person having no contractual capacity
 - Supply of necessities to the person having no contractual capacity or to his dependent
 - Obligation to pay for non-gratuitous act or service
 - Obligation to pay for gratuitous act or service
- 9 Mr. A has lost his pet dog. Not being able to find it out he announces that whosoever finds it and returns it back to him, he will suitably reward him. Mr. D found that dog and took custody of it. Which of the following statements is incorrect?
- Mr. D must take reasonable steps to trace dog's owner
 - Mr. D is bound to take as much care of the dog as a man of ordinary prudence would take of his own dog under similar circumstances
 - Mr. D must sell the dog immediately if true owner is not found on the same day
 - Mr. D has right to retain the dog until true owner is found
- 10 Mr. X supplied rice and wheat worth Rs.20000/-, Mr. Y supplied a mobile phone worth Rs. 30000/- and Mr. Z lent Rs.50000/- for the purchase of necessities to the wife and children of Mr. M, a lunatic. Mr. M has assets worth Rs. 100000/-. Can Mr. X, Mr. Y and Mr. Z recover anything from Mr. M?
- Mr. X, Mr. Y and Mr. Z can recover their full money.
 - Mr. X, Mr. Y and Mr. Z cannot recover their full money.
 - Mr. X and Mr. Y can recover their full money.
 - Mr. X and Mr. Z can recover their full money.
- 11 In case of non-gratuitous act or service, the obligation to pay arises if the following condition is satisfied.
- The thing must have been done or delivered lawfully
 - The person who had done or delivered the thing must not have intended to do so gratuitously
 - The person for whom the act is done must have enjoyed the benefit of the act
 - All of the above
- 12 In Quasi-contract, there are
- Legal formalities
 - Legal obligations
 - Contractual obligations
 - None of these

- 13 Umair purchased vegetables for his family while visiting Fahad. However, he forgot to take them from Fahad's house and those vegetables were consumed by Fahad's family. Fahad is now bound to pay the price of those vegetables because of obligation created under:
- deemed contract
 - contract of indemnity
 - quasi contract
 - contract of bailment
- 14 While having dinner at a restaurant, Nadir found a gold coin under his chair which he took into his custody. Salim, the restaurant owner, demanded Nadir to hand over the gold coin to him. Which of the following statements is correct?
- Nadir should hand over the gold coin to Salim as he would be regarded as a bailee being the restaurant owner
 - Nadir should not hand over the gold coin to Salim as Nadir is the pledgee to the owner of the gold coin
 - Nadir can keep the gold coin with him as he has become the bailee to the owner of the gold coin
 - Nadir can keep the gold coin with him as he has become the agent to the owner of the gold coin
- 15 Malik engaged Waqas to carry out maintenance of the equipment installed in the garden area of his house. While working on maintenance tasks, Waqas noticed a gas leak in the kitchen. To prevent any casualty, Waqas promptly fixed the gas leak using his tools without seeking Malik's consent since he was not at home. Malik later thanked him for taking timely action. Under the Contract Act, 1872, can Waqas hold Malik liable to pay for his services in respect of fixing the gas leak?
- No, as Malik had not engaged Waqas to fix the gas leak
 - No, because the service charges for fixing the gas leak were not ascertained
 - Yes, if Waqas did not intend to fix the gas leak gratuitously
 - Yes, because Waqas fixed the gas leak as Malik's agent

ANSWERS

1	a)	In Quasi Contract, the parties do not go into the process of offer & acceptance, rather a relationship resembling with that of a contract is established.
2	c)	According to this principle, nobody will be allowed to be enriched at the expense or cost of another person.
3	a)	From the property of that incapable person. The supplier of necessities is legally entitled to recover the cost of such supplies.
4	d)	The person who gets benefit of non-gratuitous act or service is liable to compensate the person doing such act or rendering services.
5	c)	Supplier of necessities is legally entitled to recover the reasonable cost of such supplies
6	a)	To take reasonable care of goods, as he would have taken in case of his own goods.
7	b)	Another party must repay it to the party paying it. That person is under legal obligations to return it to the person paying.
8	d)	The person doing the act should not have intended to do it gratuitously.
9	c)	The dog is not of perishable nature and Mr. D should not sell the dog unless lawful charges of finding the true owner amount to two-third or more of the value of the goods.
10	d)	Mr. X and Mr. Z can recover their full money because Mr. X & Mr. Z supplied necessities but Mr. Y cannot recover anything because he has not supplied necessities.
11	d)	The person who gets benefit of non-gratuitous act or service is liable to compensate the person doing such act or rendering services.
12	b)	A Quasi-contract is an obligation imposed by law in absence of any agreement between the parties.
13	c)	quasi contract
14	c)	Nadir can keep the gold coin with him as he has become the bailee to the owner of the gold coin
15	c)	Yes, if Waqas did not intend to fix the gas leak gratuitously

STICKY NOTES

Quasi Contracts

1. Claim for necessities supplied to a person incapable of contracting or to his dependents
2. Reimbursement of person paying money due by another in payment of which he is interested
3. Obligation to pay by person enjoying benefit of non-gratuitous act
4. Responsibility of finder of goods as bailee.
5. Liability of person to whom money is paid or thing delivered by mistake or under coercion.

CONSEQUENCES FOR BREACH OF CONTRACT

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Compensation for Loss or Damage caused by Breach
- 2 Compensation where Penalty is Stipulated
- 3 Objective Based Q&A

STICKY NOTES

AT A GLANCE

When there is a breach of contract by one of the parties to the contract, the injured party is entitled to such damages which naturally arose in the usual course of things from such breach (ordinary damages) and such damages which the parties knew, when they made the contract, to be likely to result from the breach (special damages).

However, such compensation is not to be given for any remote or indirect loss or damage sustained by a reason of the breach. In estimating the amount of compensation, the means which existed of remedying the inconvenience cause by non-performance of the contract must be taken into account.

Sometimes the parties to a contract stipulate at the time of its formation that on the breach of the contract by either of them, a certain specified sum will be payable as damages.

An aggrieved party can claim reasonable compensation only not exceeding the amount named in the contract regardless of whether the amount is penalty or not.

1 COMPENSATION FOR LOSS OR DAMAGE CAUSED BY BREACH

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

1.1 Damages arising naturally – ordinary damages [Section 73]

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

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

► Example 01:

Naveed promised to deliver food at an event organised by Adeel for 80 persons for Rs. 85,000. Just an hour before the event, Naveed informed that he would not be able to deliver the food. Adeel arranged the food from another caterer which did cost him Rs. 93,000. Adeel may claim damages of differential amount i.e. Rs. 8,000 from Naveed.

► Example 02:

Asif hires Bilal's ship to go to Karachi, and there take on board, on the first of January, a cargo which Asif is to provide and to bring it to Gwadar, the freight to be paid when earned. Bilal's ship does not go to Karachi, but Asif has opportunities of procuring suitable conveyance or the cargo upon terms as advantageous as those on which he had chartered the ship. Asif avails himself of those opportunities, but is put to trouble and expense in doing so. Asif is entitled to receive compensation from Bilal in respect of such trouble and expense.

► Example 03:

Azam contracts to buy of Babar, at a Rs. 150 per kg, 500 kgs of rice, no time being fixed for delivery. Azam afterwards informs Babar that he will not accept the rice if tendered to him, the market price being dropped to Rs. 130 per kg on this day. Babar is entitled to receive from Azam, by way of compensation, Rs. 20 per kg (i.e. total Rs. 10,000).

► Example 04:

Alia contracts to buy Bisma's ship for Rs. 6 billion, but breaks her promise. The price which Bisma could obtain at the time of breach of promise was Rs. 5.8 billion. Alia must pay to Bisma, by way of compensation, the excess, Rs. 0.2 billion.

► Example 05:

Arslan, the owner of a boat, contracts with Burhan to take a cargo of yarn to Gwadar, for sale at Gwadar, starting on a specified day. The boat owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Gwadar is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of yarn falls. The measure of the compensation payable to Burhan by Arslan is the difference (Rs. 1 million) between the price which Burhan could have obtained for the cargo at Gwadar at the time when it would have arrived (Rs. 6 million) if forwarded in due course, and its market price at the time when it actually arrived (Rs. 5 million).

► Example 06:

Akmal contracts to repair Kamran's house in a certain manner, and receives payment in advance. Akmal repairs the house, but not according to contract. Kamran is entitled to recover from Akmal the cost of making the repairs conform to the contract.

► Example 07:

Ajmal contracts to let his ship to Saeed for a year, from the first of January for a certain price (Rs. 28 million). Freight rises, and, on the first of January, the hire obtainable for the ship is higher (Rs. 32 million) than the contract price. Ajmal breaks his promise. He must pay to Saeed, by way of compensation, a sum equal to the difference (Rs. 4 million) between the contract price and the price for which Saeed could hire a similar ship for a year on and from the first of January.

► *Example 08:*

Adeel contracts to supply Jazib with a 1,000 kg of iron at Rs. 20 per kg above the price at which Adeel could procure and deliver the iron. Jazib wrongfully refuses to receive the iron. Jazib must pay to Adeel, by way of compensation, the difference between the contract price of the iron and the sum for which Adeel could have obtained and delivered it, i.e. Rs. 20,000.

► *Example 09:*

Abid sells certain merchandise to Sajid, warranting it to be of a particular quality, and Sajid, in reliance upon this warranty, sells it to Habib with a similar warranty. The goods prove to be not according to the warranty, and Sajid becomes liable to pay Habib a sum of money by way of compensation. Sajid is entitled to be reimbursed this sum by Abid.

► *Example 10:*

Amjad contracts to deliver 5,000 kg of rice to Tanveer on the first of January at Rs. 100 per kg. Tanveer afterwards, before the first of January, contracts to sell the rice to Rizwan at a price (i.e. Rs. 125 per kg) higher than the market price (i.e. Rs. 120 per kg) on the first of January. Amjad breaks his promise. In estimating the compensation payable by Amjad to Tanveer, the market price (Rs. 120 per kg) of the first of January, and not the profit which would have arisen to Tanveer from the sale to Rizwan, is to be taken into account. The damages are to be calculated as Rs. 20 per kg.

1.2 Damages in contemplation of parties – special damages [Section 73]

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

► *Example 11:*

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

► *Example 12:*

Asif, having contracted with Basheer to supply Basheer with 1,000 kg of iron at Rs. 500 per kg, to be delivered at a stated time, contracts with Saleem for the purchase of 1,000 kg of iron at Rs. 400 per kg, telling Saleem that he does so for the purpose of performing his contract with Basheer. Saleem, fails to perform his contract with Asif, who cannot procure other iron, and Basheer, in consequence, rescinds the contract. Saleem must pay to Asif Rs. 100,000, being the profit which Asif would have made by the performance of his contract with Basheer.

► *Example 13:*

Amjad contracts with Bilal to make and deliver to Bilal, by a fixed day for a specified price, a certain piece of machinery. Amjad does not deliver the piece of machinery at the time specified, and, in consequence of this, Bilal is obliged to procure another at a higher price than that which he was to have paid to Amjad, and is prevented from performing a contract which Bilal had made with a third person at the time of his contract with Amjad (but which had not been then communicated to Amjad), and is compelled to make compensation for breach of that contract. Amjad must pay to Bilal by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by Bilal for another, but not the sum paid by Bilal to the third person by way of compensation.

► *Example 14:*

Aslam contracts to sell and deliver 500 bales of cotton to Kunal on a fixed day, Aslam knows nothing of Kunal's mode of conducting his business. Aslam breaks his promise, and Kunal, having no cotton, is obliged to close his mill. Aslam is not responsible to Kunal for the loss caused to Kunal by the closing of the mill.

1.3 Remote and indirect loss [Section 73]

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

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

► **Example 15:**

On 1st December, Qasim contracted to sell and deliver 50 tons of wheat @ Rs. 8,000 per ton to Yousaf on 1st January. On 20th December Yousaf, afterwards, contracted to sell those goods to Haris at Rs. 10,000 per ton. Qasim failed to deliver goods on 1st January when the price of the wheat was Rs. 9,500 per ton. Yousaf is entitled to recover Rs. 75,000 [i.e. (Rs. 9,500 – Rs. 8,000) x 50]. Yousaf is not entitled to recover Rs. 100,000 as profit which would have arisen to Yousaf from the sale to Haris because the profit is the indirect consequence of the breach of contract.

► **Example 16:**

Azam delivers to Babar, a common carrier; a machine to be delivered without delay, to Azam's mill informing that his mill has stopped for want of the machine. Babar unreasonably delays the delivery of machine, and Azam, in consequence, loses a profitable contract with the Government. Azam is entitled to receive from Babar, by way of compensation, the average amount of profit, which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

► **Example 17:**

Joseph contracts to pay a sum of money to Bobby on a day specified. Joseph does not pay the money on that day. Bobby, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. Joseph is not liable to make good to Bobby anything except the principal sum he contracted to pay, together with interest up to the day of payment.

► **Example 18:**

Pence, a ship-owner, contracts with Harris to convey him from Karachi to Sydney in Pence's ship, sailing on the first of January, and Harris pays to Pence, by way of deposit, 50% of his passage money. The ship does not sail on the first of January, and Harris, after being, in consequence, detained in Karachi for some time, and there by put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. Pence is liable to repay to Harris his deposit, with interest, and the expense to which he is put by his detention in Karachi and the excess, if any, of the passage money paid for the second ship over that agreed upon for the first, but not the sum of money which Harris lost by arriving in Sydney too late.

► **Example 19:**

Ping contacts to sell and deliver to Peter, on the first of January, certain cloth, which Peter intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. Peter is entitled to receive from Ping, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

1.4 Damages in quasi contract [Section 73]

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

It means the compensation for damages arising from breach of a quasi-contract shall be same as in any other contract.

► **Example 20:**

Anwar, a tradesman, leaves goods at Saleem's house by mistake. Saleem treats the goods as his own and consumes them. Anwar had to buy the goods from market next day. Saleem is liable to pay Anwar the market price paid by Anwar for those goods.

1.5 Means of remedying the inconvenience [Section 73]

In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

It is the duty of the aggrieved party to take all reasonable steps to mitigate the loss caused by the breach and it cannot claim compensation for the loss which could reasonably have been avoided.

► **Example 21:**

Bilal contracted to pay Rs. 500,000 to Jamal for procuring raw materials for a specific order from government. Bilal clearly stated that in case order is not fulfilled he will lose profit of Rs. 200,000. Jamal did not deliver the raw materials. Bilal could buy the raw materials from market for Rs. 600,000 but did not do that and filed a suit for recovery of special damages of Rs. 200,000. He can recover only Rs. 100,000 as it was duty of Bilal to minimise the damage suffered due to breach and he could do so by procuring material from the market.

► **Example 22:**

Abid took a shop on rent from Hamid and paid one month's rent in advance. Hamid could not give possession of the shop to Abid. Abid chose to do no business for 8 months though there were other shops available in the vicinity. Abid sued Hamid for breach of contract and claimed damages for loss suffered. Abid is entitled only to a refund of his advance and nothing more, as he had failed in his duty to minimise the loss by not taking another shop in the neighbourhood.

1.6 Party rightly rescinding the contract [Section 75]

A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

► **Example 23:**

Asifa, a singer, contracts with Behzad, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and Behzad engages to pay her Rs. 100,000 for each night's performance. On the sixth night, Asifa wilfully absents herself from the theatre, and Behzad, in consequence, rescinds the contract. Behzad is entitled to claim compensation for the damage which he has sustained through the nonfulfillment of the contract.

► **Practice Question 01:**

Saleem entered into a contract for the purchase of 5 vehicles from Phony (Private) Limited (PL) which were to be delivered in the month of February. Saleem also entered into another contract for onward sale of these vehicles to Jabbar Limited (JL). However, PL refused to deliver the vehicles as contracted. Saleem had to buy the vehicles from another supplier at an extra cost of Rs. 2 million for supplying these to JL. Saleem also had to pay compensation of Rs. 0.6 million to JL due to delay in supply. Under the provisions of the Contract Act, 1872 analyse the above situation and comment whether Saleem is entitled to receive any compensation from PL.

► **Solution:**

Saleem is entitled to receive from Phony (Private) Limited (PL), compensation for any loss or damage caused to him which naturally arose in the usual course of things from such breach i.e. Rs. 2 million. However, such compensation cannot be claimed for any remote and indirect loss or damage sustained by reason of the breach unless the parties knew about such consequences when they made the contract. Hence, PL would only be liable to pay the amount of Rs. 0.6 million claimed by JL if PL knew about this arrangement at the time of entering into the contract.

► **Practice Question 02:**

Describe the principles of determining compensation for loss or damages caused due to breach of contract.

► **Solution:**

The party who suffers from breach of contract is entitled to receive compensation for any loss or damage caused to it, which naturally arose from the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from such breach.

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

► *Practice Question 03:*

- a) Sarya Traders (ST) agreed to supply building materials to Khwaja Contractors (KC) on 10 September 2025 for the construction of a charitable hospital in District Malir. However, on due date, ST failed to fulfil their obligation.

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

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

► *Solution:***Part (a)**

Time being essence of the contract, following would be the rights of Khwaja Contractors (KC) under the circumstances:

- Contract would be voidable at the option of KC (promisee).
- KC may insist that Sarya Traders (ST) should deliver building material. However, in order to claim compensation on account of the delayed supply, KC shall have to give notice to ST of their intention to do so at the time of acceptance of performance at any time other than earlier agreed.
- KC may decide not to accept performance beyond the stipulated time and rescind the contract and claim compensation for any damages which it may have sustained due to non-fulfilment of the contract by ST.

Part (b)

In this case, ST is liable to pay by way of compensation to KC, the difference between the contract price and the price which KC had to pay for procuring building material.

However, if ST was aware about the penalty, which KC had to pay to the third party due to delay in construction of hospital, at the time of contract with KC, ST would be liable to compensate the amount of Rs. 50,000 to KC.

On the contrary, if ST was not aware of any such penalty at the time of contract with KC, then KC cannot recover the amount of Rs. 50,000 from ST.

► *Practice Question 04:*

In June 2025, Haroon Publishers (HP) entered into a contract with Salima, an upcoming and promising author, to publish her first novel. An advance of Rs. 100,000 was paid to Salima who agreed to share the manuscript in October. HP promised to incur promotional expenses of Rs. 300,000 in respect of the novel.

In August 2025, Salima suddenly gained popularity as her social media publications went viral. Seeing an opportunity, HP immediately launched the advertising campaign for the promotion of Salima's upcoming novel and secured pre-orders of 50,000 copies of the novel. HP has estimated to earn profit of Rs. 1,700,000 from the orders.

In September 2025, Salima contacted HP regretting that she will not be able to send the manuscript and sent back the cheque of Rs. 100,000 received in advance.

Under the Contract Act, 1872 discuss the status of the contract and any possible remedies available to HP.

► *Solution:*

Salima has communicated the (anticipatory) breach of contract by communicating the regret to send the manuscript and sending back the advance cheque of Rs. 100,000. HP may claim remedies now or wait for actual date of performance and then may claim remedies from Salima if she still fails to perform on due date.

The possible remedies available to HP:

- HP can sue Salima for damages in order to be compensated for financial loss sustained as a consequence of Salima's breach. However, the amount of damages awarded shall not be more than the actual loss suffered by HP.

- Damages will only be awarded in respect of losses which arise naturally, or which both parties may reasonably be supposed to have contemplated when the contract was made, as a probable result of its breach.

Therefore, HP would only be able to recover the campaign cost from Salima and will not be able to claim the anticipated profits of the pre-orders, as it was not contemplated by the parties when the contract was signed in June 2025.

► *Practice Question 05:*

Bromine Traders (BT) is engaged in the business of import, purchase and supply of electronic items. BT agreed to supply 500 electric ovens to Indium Limited (IL). The ovens were to be manufactured by Argon Brothers (AB). AB failed to supply the ovens to BT on time due to which BT was unable to deliver the ovens to IL.

Evaluate BT's position in the given situation.

► *Solution:*

BT will be held liable towards IL and will have to pay the damages because default by AB being third party to the contract, on whose work the promisor was relying does not render the contract void on account of supervening impossibility.

However, BT can recover ordinary damages from AB which occurred due to breach of contract. BT can also recover special damages if it was known to AB at the time of making the contract that ovens were to be delivered onwards to IL.

Amount of damages in both cases i.e. those claimable from AB and those payable to IL would depend as to whether or not the ovens manufactured by AB could be readily purchased from the market.

► *Practice Question 06:*

Rahim Khan is a software engineer who runs his own IT firm. He engages many free lancers as and when required to work on different projects. He also works part-time in a computer training institute where he teaches various computer courses.

Consider the following matters under the Contract Act, 1872:

- While teaching at the institute, Rahim met a course participant Usama with specialized graphic designing skills. He collaborated with Usama and submitted a website designing proposal to a prospective client, Farah. She liked the proposal and offered Rahim and Usama to design her boutique's website for Rs. 500,000 to which they both agreed.

Rahim and Usama lied to Farah that Usama is eighteen years old even though his eighteenth birthday was still few months away.

Discuss whether Farah can enforce performance against Rahim and Usama.

- On 10 September 2025, a virtual gaming tournament has been scheduled in which a gaming expert team will participate from Pakistan. Rahim provided training to Pakistani team. Considering the team's skills, he proudly claimed to his friend Nadir that his team will win the tournament.

Nadir offered that if Rahim submits Rs. 100,000 to him as a security and his team wins the tournament then Nadir will pay Rs. 200,000 to Rahim. Rahim agreed and paid Rs. 100,000 to Nadir.

Discuss whether Rahim can sue Nadir if the team wins the tournament but Nadir refuses to pay.

- Organdy Limited (OL) signed a contract with Rahim's IT firm to manage OL's social media accounts for one year effective 1 July 2025 at Rs. 1,500,000 per quarter payable in arrears. Rahim hired Zia to perform the task at a salary of Rs. 200,000 per month for the contract term. Rahim sent several reminders for the passwords of OL's social media accounts but did not receive the passwords from OL.

Discuss the validity of the contract between OL and Rahim. Also identify the remedies available to Rahim, if any.

- d) Assume that in (c) above, Rahim was offered a similar project by Muslin Limited. On 31 August 2025, Rahim accepted the offer and assigned the project to Zia. On the same date, Rahim sent an e-mail to OL regretting that performance is impossible mainly due to non-availability of resources.

Discuss the validity of Rahim's correspondence. Also discuss OL's position in this situation.

► **Solution:**

Part (a)

Usama was not competent to contract as he was below the age of majority i.e. eighteen years and an agreement with minor is void ab-initio.

As Usama was not competent to contract, he will not be liable towards Farah irrespective of the fact that he fraudulently induced Farah to enter into an agreement with him. Therefore, Farah cannot demand performance from Usama. However, since he entered into agreement jointly with Rahim, Farah can demand performance from Rahim.

Furthermore, if it was intention of parties that contract should be performed by promisors who submitted proposal, such promise must be performed by Rahim. Otherwise, Rahim may employ another competent graphic designer to perform the contract.

Part (b)

Rahim has entered into an agreement with Nadir by way of wager as he has made a bet such that Rs. 200,000 shall be paid to him on the happening of an uncertain event i.e. a particular team winning the tournament. This agreement is void and no suit can be filed to recover any sum paid or payable in this regard.

Hence, Rahim cannot file suit for recovering money already paid i.e. Rs. 100,000 or for recovering win money of another Rs. 100,000 even if the team wins the tournament as predicted by him.

Part (c)

The contract between Rahim and OL comprised of reciprocal promises and OL is preventing Rahim from performing his promise, therefore, contract is voidable at Rahim's option i.e. Rahim can declare the contract void or not take any step implying that he intends to continue the contract.

Furthermore, Rahim is entitled to get such damages which naturally arose in the usual course of business from such breach or which the parties knew when they made the contract to be likely to result from such breach. Accordingly, Rahim can claim Zia's salary to such extent which incurred till the date he communicates his decision to repudiate the contract.

Part (d)

As identified in (c) above, the contract is voidable at Rahim's option. By refusing to perform, Rahim has rescinded the contract. However, his comment regarding impossibility of contract performance is incorrect as non-availability of resources does not make a contract void due to supervening impossibility.

OL does not have any option available and cannot insist that Rahim should perform the contract. As discussed in (c) above, OL will have to compensate Zia's salary of Rs. 200,000 for two months i.e. July and August 2025 as Rahim incurred these damages due to breach of contract.

► **Practice Question 07:**

Pentagon Dealers (PD) is a partnership firm engaged in the purchase and sale of automobiles. Saad, Mona and Zain, partners in PD, share profit in equal proportion.

A car racing championship is planned to be held in Karachi on 31 March 2026. On 1 January 2026, PD entered into marketing collaboration with a car racer, Sphere Ryders (SR), for Rs. 2 million. Under the collaboration, PD also promised to deliver a brand new sports car to SR if it wins the finale of the championship. However, on 1 March 2026, Zain cancelled the sports car incentive on PD's behalf when the car prices increased exponentially. Under the provisions of the Contract Act, 1872, evaluate PD's position and discuss the remedies available to SR, if any.

► **Solution:****PD's position**

The marketing collaboration between PD and SR constitutes a contract that contains therein a term which is dependent on the happening of a future uncertain event i.e., SR winning the finale of the car racing championship.

Zain's act of incentive cancellation is not valid as delivery promise would become void only if SR does not win the finale scheduled on 31 March 2026 or if the act of SR winning the finale becomes impossible on or before 31 March 2026. Furthermore, it is an absolute fact that the performance of the promise becoming commercially unviable due to exponential increase in prices is not an acceptable excuse of supervening impossibility.

Zain's act of incentive cancellation is an attempt for alteration to the original terms of the contract which requires SR's consent. If SR agrees to substitute a new contract, the original contract need not be performed by PD. Otherwise, PD shall continue to be held liable under the contract.

Remedies available to SR

SR can still hold PD liable for car delivery if SR manages to win the finale. However, SR as promisee may also dispense with or remit, wholly or in part, the performance of the promise made, or may accept instead of it any satisfaction which it thinks fit.

If SR wins the finale, it will be eligible to claim compensation from PD for any losses it sustained due to Zain's act that naturally arose in the usual course of things from such breach which may be the car price on 31 March 2026. Furthermore, SR may also seek compensation for special damages i.e., any loss or damage caused to it, which the parties knew, when contract was made, as a likely consequence to result from the breach.

► **Practice Question 08:**

Nonagon Books (NB), owned by Haroon, is a publishing house that also deals in a wide variety of educational books. The following is a matter related to NB that need to be addressed under the provisions of the Contract Act, 1872:

NB agreed to purchase 15,000 medical books worth Rs. 50 million from Heptagon Publishers (HP), with the delivery scheduled for 25 February 2026. NB promised to provide a bank guarantee as security for the payment. However, HP did not deliver the books on the agreed delivery date because NB did not provide the bank guarantee. Subsequently, NB sued HP for non-performance of contract, claiming that since the books were not received, the bank guarantee was not provided. Discuss NB's position and its liability, if any.

► **Solution:****NB's position**

The contract between NB and HP consist of reciprocal promises. It seems that the order of performance was not fixed by the contracting parties at the time of contract formation, therefore, reciprocal promises needed to be performed in such order which the nature of transaction required i.e., NB first needed to provide the payment security (bank guarantee) after which HP would deliver the books.

NB's liability

NB is liable to compensate HP, being the aggrieved party, for loss or damage caused by NB's breach. This compensation should cover losses that naturally arose in the usual course of things from the breach or were known by the parties, at the time of contract formation, as a likely consequence to results of the breach.

► **Practice Question 09:**

Nonagon Books (NB), owned by Haroon, is a publishing house that also deals in a wide variety of educational books. The following is a matter related to NB that need to be addressed under the provisions of the Contract Act, 1872:

NB placed an order with Octagon Printers (OP) for 100,000 copies of a Pakistani scientist's autobiography, with a delivery deadline of 2 March 2026. NB had informed OP of its intention to sell the autobiography at an exhibition scheduled for 3 March 2026, anticipating a profit of Rs. 5 million from the sale. However, due to unforeseen delays, the order arrived on 4 March 2026, at 11 p.m., when NB's warehouse was still open for stock count. Discuss the possible course(s) of action that NB is entitled to take.

► *Solution:*

OP was aware of NB's plan to sell the autobiography in the exhibition scheduled for 3 March 2026 due to which time was the essence of contract and non-delivery on agreed date has made the contract voidable at NB's option.

The possible courses of action that NB is entitled to take are as follows:

- i. NB has the right to accept delayed performance from OP. In such case, NB would not be able to claim compensation for any losses resulting from the delivery delay, unless NB notifies OP of its intention to claim such compensation at the time of accepting the delayed delivery of books.

NB also has the right to demand delivery at an appropriate time as the offer to deliver at 11 p.m. when staff is already busy with the stock count would not be considered as valid offer of performance unless NB itself is willing to accept performance at such time and in such manner.

- ii. NB has the right to rescind the contract and declare it void, thereby refusing to take delivery. Being the aggrieved party, NB would be entitled to be compensated by OP for any loss or damage caused by the breach that naturally arose in the usual course of things from such breach, and the anticipated profit of Rs. 5 million, which both parties knew at the time of the contract formation to be a likely result of its breach.

► *Practice Question 10:*

Squash Management (SM) specializes in organising large-scale destination events, managing all aspects including travel, accommodation and event venue management such as catering and decoration arrangements.

SM agreed to supply customised shields and trophies on 31 August 2026 for a marathon organised by Athletes Association (AA). The customised items, displaying marathon date and name of the organisers, along with other sponsors, were to be manufactured by Frisbee Carvers (FC). However, FC failed to manufacture the items on agreed time due to a labour strike, and SM was unable to deliver them to AA by 31 August 2025. Under the Contract Act, 1872, evaluate SM's position in this situation.

► *Solution:*

SM would be held liable to AA and would have to pay damages because the default by FC, a third party to the contract on whom the promisor was relying, does not render the contract void due to supervening impossibility.

Furthermore, since a labour strike is not a valid excuse for the non-performance of the contract, SM can recover ordinary damages from FC that occurred due to the breach of contract. SM may also recover special damages that were known to FC at the time of making the contract since FC knew the event date and was informed that the items were to be delivered to AA; such information being displayed on the customised shields and trophies.

The amount of damages in both cases i.e., those claimable from FC and those payable to AA, would depend on the market prices of similar items.

2 COMPENSATION WHERE PENALTY IS STIPULATED

2.1 Basic rule [Section 74]

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

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

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

► *Example 24:*

Arslan, under a sale of goodwill arrangement, contracts with Burhan that if Arslan practices as a surgeon within Peshawar, he will pay Burhan Rs. 5 million. Arslan practices as surgeon in Peshawar. Burhan is entitled to such compensation not exceeding Rs. 5 million as the Court considers reasonable.

► *Example 25:*

Azam contracts with Babar to pay Rs. 2 million, if he fails to pay Babar Rs. 1 million on a given day. The double amount is disproportionate to the likely actual loss. This is a penalty clause. Azam fails to pay Babar Rs. 1 million on that day. Babar is entitled to recover from Azam such compensation not exceeding Rs. 2 million as the Court considers reasonable.

► *Example 26:*

Azam undertakes to repay Babar a loan of Rs. 1,000,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty and contract may be enforced according to its terms. Notice that no extra amount is being paid.

► *Example 27:*

Azam borrows Rs. 1,000,000 from Babar and gives him a bond of Rs. 2,000,000 payable by five yearly instalments of Rs. 400,000, with a stipulation that, in default of payment of any instalments, the whole shall become due. This is a stipulation by way of penalty. The court may order reasonable compensation only.

► *Example 28:*

Asif who owes money to Basheer, a money lender, undertakes to repay him by delivering to him 10 ton of grain on a certain date, and stipulates that, in the event of his not delivering by the stipulated date, he shall be liable to deliver 20 ton. This is stipulation by way of penalty, and Basheer is only entitled to reasonable compensation in case of breach.

2.2 Increased interest as penalty [Section 74]

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

► *Example 29:*

Azam gives Babar a bond for the repayment of Rs. 1,000,000 with interest at 12 per cent, at the end of six months, with a stipulation that in case of default, interest shall be payable at the rate of 75 per cent, from the date of default. This is a stipulation by way of penalty, and Babar is only entitled to recover from Azam such compensation as the Court considers reasonable.

► *Practice Question 11:*

Consider the following independent situations:

- i. In a contract, a specific provision dictates that in the event of a default, Rs. 10 million shall be payable to the aggrieved party by the defaulting party.
- ii. A constructive contract lacks a pre-established determination of the damages to be paid in the event of a default.

Under the Contract Act, 1872, advise how the compensation payable would be determined in each of the above situations after a default is committed.

► *Solution:***Part (i)**

Where a contract is breached and a specific sum, i.e. Rs. 10 million, is stipulated as the penalty for the breach, the aggrieved party is entitled to receive reasonable compensation from the defaulting party. This compensation should not exceed Rs. 10 million, regardless of whether actual damage or loss has been proven.

Part (ii)

When a constructive contract is breached, the party adversely affected by the breach is entitled to receive compensation from the defaulting party for any loss or damage directly resulting from the breach. This includes losses or damages that either naturally arose in the ordinary course of events or were known to both parties at the time the contract was made as likely outcomes of a breach.

Compensation will not be awarded for any remote or indirect loss or damage incurred due to the breach. When calculating the loss or damage resulting from a breach of contract, any existing means of remedying the inconvenience caused by the contract's non-performance must be taken into account.

► *Practice Question 12:*

Straw Farms (SF) is famous for its organically grown peaches. In July 2025, SF decided to build a processing facility for freezing peaches. In August 2025, SF awarded two separate contracts to Gypsum Builders (GB) as follows:

- i. Construction of a factory building by August 2025 for processing the peaches to be harvested in September 2025. SF informed GB that when the building is ready, a processing plant will be installed for freezing peaches to be exported to Europe, from which SF expects to earn a profit of Rs. 10 million.
- ii. Construction of a head office building by August 2025 for administrative work. SF informed GB that the staff will be shifted to this building in December 2025.

GB initially planned to construct both buildings by July 2025; however, due to labour issues, construction could not be completed on either site till date. GB needs a further 30 days to finish the remaining work.

Under the Contract Act, 1872, evaluate SF's position, and discuss the remedies available to SF.

► *Solution:***Contract I - Construction of factory building****SF's position**

GB was contractually obligated to complete the construction of the factory building by August 2025, given that the processing of peaches to be harvested in September 2025 was dependent on the building's completion. Therefore, time was of the essence for this contract.

Due to GB's failure to meet the given timeline, the contract becomes voidable at the discretion of SF.

Remedies available to SF

SF may choose to accept delayed performance from GB after August 2025. However, in this scenario, SF cannot claim compensation for any losses resulting from the delay, unless SF notifies GB of its intention to claim such compensation at the time of accepting the delayed performance.

It is pertinent to note that if SF allows GB to continue construction activities after August 2025 without any formal notice, this will be considered implied acceptance of the delayed performance.

Alternatively, SF can refuse to accept delayed performance. Further, SF may also seek compensation for damages incurred due to non-fulfilment of the contract, since GB knew, at the time of making the contract regarding the potential consequences of not completing the construction work within stipulated time period.

Contract II - Construction of head office building

SF's position

The head office building was not scheduled for use until December 2025; hence, time was evidently not the essence of this contract.

SF does not have the option to render the contract voidable, so GB can proceed with the construction work.

Remedies available to SF

SF may be entitled to claim compensation from GB for any potential losses due to the delay. However, it's worth noting that the head office building's usage was planned for December 2025, and this timeline was clearly communicated to all parties involved. Given this clearly stated intent, the likelihood of GB being required to compensate SF for delays related to this contract is relatively low.

3 OBJECTIVE BASED Q&A

- 1 The main object of awarding damages is
 - a) To compensate monetary losses of aggrieved party
 - b) To punish the party responsible for breach of contract
 - c) To honour the petition of aggrieved party
 - d) To put aggrieved party in a better position
- 2 In a breach of contract of sale, general rule for measuring damage is
 - a) Difference between contract price and market price
 - b) Difference between purchase price and selling price
 - c) Difference between selling price and market price
 - d) Difference between cost price and selling price
- 3 Damages which naturally arose in the usual course of things from breach of contract are called:
 - a) Ordinary damages
 - b) Special damages
 - c) Remote damages
 - d) Indirect damages
- 4 Such damages which the parties knew, when they made the contract, to be likely to result from the breach are called:
 - a) Ordinary damages
 - b) Special damages
 - c) Remote damages
 - d) Indirect damages
- 5 In case of fixed damages provided in contract
 - a) Damages for actual loss will be awarded
 - b) Damages for actual loss to the maximum of amount fixed will be awarded
 - c) Amount of damages, as fixed will be awarded
 - d) None of these are applicable

- 6 Mr. B agreed to supply spare parts of machine to Mr. A on 5th September at particular price. Mr. B fails to deliver spare parts on due date. There is a breach of contract and Mr. A filed a suit against Mr. B for the compensation of losses. Mr. A claimed that due to non-availability of spare parts, the machine could not function, so Mr. A claimed (i) depreciation on machine (ii) fixed expenses such as salary and (iii) loss of profit due to non-function of machine. State the legal position.
- Mr. A can only claim depreciation on machine
 - Mr. A can only claim fixed expenses such as salary
 - Mr. A cannot claim any amount
 - Mr. A can claim depreciation on machine and fixed expenses only such as salary
- 7 Which of the following losses can be recovered in case of breach of contract?
- Losses arising naturally from the breach.
 - Losses in contemplation of parties after they had entered into the contract
 - Remote losses
 - Indirect losses
- 8 The rules for damages in quasi contract are same as those:
- Contingent contracts.
 - Voidable contracts.
 - Any other contract.
 - Property contracts.
- 9 Mr. A agrees to sell 200 bags of sugar to Mr. B on 11th November at Rs.500/- per bag. Mr. B is to make payment on the delivery of sugar bags. Before the due date the price of sugar has increased to Rs. 600/- per bag. Mr. A refuse to supply sugar to Mr. B. There is a breach of contract Mr. B is
- Not entitled to claim any amount
 - Entitled to claim Rs. 600/- per bag of sugar
 - Entitled to claim Rs. 100/- per bag of sugar
 - Not entitled to claim Rs.100/- per bag of sugar
- 10 The amount of damages fixed by the parties at the time of making a contract is not by way of penalty if:
- It is extravagant and unreasonable in amount as compared to maximum possible loss that may arise.
 - The higher interest rate has been stipulated in case of default.
 - The breach consists of not paying a sum of money and amount fixed is double the amount of that sum of money.
 - The amount is genuine pre-estimate of the probable loss.

- 11 If parties have stipulated the amount to be paid as damages in case of breach, at the time of formation of the contract, the Court:
- will award to the party aggrieved exactly the amount named or penalty stipulated.
 - will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated.
 - will award to the party aggrieved the amount named or penalty stipulated as a minimum.
 - may award to the party aggrieved any amount regardless of the amount named or penalty stipulated.
- 12 Mr. A entered into an agreement for constructing house for Mr. B and to give complete possession on 1st January. Mr. B makes an agreement with Mr. C for renting out that house to him from 2nd January. This fact is in the knowledge of Mr. A. The house was badly constructed and collapsed before 1st January. Mr. B is entitled to get compensation for
- Cost of reconstructing the house
 - Loss of rent
 - Compensation, which Mr. B was to pay Mr. C for not renting out the house
 - All of the above

- 13 On 10 January 2026, Asif agreed to deliver 5,000 kg of coal to Zain on 31 January 2026 at Rs. 70 per kg. On 15 January 2026, Zain promised to deliver 5,000 kg of coal to Faizan on 10 February 2026 at Rs. 105 per kg. Asif had no information about Zain's agreement with Faizan.

Asif failed to deliver on due date and Zain filed a suit against him on 28 February 2026 claiming damages.

Determine the damages that Zain can recover from Asif if market price of coal at different dates was as follows:

10 January 2026	Rs. 75 per kg
15 January 2026	Rs. 80 per kg
31 January 2026	Rs. 90 per kg
10 February 2026	Rs. 98 per kg

- Rs. 100,000
 - Rs. 140,000
 - Rs. 175,000
 - Nil
- 14 On 1 September 2025, Organza Florists (OF) agreed to deliver 100 kg of freshly picked red roses to Blaize Banquet (BB) on 4 September 2025 at Rs. 250 per kg for a wedding ceremony. As the roses were to be picked in the morning of the event day, OF planned to procure the roses from Taffeta Gardens (TG) at an agreed rate of Rs. 100 per kg.
- However, on 3 September 2025, before OF could place the order with TG, BB contacted OF and asked for the delivery to be made on 7 September 2025 as the ceremony was re-scheduled. OF refused to change the delivery date and rescinded the contract.

Can OF claim damages from BB in respect of the contract?

- a) Yes, OF can claim Rs. 10,000 as damages
- b) Yes, OF can claim Rs. 25,000 as damages
- c) No, because OF has not suffered any damages
- d) No, because there was no penalty clause agreed between OF and BB

- 15 Mona promised to sell her wedding dress to Sadaf for Rs. 80,000 if she would pay Rs. 30,000 in advance and the balance on the delivery date which was a month before Sadaf's wedding. Mona knew that rain soaked her wedding dress and destroyed it completely, however, she needed Rs. 30,000 urgently. Sadaf agreed to the payment terms and paid the advance of Rs. 30,000 to Mona.

Subsequently, when Mona failed to honour delivery of the wedding dress, Sadaf had to purchase another dress worth Rs. 100,000 for her wedding. Identify the amount which Mona is liable to pay to Sadaf.

- a) Rs. 20,000
- b) Rs. 30,000
- c) Rs. 50,000
- d) Rs. 80,000

- 16 Sidra Farms (SF) agreed to supply 500 kg of fresh meat at Rs. 800 per kg to Canary Foods (CF) on 5 March 2026. It was mutually agreed that in case of breach, defaulting party shall pay the compensation of Rs. 200,000. SF estimated to earn a profit of Rs. 100,000 from the contract.

On 1 March 2026, SF's farms were destroyed due to floods. CF came to know about this fact through the newspaper and immediately placed the order with another vendor. On 5 March 2026, SF purchased 500 kg meat from the market at Rs. 600 per kg and reached CF's designated location. CF refused to take the delivery. SF sold the consignment for Rs. 650 per kg and incurred additional transportation charges of Rs. 10,000.

In the above scenario, CF's liability towards SF would be:

- a) Rs. 10,000
- b) Rs. 85,000
- c) Rs. 100,000
- d) Rs. 200,000

- 17 Sadia sold leather garments worth Rs. 500,000 to Concrete Textiles (CT) with an agreed payment date of 1 August 2025. However, CT missed the payment, causing Sadia to be unable to settle her own Rs. 500,000 debt to Ash Leathers (AL), which was due on 15 August 2025. As a result, AL sent a notice to Sadia demanding payment of Rs. 500,000 along with an additional Rs. 25,000 for damages and Rs. 2,000 as miscellaneous charges.

On 5 September 2025, when Sadia finally received payment of Rs. 500,000 from CT, she demanded that CT should also pay compensation to her.

Under the Contract Act, 1872, which of the following amounts is Sadia entitled to claim from CT?

- a) Interest accrued on Rs. 500,000 from 1 August 2025 till 4 September 2025
- b) Interest accrued on Rs. 500,000 from 15 August 2025 till 4 September 2025
- c) Rs. 25,000 on account of damages payable to AL by Sadia
- d) Rs. 27,000 on account of damages and miscellaneous charges payable to AL by Sadia

- 18 Jamal purchased a ticket from Hexagon Cruises (HC) for cruise ship journey from Pakistan to Georgia for Rs. 300,000, scheduled to reach there on 29 February 2026. The objective of Jamal's trip was to deliver his speech on the first two days of the five-day conference he was attending in Georgia. In consideration, he received Rs. 100,000 advance from the Georgia Research Institute (GRI).

On the date of departure, HC cancelled the journey. Jamal purchased the next available ticket from Oval Cruises for Rs. 500,000, scheduled to depart after two days. Jamal arranged hotel accommodation costing Rs. 30,000 and incurred necessary expenses of Rs. 20,000 during his two days extended stay in Karachi. He finally reached Georgia on 3 March 2026 and had to refund Rs. 100,000 to GRI as he did not deliver his speech as contracted.

Under the Contract Act, 1872, which of the following amounts can Jamal recover from HC?

- a) Rs. 500,000
- b) Rs. 550,000
- c) Rs. 600,000
- d) Rs. 650,000

- 19 Rehan, an archery expert, agreed to conduct a two-week archery training program, including weekends, at The Archery Club (TAC) for a daily fee of Rs. 15,000. TAC paid Rs. 210,000 to Rehan in advance before the training commenced on 19 August 2025. After six days of training, Rehan wilfully absented himself on the following Sunday. TAC arranged another trainer for the day and paid him Rs. 25,000. Rehan was allowed to resume the training on the next day, and he concluded the training on 1 September 2025, without any further absence.

Under the Contract Act, 1872, which of the following amounts can TAC recover from Rehan?

- a) Rs. 10,000
- b) Rs. 15,000
- c) Rs. 25,000
- d) Rs. 40,000

- 20 Pervaiz agreed to supply hiking equipment for Rs. 300,000 to Gliding Climbs (GC) for a tour on 31 August 2025. GC emphasized to Pervaiz the importance of timely delivery; otherwise, GC would lose the expected profit of Rs. 150,000 from the tour.

On 20 August 2025, Pervaiz informed GC of his business closure and refused to supply the equipment. GC purchased the equipment for Rs. 400,000 on 31 August 2025 from the market and sued Pervaiz for damages.

Under the Contract Act, 1872, determine the amount of damages that GC may claim.

- a) Rs. 50,000
- b) Rs. 100,000
- c) Rs. 150,000
- d) Rs. 250,000

ANSWERS

1	a)	The basic idea of providing compensation to the aggrieved party is to put him in the same financial position as he would have been if the contract had been performed.
2	a)	Difference between contract price and market price.
3	a)	Ordinary damages
4	b)	Special damages
5	b)	Damages for actual loss to the maximum of amount fixed will be awarded. The court will make assessment of actual loss and grant damage for compensating that loss.
6	d)	Mr. A can claim depreciation on machine and fixed expenses only such as salary. Compensation may be granted only for depreciation, fixed expenses, and salary. The loss of profit is a remote and indirect loss.
7	a)	Losses arising naturally from the breach.
8	c)	Any other contract.
9	c)	Entitled to claim Rs. 100/- per bag of sugar. Natural and direct losses may, vary situation to situation depending on nature of transaction and prevailing circumstances.
10	d)	The amount is genuine pre-estimate of the probable loss.
11	b)	The Court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated
12	d)	The aggrieved party, Mr. A can claim cost of rebuilding the house, loss of rent and compensation to third party.
13	a)	Rs. 100,000
14	c)	No, because OF has not suffered any damages
15	c)	Rs. 50,000
16	b)	Rs. 85,000
17	a)	Interest accrued on Rs. 500,000 from 1 August 2025 till 4 September 2025
18	b)	Rs. 550,000
19	c)	Rs. 25,000
20	b)	Rs. 100,000

STICKY NOTES**Compensation for loss or damage caused by breach**

1. Damages arising naturally – ordinary damages
2. Damages in contemplation of parties – special damages
3. Remote and indirect loss not to be compensated
4. Damages in quasi contract is same as any other contract
5. The possibility of mitigating the loss also be considered while measuring the damages.
6. A party that rightfully rescinds the contract is also entitled to compensation.

Compensation where penalty is stipulated

Court will allow only reasonable compensation not exceeding amount fixed whether or not the amount fixed is by way of penalty.

APPOINTMENT AND AUTHORITY OF AGENTS

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Appointment of Agents
- 2 Authority of Agents
- 3 Objective Based Q&A

STICKY NOTES

AT A GLANCE

An agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called principal.

Whatever a person competent to contract may do himself, he may do through an agent. The consideration is not necessary in agency relationship i.e. Contract between principal and agent.

The authority of an agent means his capacity to bind the principal. This authority may be actual authority or ostensible authority.

Actual authority is the authority conferred on an agent by the principal. It may be expressed or implied. An agent having authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

Ostensible or apparent authority is the authority of an agent as it appears to others i.e. third party.

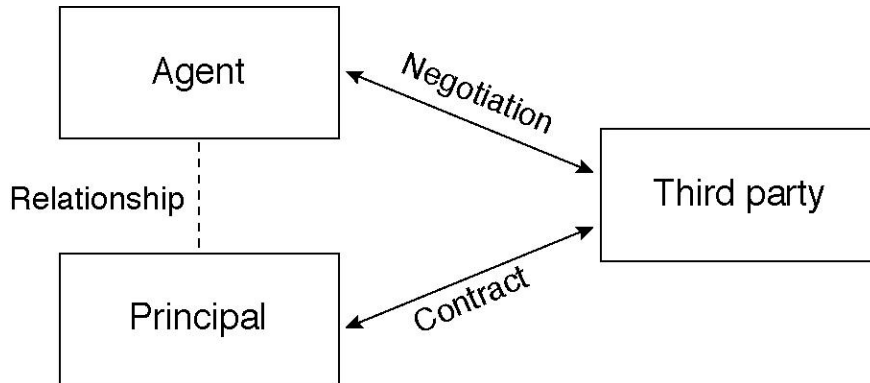
1 APPOINTMENT OF AGENTS

1.1 Definition [Section 182]

An “agent” is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the “principal”.

Analysis

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



There is a legal relationship between the agent and the principal. This legal relationship is called ‘agency’.

► Example 01:

Pasha appoints Azam to buy 10 bags of sugar on his behalf. Pasha is ‘principal’ and Azam is ‘agent’ and the contract between the two is ‘agency’.

The agent acts on behalf of the principal, by negotiating with a third party. Under normal circumstances, there is no legal agreement between the agent and the third party.

► Example 02:

Pasha appoints Azam to buy 10 bags of sugar on his behalf. If in pursuance of contract of agency, Azam finalises a deal to purchase the bags of sugar from Tariq, a wholesale dealer in sugar, on credit, on behalf of Pasha. There is no legal agreement between Azam and Tariq.

However, the agent may negotiate the terms of a contract between the principal and the third party. When the contract is made, it is between the principal and the third party.

► Example 03:

Pasha appoints Azam to buy 10 bags of sugar on his behalf. If in pursuance of contract of agency, Azam purchases the bags of sugar from Tariq, a wholesale dealer in sugar, on credit, then Pasha and Tariq are in direct contractual relations and the contract of purchase is enforceable both by and against Pasha.

An agent may act for a principal in arranging just one transaction. However, it is common in business for an agent to act regularly on behalf of a principal, arranging large numbers of different business transactions and contracts.

1.2 Who may employ agent [Section 183]

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

► *Example 04:*

Parveen (25 years old) employed Azam (36 years old) as her agent to finalise a business deal with Tariq. Azam made the contract on behalf of Parveen with Tariq. Parveen and Tariq can enforce the contract against each other.

► *Example 05:*

Maria (17 years old) employed Azam (36 years old) as her agent to finalise a business deal with Tariq. Azam made the contract on behalf of Maria with Tariq. Maria is not allowed to employ an agent under the law. Tariq cannot enforce the contract against Maria but may enforce it against Azam.

1.3 Who may be an agent [Section 184]

As between the principal and third persons any person may become an agent.

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

► *Example 06:*

Parveen (25 years old) employed Azam (36 years old) as her agent to finalise a business deal with Tariq. Azam made the contract on behalf of Parveen with Tariq. Azam as an agent shall be responsible to Parveen in case he breaches his duty as an agent.

► *Example 07:*

Parveen (25 years old) employed Asif (15 years old) as her agent to finalise a business deal with Tariq. Asif made the contract on behalf of Parveen with Tariq. Asif as an agent shall not be responsible to Parveen in case he breaches his duty as an agent.

1.4 Consideration not necessary [Section 185]

No consideration is necessary to create an agency.

► *Example 08:*

Arslan promises to sell Faisal's house on his behalf. An agreement between Arslan and Faisal is valid even without consideration.

2 AUTHORITY OF AGENTS

2.1 Legal issues with agency relationships

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

- A person (A) might claim to act on behalf of a principal (P), and a third party (T) might enter into an agreement believing the contract to be with P. However, P might deny that the person is in fact his agent.
- A person (A) might be the agent of Principal (P) with authority to make certain agreements on behalf of P. However, the agent might make an agreement with a third party (T) and in doing so go beyond the limits of his authority as agent. The principal (P) might then refuse to accept the agreement as legally binding. An example of this is where a manager makes an agreement on behalf of the company he works for, and the company refuses to honour the agreement on the grounds that the manager did not have the authority to make the agreement.

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

2.2 Express Authority [Section 186 & 187]

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

► *Example 09:*

Paras appointed Azam as his agent to sell his house by a written power of attorney. Azam sold the house to Tariq. Azam had express authority and the transaction is binding on Paras.

► *Example 10:*

Paras appointed Atif as his agent to sell goods at his shop by a verbal agreement. Atif sold the goods. Atif had express authority and the transaction is binding on Paras.

2.3 Implied Authority [Section 186, 187 & 188]

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

► *Example 11:*

Amjad owns a shop in Quetta, living himself in Karachi, and visiting the shop occasionally. The shop is managed by Basit, and he is in the habit of ordering goods from Dawood in the name of Amjad for the purposes of the shop, and of paying for them out of Amjad's funds with Amjad's knowledge. Basit has an implied authority from Amjad to order goods from Dawood in the name of Amjad for the purposes of the shop.

2.3.1 Extent of agent's authority

An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

► *Example 12:*

Anwar is employed by Parveen, residing in London, to recover at Karachi a debt due to Parveen. Anwar may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

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

► *Example 13:*

Paras constitutes Asif as his agent to carry on his business of a shipbuilder. Asif may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

2.4 Apparent (ostensible) authority

The principal is liable to third party when third party has reasonable reason to believe that the agent has authority to act on behalf of principal, even though it might not be the actual case.

Unless the third party has knowledge to the contrary, he is entitled to assume that an agent holding a particular position has all the powers that are normally given to a person in such a position.

► *Example 14:*

Parvez terminated the services of his agent Anum. No notice to this effect was given by Parvez. Subsequently, Anum purchased some goods from Talal on behalf of Parvez. It was held that Parvez was liable to pay the price to Talal.

► *Example 15:*

Paras writes to Talal that Azam is authorised to sell his car. Paras privately instructs Azam not to sell the car. Azam sells the car to Talal for Rs. 400,000. The sale is binding on Paras. Azam had ostensible, not actual, authority to sell.

► *Example 16:*

Pasha leaves certain articles with Aslam, an auctioneer asking him not to sell them below a stated price. Aslam sells the articles to Tariq below the stated price. Tariq knows of Pasha's instructions to Aslam. Pasha can set aside the contract with Tariq.

► *Example 17:*

Pasha leaves certain articles with Aslam, an auctioneer asking him not to sell them below a stated price. Aslam sells the articles to Tariq below the stated price. Tariq is ignorant of Pasha's instructions to Aslam. Pasha cannot set aside the contract with Tariq.

2.5 Agent's authority in an emergency [Section 189]

An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

► *Example 18:*

Pasha consigns butter to Ameen (his agent) at Lahore, with directions to send them immediately to Baqir at Rawalpindi. Ameen noticed that butter might not bear the journey to Rawalpindi without spoiling. Ameen sold the butter at Lahore to avoid loss. Ameen's act is valid.

► *Example 19:*

Pasha consigns Furniture to Abid (his agent) at Lahore, with directions to send the items immediately to Babar at Rawalpindi. Abid thought the furniture might not fetch good price at Rawalpindi and sold the furniture in Lahore. Abid's act is not valid as there was no real emergency.

► *Example 20:*

An agent for sale may have goods repaired if it be necessary.

► *Practice Question 01:*

Doves & Co. (DC) is a partnership firm engaged in the selling of various species of pet birds. The firm's operations are managed by two partners namely Faizan and Usama.

Haroon, a specialist bird-keeper, owns an aviary where he keeps exotic birds. In order to source exotic birds from abroad, Faizan plans to appoint Haroon as DC's agent in Faisalabad for purchasing 100 birds per week and keeping them in custody until the birds are sold. Under the provisions of the Contract Act, 1872, briefly explain Haroon's authority in respect of DC's business.

► *Solution:*

With respect to DC's business, Haroon shall have the express authority to do every lawful thing necessary to purchase the birds and act as their custodian until the birds are sold. An agent having an authority to carry on a business has the authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Further, in case of an emergency, Haroon shall have the authority, to take all necessary actions for the purpose of protecting DC from any potential loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

► *Practice Question 02:*

Under the provisions of the Contract Act, 1872, define the term 'agent' and explain how the authority of an agent is determined.

► *Solution:*

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

An agent's authority may be express or implied. An express authority is given by words spoken or written whereas implied authority is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted for circumstances of the case.

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

Furthermore, an agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

3 OBJECTIVE BASED Q&A

- 1 A Minor can
 - a) Be an agent but not liable to his principal for breach of duty
 - b) Be a principal
 - c) Be an agent liable to his principal as any agent with age of majority
 - d) Both b) and c)
- 2 An agent has authority in emergency to do all such acts as would be done by a person of ordinary prudence in his own case under similar circumstances, for the purpose of
 - a) Securing maximum benefit for himself
 - b) Making secret profit
 - c) Protecting his principal from loss
 - d) Protecting third party from loss
- 3 The agent acts on behalf of the principal, by negotiating with the third party. Under normal circumstance, there is no legal agreement between
 - a) The agent and the principal
 - b) The principal and the third party
 - c) The agent and the third party
 - d) The agent and the sub-agent
- 4 Jamal appointed Adeel to do act for him or to represent in dealings with third parties. Since Adeel is an agent and Jamal will be:
 - a) The Boss
 - b) The master
 - c) The Principal
 - d) None of these
- 5 The relationship between the principal and the agent is called:
 - a) Master and servant relationship
 - b) Boss and secretary relationship
 - c) Agency relationship
 - d) None of these
- 6 If the principal is not competent to contract, he:
 - a) can make an agency relationship.
 - b) cannot make an agency relationship.
 - c) can appoint another person to make an agency relationship on his behalf.
 - d) None of the above is true.

- 7 Naveed appointed Imran as his agent. Now the acts of Imran are:
- Binding for Naveed
 - Binding for both Naveed and Imran
 - Not binding for Naveed
 - Binding for Imran
- 8 What is the minimum consideration required to create an agency?
- Minimum Rs. 1,000 per day
 - Equal to minimum monthly wage fixed by government in that area
 - No consideration at all is required
 - Equal to average commission paid in the industry in last three years.
- 9 What are the essentials for a person to employ an agent?
- The person should not be of sound mind
 - The person should be a major, according to the law to which the agent is subject
 - The person should be a major, according to the law to which he is subject and should also be of sound mind
 - The person should have executed a contract of indemnity before employing an agent
- 10 An Agent's authority can be created
- Only by expressly writing the terms thereof
 - Only by implication
 - Only by expressly writing the terms thereof and registering the same with sub-registrar
 - Either expressly or impliedly
- 11 Out of the following, who can appoint an agent?
- Person of sound mind aged sixteen
 - Person of sound mind aged twenty five
 - Person of unsound mind aged twenty five
 - Person of unsound mind aged sixteen
- 12 Asif is residing in Khanewal and has a house in Layyah. Asif appoints Basheer by a power of attorney to take care of his house. State the nature of agency created between Asif and Basheer.
- Implied agency
 - Agency in emergency
 - Agency by holding out
 - Express agency

- 13 Under the Contract Act, 1872, which of the following is a void agreement?
- a) Farah verbally agrees to compensate her brother Shahid for her hospitalization expenses paid voluntarily by Shahid on her behalf
 - b) Kashif appoints a minor, Mona, as his agent for his garment business
 - c) After death of Fatima's parents, her guardian signed an agreement for good consideration, under which Fatima cannot be married till she is a minor
 - d) Zain promised that he would not open his fast food outlet in Gulberg in exchange of Rs. 200,000 paid to him by Primer Foods
- 14 Sadia, owner of a renowned Islamabad restaurant specializing in desserts, appointed Qasim, a minor, as an agent to assist her in procuring restaurant supplies. Qasim would not receive a commission and was working to gain experience only. On 1 August 2025, Qasim purchased 5,000 kg of sugar for the restaurant from Tariq Traders (TT) on credit, with payment due in one month. However, on 31 August 2025, following a dispute, Qasim stopped working for Sadia and refused to pay TT.
- Under the Contract Act, 1872, can TT be entitled to recover payment for 5,000 kg of sugar from Sadia?
- a) No, because TT's agreement with Qasim being a minor was void
 - b) No, because Qasim's agreement with Sadia was void due to lack of consideration
 - c) Yes, because the contract to sell 5,000 kg of sugar was between TT and Sadia
 - d) Yes, because Qasim and Sadia were jointly and severally liable to pay TT

ANSWERS

1	a)	As between the principal and third person any person may become an agent. Even a minor or a person of unsound mind can be appointed as agent, however, they shall not be liable to principal as they are not competent to contract.
2	c)	An agent has authority in emergency to do all such acts for the purpose of protecting his principal from loss.
3	c)	There is no legal agreement between the agent and the third party. However, the agent may negotiate the terms of a contract between the principal and the third party.
4	c)	Jamal is the Principal
5	c)	Agency relationship
6	b)	A person who is incompetent to contract cannot make an agency relationship.
7	a)	The authorised act of agent is binding on the Principal i.e. Naveed.
8	c)	No consideration is necessary in contract of agency.
9	c)	The person should be a major, according to the law to which he is subject and should also be of sound mind
10	d)	An agency can be expressed or implied.
11	b)	Person of sound mind aged twenty five
12	d)	Power of attorney is written. An agency by words spoken or written is an express agency.
13	d)	Zain promised that he would not open his fast food outlet in Gulberg in exchange of Rs. 200,000 paid to him by Primer Foods
14	c)	Yes, because the contract to sell 5,000 kg of sugar was between TT and Sadia

STICKY NOTES

Appointment

1. An agent is a person employed to do any act for another or to represent another in dealing with third persons.
2. The person for whom such act is done, or who is so represented, is called the principal.
3. Any person (other than minor and person of unsound mind) may employ an agent.
4. Any person may become agent.
5. Any fixed or minimum consideration is not necessary in contract of agency.

Authority

1. Express authority (by words spoken or written)
2. Implied authority (inferred from circumstances of the case)
3. Apparent authority (as it appears to third persons)
4. Authority in emergency (for protecting principal from loss)

AT A GLANCE

SPOTLIGHT

STICKY NOTES

THE NATURE OF PARTNERSHIP

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Introduction
- 2 Test of Partnership
- 3 Types of Partnership and Partners
- 4 Objective Based Q&A

STICKY NOTES

AT A GLANCE

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

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

Law of partnership is an extension of the law of agency. Partnership is merely an abstract legal relationship between partners. Partnership is a special type of contract and as such all the elements of valid contract must be present unless contrary is required by the Partnership Act, 1932.

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

The test of partnership is mutual agency and not necessarily the sharing of profits or the contribution of capital or the holding of a particular property jointly.

A partnership may be for a fixed period of time. Where no provision is made by the partners for the duration of the partnership, it is partnership at will. A partnership for undertaking a particular adventure is called particular partnership.

1 INTRODUCTION

1.1 Short Title, Extent and Commencement [Section 1]

The law relating to partnership businesses in Pakistan is the Partnership Act, 1932. It shall be referred to as “the Act” or “this Act” in this chapter and next two chapters.

This Act came into force on the first day of October 1932 and it is applicable to the whole of Pakistan.

1.2 Definitions [Section 2 and 4]

The Partnership Act, 1932 defines various terms used in the Act as given below. All other expressions shall have the same meanings as defined under Contract Act, 1872.

- “**partnership**” is the relation between person who have agreed to share the profits of a business carried on all or any of them acting for all.
- Persons who have entered into partnership are individually called “**partners**”.
- Persons who have entered into partnership are collectively called “**firm**”.
- The name under which the business of partnership is carried on is called the “**firm name**”.
- An “**act of a firm**” means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm.
- “**business**” includes every trade, occupation and profession.
- “**third party**” used in relation to firm or to a partner therein means any person who is not a partner in the firm.

► Example 01:

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only. On first day, on behalf of Solar Traders, Aftab ordered 100 light bulbs on credit from Tanveer, a wholesaler of electric products.

- Solar Traders is a partnership firm
- Aftab, Badal and Chand each is an individual partner in this partnership firm and collectively these three partners are the firm with the name Solar Trader.
- Tanveer is a third party in the context of this partnership firm.
- Aftab entered into contract with Tanveer as an agent of the firm, and this contract is an act of firm. The firm is liable to pay to Tanveer i.e. all three partners are liable.

1.3 Application of Contract Act [Section 3]

Those provisions of Contract Act, 1872 shall continue to apply to firms that are not inconsistent with the provisions of Partnership Act, 1932.

2 TEST OF PARTNERSHIP

2.1 Mode of determining existence of Partnership [Section 6]

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

- a) Association of two or more persons
- b) Agreement
- c) Carrying on business
- d) Sharing of profits
- e) Mutual agency

2.1.1 Association of two or more persons

The partnership is an association between two or more persons and all persons must be competent to contract. Thus, there can be no partnership consisting of a single individual. If the number gets reduced to one, for any reason, it ceases to be a partnership. The partnership Act does not say anything about the maximum number of partners. However, in the Companies Act, 2017, the following maximum numbers are fixed:

- a) In case of a partnership firm carrying on business not falling in (b) below, maximum number is 20.
- b) In case of a partnership formed to carry on practice as lawyers, accountants or any other profession where practice as a limited liability company is not permitted under the relevant laws or regulations of such practice, maximum number may exceed 20.

If the number of partners exceeds the maximum number allowed then such partners and partnership firm becomes subject to adverse consequences as defined in the Companies Act, 2017

► Example 02:

In an MBA class, 28 class fellows decided to form a partnership firm to work collectively as marketing and advertisement advisors. Such partnership will be violating the law. They should form a company under Companies Act, 2017.

► Example 03:

After qualifying CA Pakistan, 28 Chartered Accountants decided to form a partnership firm to work collectively as Chartered Accountants. Such partnership is allowed under the law without following the requirement of formation under the Companies Act, 2017.

2.1.2 Agreement

A partnership is a contractual agreement between the partners. This agreement may be expressed (whether written or oral) or implied. The written agreement is known as 'partnership deed'. In Pakistan generally partnership arises from contract and in some cases also from status such as, (Joint Family Business) operation of law, inheritance or succession.

A partnership deed usually sets out the following:

- Firm name
- Place or principal place of business of the firm
- Names of any other places where the firm carries on its business
- The date when each partner joined the firm
- Number of partners
- Names in full and permanent addresses of partners

- Duration of partnership (if any)
- Purpose of the partnership
- Rights and duties of the partners.
- Amount of capital that each partner should put into the business, and keep in the business until the partner retires or the partnership is dissolved

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

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

► *Example 04:*

Azhar and Babar started a business together and share its profit. They made a formal agreement titled "Partnership deed" and included all possible legal clauses to avoid disputes and confusion between them in future. It is a valid way of forming a partnership.

► *Example 05:*

Although there is no express agreement between them, but Arslan regularly buys old furniture and repairs it and then, his cousin Faisal sells the furniture and they both share the profit equally. The relation between Arslan and Faisal is partnership, by implied agreement.

2.1.3 Carrying on business

To constitute a partnership, the parties must have agreed to carry on a business. Where there is no business to be done, there can be no question of partnership. Business here includes any lawful trade, occupation and profession. An agreement to carry on business at a future time does not result in partnership unless that time arrives and the business is commenced. If the purpose is to carry on some charitable work it will not be a partnership.

► *Example 06:*

Ghaffar and Jabbar purchased a shop, incurred additional expenses to renovate it contributing in the ratio of 50:50 and then leased out the shop on rent which was shared equally by them. It won't be a partnership as they are co-owners and never carried out any business.

2.1.4 Sharing of profits

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

► *Example 07:*

Ahmad and Baqir, two chartered accountants, agree to carry on practice in common at the office of Ahmad under the name "Ahmad and Baqir" for a period of seven years. The terms of agreement entered into between them provide that Baqir should manage the office and supervise the clerical work and that he should draw a fixed allowance of Rs. 20,000 per month in lieu of profits. It is further agreed that losses, if any, shall be borne by Ahmad alone, and that after seven years Ahmad would be entitled to the office and all the other equipment, and Baqir would not have any right, or claim, in respect of them. Are Ahmad and Baqir partners?

Yes, Ahmad and Baqir are partners. In a partnership, partners are free to agree to any term as regards sharing of profits. Again, sharing of loss is not necessary for becoming a partner. So also, partners may agree that on the dissolution of their partnership all the assets will belong to one partner only.

► **Example 08:**

Saleem, the licensed proprietor of a theatre, lets the use of it to Jameel for dramatic entertainments. Saleem manages the theatre and bears all its expenses. He also incurs certain expenses for advertising and the band. He also collects door money of which he retains half and hands over the other half to Jameel. There is not partnership, Saleem and Jameel are sharing revenues and not profits.

2.1.5 Mutual agency

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

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

- A partnership does not have a legal personality. Unlike a company, it is not a legal person. A third party entering into business transaction with a partnership does not have a contractual agreement with the partnership; the contractual agreement is between the third party and all the partners as individuals.
- Partners in a partnership do not have limited liability, and are personally liable for any liabilities of the partnership business that the partnership cannot pay.

► **Example 09:**

Ali, Bilal and Chand are partners in a business. Dawood an outsider deals with the firm through Ali. As between Ali and Dawood, Ali is the principal. But as between Ali, Bilal and Chand, Ali is also the agent of Bilal and Chand. As such Ali, Bilal and Chand can all sue Dawood. Dawood can also sue Ali, Bilal and Chand. Furthermore Ali is accountable to Bilal and Chand because he is an agent of Bilal and Chand.

Mutual agency relationship in case of a firm of Ali, Bilal and Chand

An act by:	Ali	Bilal	Chand
Who is an agent	Ali	Bilal	Chand
The contract is binding on:	Ali, Bilal and Chand		

2.2 Not a Partnership**2.2.1 Joint or common interest in the property [Section 6]**

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

► **Example 10:**

Arslan and Noman are co-owners of a house and let it to a paying guest. They divide the rent between them. There is no business being carried on and therefore, they are not partners.

The partnership and co-ownership are two different relationships and it is important to understand the difference between the two:

DIFFERENCE		Partnership firm	Co-ownership
1.	Formation	It is created by an agreement alone.	Co-ownership is not necessarily a result of an agreement.
2.	Business	In partnership carrying on business is an essential. If there will be end of business it will ultimately result in end of partnership firm.	Co-ownership does not necessarily involve the carrying on of a business.

DIFFERENCE		Partnership firm	Co-ownership
3.	Number of persons	Minimum two competent to contract persons are required and a maximum of 20 persons (exception of firm of professionals who are prohibited to form a limited liability company where in number of partners can be more than 20) can carry partnership.	No limit on maximum number of co-owners.
4.	Sharing of profit	Sharing of profit is one of the essential elements.	It does not involve sharing of profit.
5.	Mutual agency	A partner is an agent of the firm for the purpose of business of the firm.	Co-owners are not agents to one another.
6.	Transfer of interest	A partner cannot transfer his interest without getting consent from other partner(s).	Co-owner can transfer his interest without getting consent from other co-owner(s).

► **Example 11:**

Jazib and Ghalib jointly purchased a tea shop and incurred additional expenses for purchasing pottery and some other materials to furnish the shop. The money was contributed half and half and then the rented out the shop. The rent has to be shared equally by them. They are only co-owners and not partners as they never carried on any business.

► **Example 12:**

Ahmad and Rizwan are joint owners of a ship. Ahmad works on the ship, takes the entire management of it, and meets all the expenses. He takes two-thirds of gross earnings and pays over the balance to Rizwan who does nothing. There is no partnership. They are sharing gross revenue and not profits.

2.2.2 Sharing of Profits is not a Conclusive Evidence of Partnership [Section 6]

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

► **Example 13:**

Hussain, a publisher agrees to publish at his own expense, a book written by Burhan and to pay Burhan half the net profits. Hussain and Burhan are not partners. Hussain is simply paying Burhan royalty by way of profits.

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

- Lender of money to persons engaged or about to engage in any business
- Servant or agent as remuneration
- Widow or child of a deceased partner as annuity
- A transferee of a partner's interest
- A minor who is admitted to the benefits of an existing partnership
- Previous owner or part owner as consideration for the sale of goodwill or share of it.

► **Example 14:**

A customer is not a partner of the bank in which he has profit or loss sharing account.

► **Example 15:**

Raheem, a clerk in Kareem's business, entered into a verbal agreement with Kareem for 10% share of profit, rather than a fixed salary. It was further agreed that the building in which the business was carried on should remain the property of Kareem and all work and decisions will be solely decided by Kareem. Raheem alleges that he is a partner and claims dissolution of the firm. Kareem denies the partnership, and alleges that Raheem is only a clerk. In view of the surrounding circumstances of the case it is evident that Raheem is only a clerk. It is an established fact that sharing of profits is not the sole test of partnership.

2.2.3 Loan from Banking Company [Section 6A]

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

► **Example 16:**

Amjad applied for a loan from ABC Bank for his business. It was decided that bank will get 20% of profit or loss, in lieu of interest. There is no partnership between Amjad and ABC Bank.

2.2.4 Partnership Not Created by Status [Section 5]

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

► **Example 17:**

In particular, the members of Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business. Although, they are carrying business together but the relationship between them has not arisen from contract.

► **Practice Question 01:**

Sharing net profits usually creates a very strong inference that the parties have formed a partnership. But in certain situations, the fact that the profits are shared or the parties have agreed to share the profits will not by itself create a presumption that a partnership was intended. List such situations as given in the Partnership Act, 1932.

► **Solution:**

These situations are:

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

► **Practice Question 02:**

Munaf, a sole proprietor, engaged in the business of selling cooking oil to wholesalers agreed to admit Lari in his business on the following terms:

That Lari shall not bring any capital and shall not be liable for any losses of the firm. However, he shall be entitled to receive Rs. 150,000 on introducing any new client to the business, share 40% of the profits and have the right to exercise all the powers of a partner in the firm.

Analyse the above situation and advise whether a partnership is constituted between Munaf and Lari under the provisions of the Partnership Act, 1932.

► *Solution:*

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

The essentials of a partnership are:

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

The Partnership Act does not require that a partner must contribute money or capital. Similarly the partners may also agree that any one of them shall not be liable for losses. Thus, in the presence of the above essentials and the fact that Lari is entitled to exercise all the powers of a partner Munaf and Lari are said to have constituted a partnership.

► *Practice Question 03:*

The sharing of profit is a prima facie evidence but not a conclusive test of partnership'. Under the provisions of the Partnership Act, 1932 list the circumstances in which receipt by a person of a share of profits of a business does not of itself make him a partner with the persons carrying on the business.

► *Solution:*

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

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

► *Practice Question 04:*

X has been carrying on textile business for the past few years. He has recently met Y who is an expert in textile designing. X and Y have agreed that Y would advise X on various technical issues and use his contacts for the benefit of the business. Y would be entitled to 35% of the profits of the business. However, Y will not be required to bring any capital and will not take part in the day to day affairs of the business.

Under the provisions of the Partnership Act, 1932 analyse the above situation and advise whether partnership exists between X and Y.

► *Solution:*

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

A partnership exists where following conditions are complied with:

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

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

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

► *Practice Question 05:*

The sharing of profit is a prima facie evidence of partnership. Under the provisions of the Partnership Act, 1932 list any four circumstances in which a non-partner could benefit from the profits of a partnership.

► *Solution:*

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

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

► *Practice Question 06:*

Moiz, Adeeb and Mumtaz were partners in a firm. Adeeb died. Moiz and Mumtaz continued the business and agreed to give 10% share of profits of business to the widow of Adeeb as annuity. Discuss whether Adeeb's widow would be deemed to be a partner in the firm.

► *Solution:*

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

► *Practice Question 07:*

Under the provisions of the Partnership Act, 1932 list the circumstances in which sharing of profits of a partnership business does not make a person partner in the firm.

► *Solution:*

Following are the circumstances in which sharing of profit of a partnership business does not make a person partner in the firm:

- Lender of money to persons engaged or about to engage in any business;
- Servant as remuneration;
- Agent as remuneration;
- Widow of a deceased partner as annuity;
- Child of a deceased partner as annuity;
- Transferee of a partner's interest;
- A minor who is admitted to the benefits of partnership;
- Previous owner as consideration for the sale of goodwill or share thereof;
- Part owner as consideration for the sale of goodwill or share thereof.

► *Practice Question 08:*

Under the Partnership Act, 1932, explain the circumstances under which an individual, entitled to a share of up to 50% of the annual profits of a partnership firm, would still not be recognized as a partner within that firm.

► *Solution:*

An individual who is entitled to receive up to 50% of the annual profits from a partnership firm may still not be recognized as a partner in that firm if such individual falls into one of the following categories:

- Lender of money who has lent money to persons engaged in the business.
- An employee or agent who receives a share of the profit as remuneration.
- The widow or child of a deceased partner, receiving an annuity.
- A previous owner or co-owner of the business, who receives the share as consideration for the sale of the goodwill or a portion thereof.
- The transferee of a partner's interest in the firm.
- A minor who has been admitted to the benefits of the partnership firm.

3 TYPES OF PARTNERSHIP AND PARTNERS

3.1 Types of Partnership

3.1.1 Partnership-at-will [Section 7]

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

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

► *Example 18:*

Azam and Babar are partners in a firm. There is no formal express agreement and no duration fixed. Azam does not want to continue. This is partnership at will and he may give a reasonable notice of his intention to dissolve the firm to Babar and firm will be dissolved from the date mentioned in the notice.

► *Example 19:*

Azam, Babar and Misbah are partners in a firm. The partnership deed states that firm can only be dissolved with mutual consent of all the partners although no duration is fixed. Azam does not want to continue. This is not partnership at will and he can dissolve the partnership only if Babar and Misbah also agree.

3.1.2 Particular partnership [Section 8]

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

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

► *Example 20:*

Anum and Maha entered into a partnership agreement specifically for an interior designing project. This is particular partnership and it shall come to an end on completion of the project.

► *Example 21:*

Adeel and Saima entered into a partnership agreement for 10 years. This is a particular partnership. However, on completion of 10 years, they decided to continue the partnership, now their partnership is partnership at will.

3.2 Types of Partners

3.2.1 Actual or ostensible partner

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

► *Example 22:*

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only. Aftab is active or ostensible partner.

3.2.2 Sleeping or dormant partner

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

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

► *Example 23:*

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only and the existence of Badal and Chand as partners will be kept secret from outsiders. Badal and Chand are sleeping partners.

3.2.3 Nominal partner

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

► *Example 24:*

Azam and Babar started a law firm. They also requested a retired senior lawyer Arif to join in. Arif stated that they can use his name as partner but he would not be able to give his time to the firm and that he would not share in profits as well. Arif is a nominal partner and would still be liable to outsiders for the acts of firm.

3.2.4 Partner in profits only

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

► *Example 25:*

Adeel and Kashif are partners in a firm. The terms of agreement are that they will share profit in the ratio of 3:2 but in case of loss, all loss shall be borne by Adeel only. Here, Kashif is partner in profits only.

3.2.5 Sub-partner

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

► *Example 26:*

Adeel and Kashif are partners in a firm. The terms of agreement are that they will share profit in the ratio of 3:2. Unknown to Kashif, Adeel further agrees with his friend Adnan to share half of his individual share from partnership with Kashif. Adnan is a sub-partner.

3.2.6 Silent partner

Those who by agreement with other partners have no voice in the management of the partnership business. They share profit and losses, are fully liable for the debts of the firm.

► *Example 27:*

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only and Badal and Chand will not take any active part in management although their existence shall be known to outsiders. Badal and Chand are silent partners.

3.2.7 Partner by estoppel or holding out [Section 28(1)]

Where a person:

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

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

► *Example 28:*

Paras represents to Rizwan that he is a partner in the firm of Arslan, Noman and Ali, while actually he is not a partner. On the faith of this representation Rizwan gives credit to the firm. The firm becomes insolvent subsequently. Rizwan can make Paras liable on the basis of holding out and Paras is estopped from denying that he is a partner in the firm.

► *Practice Question 09:*

In view of the Partnership Act, 1932, briefly explain the meaning of 'Partnership at Will' and 'Particular Partnership'.

► *Solution:*

Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is 'partnership at will'.

When a partnership is formed for a particular period or for a specific venture, e.g. for working a coal mine, or producing a film, it is called a 'particular partnership'.

1. OBJECTIVE BASED Q&A

- 1 X and Y formed a partnership firm to undertake construction of a shopping plaza. Such a partnership is called:
 - a) limited partnership
 - b) particular partnership
 - c) partnership at will
 - d) implied partnership
- 2 The conclusive evidence of a partnership is:
 - a) mutual agency
 - b) sharing of profit and loss
 - c) mutual understanding
 - d) capital contribution
- 3 Partnership is:
 - a) the relationship between persons who have agreed to share the profits of jointly owned property managed by all or any of them acting for all
 - b) the relationship created by an agreement between a banking company and person(s) providing for sharing of profit and loss arising from the finance provided to such person(s)
 - c) both of the above
 - d) the relation between persons arising from a contract who have agreed to share the profits of a business carried on by all or any of them acting for all
- 4 Relation of partnership
 - a) Arises by legal status of the persons.
 - b) Arises out of business dealings
 - c) Arises out of a contract between persons
 - d) Arises out of legal implications
- 5 Partnership firm has:
 - a) Separate legal entity from partners if the firm is registered
 - b) No separate legal entity
 - c) Separate legal entity
 - d) Separate legal entity distinct from the partner
- 6 The persons who have entered into partnership with one another are collectively called:
 - a) Co-owners
 - b) Company
 - c) Partnership
 - d) Firm

- 7 The relation of partnership arises from:
- Status
 - Birth
 - Contract
 - Inheritance
- 8 Which of the following statement is correct?
- A partnership contract must be expressed in writing only.
 - A partnership contract must be expressed either in writing or orally.
 - A partnership contract may be expressed (in writing only) or implied.
 - A partnership contract may be expressed (either in writing or orally) or implied.
- 9 In order to form a partnership, the parties contract to share:
- Only losses
 - Only profits
 - Both profits and losses
 - Profits and losses but some partners may share in profits only
- 10 Where the partnership is at will, the firm may be dissolved by any partner giving notice, of his intention to dissolve the firm, in writing to
- Any one of the partners
 - All the other partners
 - Two partners
 - Three partners
- 11 Akram, Minhas and Bali are partners, Bali is a sleeping partner. Bali retires without giving public notice of his retirement.
Is Bali liable for subsequent debts incurred by Akram and Minhas?
- Bali is liable only to the extent of his estate
 - Bali is fully liable, as he did not give public notice of his retirement
 - Bali is liable for the amount left after contribution from Akram and Minhas
 - Bali is not liable as he was a sleeping partner
- 12 Sohail and Fida purchased a yacht, renovated it and sold it to Qasim for Rs. 10 million. They shared the proceeds equally. Both Sohail and Fida are:
- co-owners
 - co-venturers
 - Partners
 - mutual agents

- 13 A partnership firm is constituted for one year. After the expiry of one year, if the partners decide to continue the partnership, then:
- a) the period is extended automatically for further one year
 - b) the partnership becomes partnership at will
 - c) the partnership becomes particular partnership
 - d) the partnership becomes a joint venture
- 14 Jamal is the financial controller of Emerald Stones & Co. where he is entitled to a monthly remuneration of Rs. 500,000 as well as 20% of the profits, if the net annual profits of the firm exceed Rs. 50 million. What is the status of Jamal in the partnership firm?
- a) A partner in the firm
 - b) An employee of the firm
 - c) Partner as well as employee of the firm
 - d) An agent of the firm
- 15 Salman and Farhan purchased two local coffee shops and renovated them to reflect the modern café style under the name “Coffee Holics”. The interior designing of both the shops was done by Salman whereas the renovation expenses were paid by Farhan. The operational rights of both the shops were given to Zakir on the terms that Zakir shall only pay a fixed amount of Rs. 25 on each coffee cup sold. Salman and Farhan agreed to equally divide the amount paid by Zakir amongst themselves.
- In the above scenario, Salman and Farhan are:
- a) partners because they share the profit in equal proportion
 - b) partners because they jointly own the coffee shops
 - c) not partners because the renovation expenses were not paid by both of them
 - d) not partners because the arrangement does not constitute a partnership

ANSWERS

1	b)	Particular partnership
2	a)	Mutual agency
3	d)	Partnership is the relation between persons arising from a contract who have agreed to share the profits of a business carried on by all or any of them acting for all.
4	c)	In Pakistan partnership arises from contract and not from status.
5	b)	A partnership does not have a legal personality. Unlike a company, it is not a legal person.
6	d)	'Firm' represents all the partners collectively.
7	c)	The status of partnership arises from contract only.
8	d)	A partnership contract may be expressed (either in writing or orally) or implied.
9	d)	Profits and losses but some partners may share in profits only
10	b)	Notice to all the other partners is required.
11	d)	Bali is not liable as he was a sleeping partner
12	a)	co-owners
13	b)	the partnership becomes partnership at will
14	b)	An employee of the firm
15	d)	not partners because the arrangement does not constitute a partnership

STICKY NOTES

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

Persons who have entered into partnership with one another called individually **“partners”** and collectively **“a firm”** and the name under which their business is carried on is called the **“firm name”**.

Factors to determine existence of partnership include:

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

Not a Partnership

1. Joint or common interest in the property is not a partnership.
2. Sharing of profits is not a conclusive evidence of partnership
 - a) Lender of money to persons engaged or about to engage in any business
 - b) Servant or agent as remuneration
 - c) Widow or child of a deceased partner as annuity
 - d) A transferee of a partner's interest
 - e) A minor who is admitted to the benefits of an existing partnership
 - f) Previous owner or part owner as consideration for the sale of goodwill or share of it.
3. Loan from banking company (even if non-interest based) does not create a partnership relationship.
4. Partnership is created by contract and not status.

Types of Partnership

1. Partnership at will: There is no provision as to when the partnership will end.
2. Particular partnership: Such partnership comes to an end on the completion of particular adventure or on the expiry of the period.

Types of Partners

1. Actual or ostensible partner
2. Sleeping or dormant partner
3. Nominal partner
4. Partner in profits only
5. Sub-partner
6. Silent partner
7. Partner by estoppel or holding out

AT A GLANCE

SPOTLIGHT

STICKY NOTES

RELATIONS OF PARTNERS TO ONE ANOTHER

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 The Duties, Rights and Liabilities of Partners
- 2 The Property of the Firm
- 3 Objective Based Q&A

STICKY NOTES

AT A GLANCE

Every partner has duty to carry on business to the greatest common advantage, to be just and faithful, to render true accounts and provide all relevant information relating to the firm. A partner must also indemnify his co-partners for loss caused by his fraud.

The rights and duties of partners are usually included in partnership contract which may made and varied expressly or impliedly.

In relation to conduct of business, every partner has right to take part in management and to access the books, also has duty to attend diligently to his duties. The decisions are made by simple majority, however change in nature of business and introduction of new partner requires unanimous consent.

In absence of partnership contract, there is no right to remuneration, equal profit sharing, loss sharing in same ratio as profit, no interest on capital, 6% interest or as agreed upon on advances from partner to firm, right to be indemnified for proper expenses and duty to indemnify the firm for wilful neglect. Further, personal profits earned by a partner, without consent of other partners, using firm name or connection and from competing business are to be accounted for and paid to the firm.

The Partnership Act, 1932 also requires, subject to contract, that property of the firm shall be used exclusively for the business of firm. The property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and also includes the goodwill of the business.

1 THE DUTIES, RIGHTS AND LIABILITIES OF PARTNERS

1.1 General duties of partner

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

1.1.1 Duty to carry on business to the greatest common advantage [Section 9]

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

► *Example 01:*

Saleem, Naeem, Kareem and Raheem established a partnership for refining sugar. Raheem was considered expert in the job of buying sugar. Thus he was entrusted with the duty of purchasing sugar for the firm. Ajmal, cousin of Rahim, was a wholesale dealer in sugar. Raheem bought sugar from Ajmal despite the fact that the rate was higher than the market rate for same quality. Raheem has breached his duty to carry on business to greatest common advantage of all the partners.

1.1.2 Duty to be just and faithful [Section 9]

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

► *Example 02:*

Saleem, Naeem, Kareem and Raheem established a partnership for refining sugar. Raheem was considered expert in the job of buying sugar. Thus he was entrusted with the duty of purchasing sugar for the firm. Raheem himself was a wholesale dealer in sugar. He, unknown to his co-partners, supplied to the firm, at the market price, with sugar previously bought by himself from his own resources when the price was lower, and he so made considerable profit. Saleem, Naeem and Kareem sued for the profits thus made by him. Yes Raheem is accountable to the firm for the profit thus made by him because he had failed in his duty to observe utmost good faith towards other partners and to make fullest disclosure of all facts to them.

1.1.3 Duty to render true accounts [Section 9]

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

► *Example 03:*

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only and Badal and Chand will not take any active part in management. Aftab must render true accounts of the firm to Badal and Chand.

1.1.4 Duty to provide full information [Section 9]

Partners are bound to render full information of all things affecting the firm to any partner or his legal representative.

► *Example 04:*

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only and Badal and Chand will not take any active part in management. Aftab must provide full information of all things affecting the firm to Badal and Chand.

1.1.5 Duty to indemnify for loss caused by fraud [Section 10]

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

► *Example 05:*

Habib, Arslan and Adeel are partners in a firm. Habib sold an item to third party by fraud without consent of Arslan and Adeel. The firm had to pay the compensation and bear the loss. Habib must indemnify Arslan and Adeel for loss so caused to them.

1.2 Rights and Duties by Contract [Section 11]

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

Such contract may be:

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

Variation in Partnership Contract

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

► *Example 06:*

Badar, Nazar and Zafar agreed to form a partnership. The partnership deed, inter-alia, provided that all the three shall share the profits equally. Afterwards they carried on the partnership business for many years, Badar receiving one-half of the net profits and the other half being equally divided between Nazar and Zafar, to which Nazar and Zafar never objected. Later, the partnership developed some differences and as such Nazar and Zafar file a suit for their share of profits for the past years on the basis of the partnership deed. Nazar and Zafar's suit is not maintainable because by accepting profits for past many years in a ratio different from the agreed ratio they have impliedly consented to the variation in the contract (i.e. partnership deed).

Agreement in Restraint of Trade

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

1.3 Rights and Duties relating to the Conduct of the Business [Section 12]

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

1.3.1 Right to take part in the conduct of the business

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

► *Example 07:*

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only and Badal and Chand will not take any active part in management. The right to take part in management is available to all of them, it is just that Badal and Chand agreed not to participate and become silent partners.

1.3.2 Duty to attend diligently to his duties

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

► *Example 08:*

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only and Badal and Chand will not take any active part in management. Aftab must attend diligently to his duties. This duty does not apply to Badal and Chand as they are silent partners according to agreement.

1.3.3 Decision Making / Right to be consulted

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

► *Example 09:*

Azam, Babar, Yasir and Zahid are active partners in a partnership. Azam wants to open a bank account in ABC Bank for partnership business. However, Zahid is of the opinion that they should have an account in XYZ Bank. The matter must be decided by the decision of majority of the partners.

► *Example 10:*

Azam, Babar, Yasir and Zahid are active partners in a partnership. Babar, Yasir and Zahid want to change the nature of business from retailer of yarn to manufacturer of sugar but Azam does not agree. Unless all the partners agree, nature of business cannot be changed.

1.3.4 Right to have access to the books

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

► *Example 11:*

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only and Badal and Chand will not take any active part in management. Badal and Chand (and also Aftab) have right to access and inspect books of accounts of the firm.

1.4 Mutual Rights and Liabilities [Section 13]

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

1.4.1 Remuneration

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

► *Example 12:*

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only and Badal and Chand will not take any active part in management. Aftab is not entitled to remuneration for his work unless specifically agreed by the partners.

1.4.2 Sharing Profits and Losses

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

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

► *Example 13:*

Adeel and Kashif started a partnership business by contributing Rs. 5 million and Rs. 7 million respectively. However, they did not decide the profit sharing ratio. They will share profit equally.

► *Example 14:*

Adeel and Kashif are partners in a firm. The terms of agreement are that they will share profit in the ratio of 3:2 but there is no express provision regarding sharing of loss. The agreement implies that they will share losses in the ratio of 3:2 as well.

1.4.3 Interest on Capital

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

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

► **Example 15:**

Adeel and Kashif started a partnership business by contributing Rs. 5 million and Rs. 7 million respectively and agreed to share profits in the ratio of 3:2. They did not decide anything regarding interest on their respective capital. Kashif demands 10% interest should be given by the firm to both the partners. In absence of specific agreement, there shall be no interest on capital.

1.4.4 Interest on Advance (Loan) from Partner

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

► **Example 16:**

Adeel and Kashif started a partnership business by contributing Rs. 5 million and Rs. 7 million respectively and Adeel also advance Rs. 1 million to the firm as loan. They did not decide anything regarding interest on this loan. Adeel demands 10% interest should be given by the firm to him on this loan. In absence of specific agreement, interest @6% shall be paid to Adeel on his loan to the firm.

1.4.5 Right to be indemnified

Every partner has a right to claim indemnity from the firm in respect of payments made or liabilities incurred by him:

- In the ordinary and proper conduct of the business; and
- In doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

► **Example 17:**

Saima and Naima are partners in a firm. Saima paid insurance premium from her own pocket in order to protect firm's inventory when there was chance of damage by rain water. She also paid for shelves to keep the inventory safe. She is entitled to be reimbursed by the firm.

1.4.6 Duty to indemnify for wilful neglect

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

► **Example 18:**

Habib and Tanveer are partners in a firm. Habib was entrusted with monitoring inventory levels to avoid stock shortages on weekly basis. Habib neglected the work for many months due to which the firm suffered the loss. Habib must compensate the firm for loss caused due to his neglect.

1.5 Personal Profits earned by Partners [Section 16]

1.5.1 Duty to account for personal profits derived

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

► *Example 19:*

Tom and Jerry are in partnership. The partnership purchased an item of equipment costing Rs.30,000. It was discovered later that the equipment had actually been purchased by Tom for Rs.18,000, and Tom had re-sold it to the partnership without revealing that he was the owner of the property.

In this case, since the other partner did not know that Tom had made a personal profit from the transaction with the partnership, he can claim successfully that Tom should hand over to the partnership the Rs.12,000 profit that he made.

If Tom had informed Jerry in advance that he was the owner of the equipment and intended to keep the profit himself, and if Jerry agreed to this, Tom would have been able to keep all the profit for himself.

1.5.2 Duty not to compete with the business of the firm

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

► *Example 20:*

Azam, Babar, Yasir and Zahid are in partnership. Without informing the other partners, Zahid sets up a sole trader's business in competition with the partnership, and makes a profit of Rs. 50,000 by either, using firm name or property or connections of the firm. When the other partners find out what Zahid has been doing, they can require Zahid to account to the partnership for the profits he has made while operating in competition (and hand over the Rs. 50,000 to the partnership).

1.6 Rights and Duties of Partners after a change in firm [Section 17]

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

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

► *Example 21:*

Azam, Babar, Yasir and Zahid are partners in a partnership sharing profit and losses equally. Zahid retired and others continued the business. In reconstituted firm, Azam, Babar and Yasir shall share the profit and losses equally too, unless otherwise agreed.

► *Practice Question 01:*

Rafiq, Bari and Furqan have decided to establish a partnership business for trading in medical equipment. In the absence of any express contract, advise them of their mutual rights and liabilities under the provisions of the Partnership Act, 1932.

► *Solution:*

In the absence of any express contract:

- i. every partner has a right to take part in the conduct of the business;
- ii. every partner shall have the right to express his opinion before a matter is decided. Any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, but no change may be made in the nature of the business without the consent of all the partners;
- iii. every partner has a right to have access to and to inspect and copy any of the books of the firm;

- iv. a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- v. the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm;
- vi. where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of the profits;
- vii. a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum;
- viii. the firm shall indemnify a partner in respect of payments made and liabilities incurred by him:
 - in the ordinary and proper conduct of the business, and
 - in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- ix. a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

► *Practice Question 02:*

On 1 July 2016 Abid, Rizwan and Salman started a partnership business and contributed Rs. 200,000 each towards the firm's capital. They also agreed to share profits in equal proportion. Abid, in addition to his capital contribution, paid Rs. 100,000 to one of the suppliers as a security deposit. All the partners are entitled to interest at the rate of 8% on their capital. However, during the year, the firm incurred a loss of Rs. 80,000.

Under the provisions of the Partnership Act, 1932 state the amount of interest, if any, payable to each partner.

► *Solution:*

Where a partner is entitled to interest on capital such interest is required to be paid only out of profits of the firm. During the year, since the firm has incurred a loss, all the partners are not entitled to receive any interest on their capital. However, any partner making any payment, for the purpose of the business, beyond the amount of his capital contribution, is entitled to interest thereon at the rate of 6% per annum. Therefore, Abid is entitled to receive Rs. 6,000 on the amount paid as a security deposit.

► *Practice Question 03:*

Sohail, Talha, Umair & Co., a partnership concern is engaged in trading of cloth. The firm bought a plot of land from Shining Star Limited. After some time Talha and Umair on their own account bought three more plots of land in the same locality and made good profits. Sohail on becoming aware of such profits sued Talha and Umair for his share.

Under the provisions of Partnership Act 1932, explain whether Talha and Umair are liable to share such profits with Sohail.

► *Solution:*

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

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

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

► *Practice Question 04:*

Gul, Raza and Sami are partners in GRS Garments. Raza discovered that a supplier MP offers reasonable rates for consumables stores and put forth a resolution that MP should be included in the firm's list of suppliers. MP is owned by Gul and managed by his brother but Gul did not disclose this fact. When Raza and Sami became aware of the fact, they asked Gul to share with them the profits earned by MP on transactions with GRS. Under the provisions of the Partnership Act, 1932 discuss whether Gul is bound to share the profits as demanded by Raza and Sami.

► *Solution:*

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

► *Practice Question 05:*

Under the provisions of the Partnership Act, 1932 state the mandatory duties of partners which cannot be modified by an agreement amongst them.

► *Solution:*

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

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

► *Practice Question 06:*

Aftab, Rehan and Bali were partners in a law firm. The partnership deed, among other things, provided that the profits or losses of the firm would be shared equally among the partners. The firm continued its business for many years with Aftab receiving fifty percent share in the net profit and Rehan and Bali each sharing twenty-five percent of the net profit. Rehan and Bali never objected to this arrangement. Later on, partners developed some differences and Rehan and Bali filed a suit against Aftab for the recovery of their share in profits on the basis of partnership deed. Under the provisions of the Partnership Act, 1932 discuss whether Aftab would succeed in defending the suit filed against him by Rehan and Bali.

► *Solution:*

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

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

► *Practice Question 07:*

Asghar, Babar and Careem are carrying on agricultural business in partnership. They have agreed to share the profits in the ratio of 4:3:2 respectively. Careem is not liable for the losses of the firm. Asghar, who is responsible for procurement, has suggested to buy seeds and pesticides from Zubair Enterprises, a supplier of crop products, as the seeds and pesticides offered by him are of good quality and at a very reasonable price. However, Babar is not in agreement with Asghar. Under the provisions of the Partnership Act, 1932 analyse and comment.

► *Solution:*

Subject to contract between the partners, a partner can bind the firm by his actions. However, in case of differences, decision should be made by majority of the partners. Asghar cannot take decision without consultation with other partners. Every partner has a right to express his opinion before the matter is decided.

► *Practice Question 08:*

Under the provisions of the Partnership Act, 1932 what are the general duties of a partner which cannot be altered by an agreement amongst themselves?

► *Solution:*

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

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

► *Practice Question 09:*

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

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

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

► *Solution:*

Tahira and Farhana would be justified in their demand, if they have restrained Sadia from carrying on another business other than that of the firm as is permitted under the Partnership Act, 1932.

In the absence of any such agreement, they are not justified in claiming profits of the jewellery shop as the said business is not of same nature nor competes with the bridal boutique business.

Moreover, jewellery shop having same customers does not amount to misusing resources of boutique business unless it is established that Sadia had used property or business connection of boutique or the firm's name to earn personal profits i.e. if she referred the boutique customers to jewellery shop, only then she would be liable to pay such profits to Tahira and Farhana.

► *Practice Question 10:*

Krypton Traders & Co. (KTC), a partnership firm having five partners, is engaged in the business of manufacture and export of leather jackets. Operations of KTC are managed by two of its partners namely Salman and Nadir, while the remaining three partners are not actively involved in the business of the firm.

In March 2026, Salman presented two proposals to Nadir which, in his view, will improve KTC's profitability manifold. He requested Nadir to give his consent to any one of the following two proposals so that it may be executed:

- i. Reduce material cost by using low-quality leather in production.
- ii. Discontinue production activities and invest KTC's capital in real estate.

Nadir found none of the proposals in KTC's interest and disapproved both of them. Salman then presented the proposals to KTC's most senior partner, Akmal and sought his consent to proceed with the execution.

Under the provisions of the Partnership Act, 1932 discuss the possibility of execution of the above proposals:

- if Akmal agrees with proposal no. (i) only
- if Akmal agrees with proposal no. (ii) only

► **Solution:**

Following are the possibilities of execution of the proposals presented by Salman:

If Akmal agrees with proposal no. (i) only

The dispute relating to ordinary matters of the business i.e. reducing material cost by using low-quality leather in production may be decided by a majority of the partners (i.e. at least 3 partners) unless there is an express or implied contract to the contrary among the partners.

If Akmal agrees to reduce material cost by using low-quality leather in production, all the partners of KTC should be informed about the dispute and provided with opportunity to express opinion before matter is decided.

Hence, proposal no. (i) can be executed if one more partner agrees to it besides Akmal and Salman.

If Akmal agrees with proposal no. (ii) only

The proposal to discontinue production activities and invest KTC's capital in real estate will be considered as change in nature of the firm's business which cannot be made without the consent of all the partners unless there is an express or implied contract to the contrary among the partners.

Since Nadir has already disagreed with the proposal no. (ii), it cannot be executed even if Akmal agrees to the same.

Akmal's agreement to proposal no. (ii) only, means that he is not in agreement with proposal no. (i). Despite of Akmal's and Nadir's disagreement, proposal no. (i) can still be executed if the other two partners of KTC agree to execute it.

► **Practice Question 11:**

Pentagon Dealers (PD) is a partnership firm engaged in the purchase and sale of automobiles. Saad, Mona and Zain, partners in PD, share profit in equal proportion.

On 1 January 2026, Saad entered into another partnership namely Triangular Tours (TT) which arranges trips for the tourists. However, Saad did not inform Mona and Zain regarding his new partnership venture. During the first two months, TT earned a profit of Rs. 10 million. Under the provisions of the Partnership Act, 1932, determine Saad's liability towards Mona and Zain in respect of profits earned through TT's business.

► **Solution:**

Saad would only be liable to distribute his share of profits with Mona and Zain in equal proportion if:

- Saad had been restrained by Mona and Zain from carrying on any business other than that of PD; or
- it is established that Saad used PD's property; or PD's business connection; or PD's name to earn personal profits.

In the absence of any such agreement or the conditions mentioned above, Saad would not be liable to pay his share of profits from TT's business because TT's business is not of same nature nor does it compete with the automobile business in which PD is engaged.

► **Practice Question 12:**

Four software engineers, namely Ali, Fawad, Shakir and Zia, formed a partnership firm named Trapezoid Developers (TD) in March 2021, agreeing to operate the software development business for a three-year term. By the start of year 2024, TD started receiving an increasing number of contracts for software development.

Ali and Fawad now wish to continue the partnership beyond the three-year term and have prepared a proposal to expand the business by providing one-window solution for all hardware and software related matters. The proposal contains the following terms:

- i. Induct Nazir, a computer hardware expert, as a partner into TD, who will look after all hardware related matters.
- ii. Acquire a computer hardware store which will arrange all necessary hardware as per the requirements of TD's clients.
- iii. Setup a new division to meet the growing demand for customized mobile applications.

The following responses have been received regarding the proposal:

- i. Shakir is concerned that even if all the partners accept the proposal, the business cannot continue under TD's name and therefore, a new partnership firm should be formed. He is also not in favour of starting development of customized mobile applications.
- ii. Zia argued that TD should not pursue hardware business due to increasing exchange rates and diminishing purchasing power of consumers.

Under the provisions of the Partnership Act, 1932, evaluate the responses received from TD's partners and assess their possible effects on the implementation of the proposal.

► **Solution:**

Evaluation of Shakir's response and its effect(s) on the proposal

- Shakir's concern is not valid because even though TD was formed for a fixed term expiring 31 March 2024, however, under the provisions of the Partnership Act, 1932, TD may continue to carry on its business even after expiry of the mutually agreed term, if all partners give their consent to continue the business.

Where the partnership business is continued after expiry of the term, TD would become 'partnership at will' in which mutual rights and duties of TD's partners would remain the same as they were before 31 March 2024, so far as they may be consistent with the incidents of partnership at will.

However, if Shakir remains adamant that a new partnership should be formed then it may require determination of mutual rights and duties of partners in the new firm which may be done through a formal partnership agreement.

- Shakir's objection in respect of development of customized mobile applications constitutes a dispute relating to ordinary matters of the business that may be decided by a majority of the partners (i.e., at least 3 partners) unless there is an express or implied contract to the contrary among the partners.

All the partners of TD should be informed about such dispute and should be provided with an opportunity to express opinion before matter is decided. However, TD can still undertake the application development if Zia agrees.

Evaluation of Zia's response and its effect(s) on the proposal

The proposal to pursue hardware business is a different venture which would constitute change in nature of TD's business. Such business cannot be undertaken without the consent of all the partners unless there is an express or implied contract to the contrary among the partners.

If Zia remains firm on his disagreement with regards to hardware business, then:

- TD cannot pursue hardware business;
- Induction of Nazir as a partner with hardware expertise may not be required;
- Remaining partners may dissolve TD and consider to form new partnership;
- Remaining partners may form new partnership with Nazir.

► *Practice Question 13:*

Abid, a proposed partner in a partnership firm, has inquired you about the circumstances in which he must indemnify the firm and the situations in which the firm would indemnify him, after he becomes the partner.

Under the provisions of the Partnership Act, 1932, respond to Abid's inquiry.

► *Solution:*

Abid shall be required to indemnify TD for any loss caused to it by his act of fraud or wilful neglect (subject to contract between partners) in the conduct of TD's business.

Subject to contract between the partners, TD shall indemnify Abid in respect of payments made and liabilities incurred by Abid in:

- the ordinary and proper conduct of TD's business;
- doing such act, in an emergency, for the purpose of protecting TD from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

2 THE PROPERTY OF THE FIRM

2.1 Partnership Property [Section 14]

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

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

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

What is Goodwill?

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

Goodwill can be thought of as the value of the business as a whole less aggregate value of identifiable net assets.

► Example 22:

Azam, Babar and Careem are partners in a business. They buy a property in the name of fictitious person with the money of the partnership. The property is a partnership property.

► Example 23:

Noman and Usman are partners. Noman buys shares from stock exchange in his own name with the monies and on account of the firm. The value of shares subsequently increases by considerable amount. Noman claims that shares are his personal property. The shares are partnership property.

► Example 24:

Sadia and Rabia are partners. Sadia buys land with partnership money, for her sole benefit. Thereafter, Sadia debits herself in the firm books and becomes a debtor to the firm for the amount of the purchase money. The value of land increases subsequently by a considerable amount. Rabia claims that the said land is property of the firm. The land is not partnership property, because there was clearly a contrary intention.

► Example 25:

Arslan, a partner in a firm, buys shares of a company in his own name, without the authority of the other partners, but with the money and on account of the firm. The shares are deemed to be partnership property.

2.2 Application of the property of the firm [Section 15]

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

► Example 26:

Abid and Sajid are partners in a firm. Abid took the firm's printer and laptop to his home for the use of his family members till they were not useable anymore. Abid must not have used partnership property for his personal benefit and must compensate the firm.

► *Practice Question 14:*

Kashif, Irfan and Shujaat are partners in a firm. Irfan bought a shop in his own name. He issued a cheque from the partnership account and debited his account with the purchase price. He rented out the shop and credited the receipts of rent in his capital account. Kashif has objected to this practice and asked Irfan to register the shop in the firm's name contending that the shop is partnership's property. Irfan disagrees.

Explain what constitutes partnership property under the Partnership Act, 1932 and whether the shop is partnership property or not.

► *Solution:*

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

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

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

► *Practice Question 15:*

In a partnership business, Rofi intends to acquire a plot of land for the firm with his own money. However, he is not certain whether the plot would be considered as partnership property. Under the provisions of the Partnership Act, 1932 advise Rofi as what is considered to be included in the partnership property and how it is to be applied.

► *Solution:*

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

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

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

Application of the property of the firm:

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

► *Practice Question 16:*

Bader and Yaseen established a distribution agency for supplying low cost medicines to hospitals. Yaseen, by way of a verbal agreement, allowed the agency to use his ancestral land for the business of the agency. Bader purchased a delivery van in his own name with partnership money. Bader wants to repay the amount to the partnership and therefore a receivable has been recorded in the partnership books.

Under the provisions of the Partnership Act, 1932 describe whether the above assets would be considered to be the partnership property.

► *Solution:***Land provided by Yaseen:**

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

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

Delivery van:

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

► *Practice Question 17:*

Zaheer has recently graduated from the Institute of Textile Designing. He has been approached by Zara with an offer to start a designer boutique in partnership under the name and style of 'Zareer Bridals'. Zara proposed to purchase a shop in Karachi and to manage its operations whereas Zaheer will be responsible for designing the dresses for the boutique.

Zara wants to sign a formal partnership contract with Zaheer. She intends to run the boutique for five years and afterwards if the venture remains successful, she plans to open international branches on her own without any profit sharing with Zaheer.

Under the provisions of the Partnership Act, 1932:

- discuss which type of partnership is suitable for Zara.
- discuss the statutory rights and duties of both Zara and Zaheer which can be restricted or extended in Zara's favour by way of a partnership contract.

► *Solution:*

Zara may form a particular partnership for 5 years with Zaheer in respect of Zareer Bridals (ZB). In this way, she will be able to take decision of extending or ending the partnership after 5 years because partnership contract can only be varied by consent of all the partners.

The statutory rights and duties of Zara and Zaheer which can be restricted or extended in Zara's favour by way of a partnership contract are as follows:

Restrict/extinguish following of Zaheer's rights:

- i. To take part in the conduct of the business of ZB;
- ii. To access/inspect/copy books of ZB;
- iii. To be involved in decision making in respect of ZB's operations;
- iv. To object to change in the nature of ZB's business;
- v. To receive remuneration for taking part in conduct of ZB's business;
- vi. To receive equal share of ZB's profit;
- vii. To receive 6% interest p.a. if he makes payment beyond agreed capital;
- viii. To exercise his implied authorities in respect of ZB;
- ix. To carry out any other business besides ZB.

Extend/establish following of Zara's own rights:

- i. To receive more than 6% interest p.a. on payments made beyond agreed capital;
- ii. To exercise her implied authorities in respect of ZB;
- iii. To use property of ZB for purposes other than ZB's business.

Restrict/extinguish following of Zara's own duties:

- i. To indemnify ZB or Zaheer for wilful neglect on her part;
- ii. To account for personal profits derived by herself from ZB's connections;
- iii. To contribute equally to ZB's losses;
- iv. To account for personal profits derived by herself from competing business;
- v. To attend diligently to her duties in respect of ZB.

Zara may exclude the shop, if purchased for ZB, from being considered as ZB's property.

► **Practice Question 18:**

Under the provisions of the Partnership Act, 1932, identify the assets which are included in the property of a partnership firm

► **Solution:**

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

- all property and rights and interests in property originally brought into the stock of the firm, or
- all property acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm,
- the goodwill of the business.

Furthermore, unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

1. OBJECTIVE BASED Q&A

Choose the INCORRECT statement:

- 1 In the absence of a contract to the contrary,
 - a) a partner is not entitled to receive remuneration for taking part in the conduct of the business
 - b) the partners are entitled to share profits equally
 - c) the partners are entitled to interest on capital subscribed by them
 - d) a partner shall indemnify the firm for any loss caused to it by his wilful neglect
- 2 Subject to contract between the partners, a change may be made in the nature of business of the firm:
 - a) with the consent of active partners managing the business
 - b) with the consent of majority of partners
 - c) with the consent of all the partners
 - d) with the consent of all the partners and Registrar of Firms
- 3 Mr. A, a partner in the firm, buys shares of a company in his own name. Without the authority of the other partners, but with the money and on account of the firm. State the legal position.
 - a) The shares are the property of Mr. A
 - b) The shares are the property of active partners of the firm
 - c) The shares are the property of the legal representatives of Mr. A
 - d) The shares are the property of the partnership firm
- 4 The property of the firm must be used
 - a) For the exclusive benefit of the active partner
 - b) For personal benefits of the all the partner
 - c) For the purpose of business of the firm
 - d) a) & b)
- 5 Partner giving advances to the firm is entitled:
 - a) Not to claim any such interest on that amount
 - b) To claim interest @ 6% or as agreed upon
 - c) To claim interest @ 12% per annum
 - d) To claim interest as decided by the third party
- 6 In the absence of any such agreement, express or implied, the property of the firm is deemed to include:
 - a) All property, rights and interests which have been brought into the common stock for the purposes of the partnership by individual partners, whether at the commencement of business or subsequently added to it.
 - b) Those acquired in the course of business with the money belonging to the firm
 - c) The goodwill of the business
 - d) All of the above

- 7 _____ has a right to take part in the conduct and management of the business?
- Every partner
 - Sub-partner
 - Partner by holding out
 - Substituted partner
- 8 Every partner, whether active or dormant, has a right of free access to:
- All accounts of the firm only.
 - Full information of all things affecting the firm.
 - Both of above.
 - None of above.
- 9 A partner can claim interest on capital:
- If there is loss
 - If there is profit
 - If there is profit and there is an agreement to pay it
 - None of the above
- 10 Which of the following is not a right of partner(s)?
- Every partner has right to continue in the partnership and not to be expelled from it.
 - A partner has power to act in an emergency for protecting the firm from loss.
 - Every partner is entitled to share in the profits equally.
 - Every partner is entitled to introduction of new partner into the firm without consent of other partners.
- 11 Under the provisions of the Partnership Act, 1932, which of the following statements is NOT correct?
- The relation of partnership arises from contract and not from status
 - Goodwill of the business is regarded as the property of the firm
 - Nature of business can be changed with the consent of majority of the partners
 - A dormant partner has a right to inspect and copy any of the books of the firm
- 12 A contract between partners of a firm determining the mutual rights and duties of the partners may be varied by taking consent of:
- all partners of the firm whether express or implied
 - all partners of the firm only through express agreement
 - majority partners of the firm whether express or implied
 - majority partners of the firm only through express agreement

- 13 Farooq Brothers (FB) is a trading firm having five partners. FB is engaged in the business of imported electronic equipment. Under the mutual agreement of all the partners, two partners Farooq and Zohaib share the responsibility of managing the firm's business.

FB normally imports washing machines and air conditioners only. Farooq has been evaluating the option to import electric induction cookers due to huge demand on account of gas shortages. Farooq shared his plan with Zohaib, who objected on the basis that the gas shortage is a temporary problem.

Which of the following statements is NOT true?

- a) Farooq can import induction cookers if Zohaib gives consent
 - b) Farooq can import induction cookers if any other partner gives consent
 - c) Farooq can import induction cookers if majority partners give consent
 - d) Farooq can import induction cookers if all the partners give consent
- 14 In the partnership firm, Marble Resorts (MR), with Salman and Yasir as partners, an incident occurred during a corporate event on 1 August 2025. The cinematic projector for displaying documentaries developed a fault. Salman promptly purchased a replacement projector worth Rs. 500,000 using his personal credit card. His action successfully resolved the emergency, resulting in MR earning a profit of Rs. 150,000 from the event. Additionally, a five-year contract was secured with the client for hosting future corporate events.

On 1 September 2025, Yasir attempted to reimburse Salman from MR's bank account. However, Salman not only sought reimbursement for the projector's cost but also for the credit card charges of Rs. 12,500. Further, he demanded compensation for his extraordinary efforts.

Under the Partnership Act, 1932, determine the maximum amount that Salman can claim from MR.

- a) Rs. 500,000
 - b) Rs. 502,500
 - c) Rs. 512,500
 - d) Rs. 515,000
- 15 Nadir, Rehan and Saqib signed a partnership agreement on 5 March 2020 stipulating a profit-sharing ratio of 50:25:25. Nadir has been the only partner involved in managing the firm's business. Subsequent to the agreement, the firm's profits were distributed annually among the partners in the ratio of 70:15:15, a practice which neither Rehan nor Saqib opposed. However, due to an extra-ordinary increase in the current year's profit, Saqib highlighted the need to abide by the profit-sharing ratio of 50:25:25 as stipulated in the signed partnership agreement to which Nadir disagrees.

Under the Partnership Act, 1932, which of the following statements is correct with respect to the profit-sharing ratio?

- a) The ratio of 70:15:15 cannot be changed without the consent of all the partners
 - b) The ratio of 50:25:25 may be enforced through legal action against Nadir
 - c) The ratio can be changed to 50:25:25 with the consent of majority of the partners
 - d) The ratio can be changed by Nadir being the only partner managing firm's business
- 16 A general duty of a partner under the Partnership Act, 1932 that cannot be changed by agreement among the partners, is the duty of each partner to:
- a) carry on business to the benefits of the general public
 - b) indemnify the firm for wilful neglect in the conduct of the firm's business
 - c) account for personal profits derived from the use of the firm's property
 - d) render true accounts of the firm to other partners or their legal representatives

- 17 Aqib and Usama are partners in Tennis Clinics (TC) whose operations are managed by Usama. On 1 August 2024, a vehicle was purchased for Rs. 5 million from an authorized dealer and the purchase price was paid through a cheque from TC's bank account that was signed by Usama. On the same day, the vehicle was delivered directly to Usama's home. Since Usama purchased the vehicle for his personal use, he recorded himself as a debtor for Rs. 5 million in TC's books.

Under the Partnership Act, 1932, would the vehicle be considered as TC's property?

- a) Yes, because Usama purchased the vehicle on behalf of TC
- b) Yes, because the vehicle was purchased using TC's funds
- c) No, because Usama clearly intended to use the vehicle for personal purposes
- d) No, because Aqib's consent was not taken before the vehicle was purchased

ANSWERS

1	c)	The partners are entitled to interest on capital only if there is provision thereof in the partnership contract.
2	c)	The nature of business can only be changed unanimously by all the partners.
3	d)	The shares are deemed to be partnership property. Any property purchased with partnership money without other partners consent will be deemed to be partnership property.
4	c)	It is the duty of every partner to use the property of the firm exclusively for the purposes of the business of the firm.
5	b)	Where a partner makes for the purpose of the business, any payment or advance, he is entitled to interest on it @ 6% per annum or as agreed upon.
6	d)	All of the above are property of the firm.
7	a)	Every partner.
8	c)	The partners have both rights.
9	c)	If there is profit and there is an agreement to pay it
10	d)	Consent of all partners is required.
11	c)	Nature of business can be changed with the consent of majority of the partners
12	a)	all partners of the firm whether express or implied
13	b)	Farooq can import induction cookers if any other partner gives consent
14	d)	Rs. 515,000
15	a)	The ratio of 70:15:15 cannot be changed without the consent of all the partners
16	d)	render true accounts of the firm to other partners or their legal representatives
17	c)	No, because Usama clearly intended to use the vehicle for personal purposes

STICKY NOTES**General duties of the partners (not subject to contract)**

1. Duty to carry on business to the the greatest common advantage
2. Duty to be just and faithful
3. Duty to render true accounts
4. Duty to provide full information
5. Duty to indemnify for loss caused by fraud

Additionally, mutual rights and duties may be determined by contract between the partners, either expressly or impliedly, including the agreement in restraint of trade.

Right and duties relating to the conduct of the business (subject to contract)

1. Right to take part in the conduct of the business
2. Duty to attend diligently to his duties
3. Decision Making / Right to be consulted (Majority / Unanimous)
4. Right to have access to the books

Mutual rights and obligations (in absence of contract)

1. No remuneration
2. Equal sharing in profits (and losses)
3. No interst on capital (even if agreed, interst on capital is to be paid only out of profits)
4. Interst @6% on loan from partner to the firm
5. Right to be indemnified for lawful and proper expenses incurred
6. Duty to indemnify the firm for wilful neglect

Duty to account for and pay personal profits to firm (subject to contract)

1. Derived from any transaction using firm name or connection of the firm
2. Derived from competing business (without consent of other partners)

Rights of partners remain same after any change in firm unless otherwise agreed.
Rights and obligations (in absence of contract)

Property of the firm (unless there is contrary intention) includes:

1. All property originally brought into the common stock of the firm
2. All rights or interest in the property originally so brought
3. All property acquired, by purchase or otherwise, by or for the firm and all rights and interest in any property so acquired; and
4. Goodwill of the business of the firm.

Subject to contract between the partners, it is the duty of every partner to use the property of the firm exclusively for the purposes of the business.
Rights and obligations (in absence of contract)

AT A GLANCE

SPOTLIGHT

STICKY NOTES

RELATIONS OF PARTNERS TO THIRD PARTIES

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Authority and Liabilities of a Partner and the Firm
- 2 Minors Admitted to the Benefits of Partnership
- 3 Objective Based Q&A

STICKY NOTES

AT A GLANCE

A partner is agent of all the other partners for the purpose of business of the firm and, therefore, a partner is liable jointly and severally for the debts of the firm.

A partner may have actual authority or implied authority to enter into contracts on behalf of the firm. Implied authority arises only in relation to ordinary business of the firm. The Partnership Act, 1932 specifies certain acts which are not included in the implied authority of a partner unless there is any usage or custom of trade otherwise. The partners may extend or restrict the implied authority of one or more partners by partnership contract. A partner also has authority to do all such acts for protecting the firm from loss as would be done by person of ordinary care, in case of emergency.

An admission or representation made by any partner in the ordinary course of business and relating to the affairs of the firm is evidence against the firm. Similarly, a notice to acting partner relating to the affairs of the firm operates as a notice to all the partners. The firm is liable to third parties for wrongful acts of a partner or for misapplication of money or property by the partner subject to certain conditions.

A minor may be admitted to benefits of partnership i.e. he would not be personally liable and only his share is liable for acts of the firm. He does not have status and all rights of a partner in the firm.

1 AUTHORITY AND LIABILITIES OF A PARTNER AND THE FIRM

1.1 Partner to be Agent of the Firm [Section 18]

A partner is the agent of the firm for the purpose of the business of the firm.

► Example 01:

Ali, Bilal and Chand are partners in a business. Dawood an outsider deals with the firm through Ali. As between Ali and Dawood, Ali is the principal. But as between Ali, Bilal and Chand, Ali is also the agent of Bilal and Chand. As such Ali, Bilal and Chand can all sue Dawood. Dawood can also sue Ali, Bilal and Chand. Furthermore Ali is accountable to Bilal and Chand because he is an agent of Bilal and Chand.

Mutual agency relationship in case of a firm of Ali, Bilal and Chand

An act by:	Ali	Bilal	Chand
Who is an agent	Ali	Bilal	Chand
The contract is binding on:	Ali, Bilal and Chand		

1.2 Authority of Partners

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

1.2.1 Actual Authority

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

► Example 02:

Aftab, Badal and Chand started a business of trading in light bulbs together under the name Solar Traders. They decided to share profits equally and the business will be managed by Aftab only. On first day, on behalf of Solar Traders, Aftab ordered 100 light bulbs on credit from Tanveer, a wholesaler of electric products. Aftab had actual authority to enter into contract with Tanveer.

1.2.2 Implied authority [Section 19]

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

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

- Buying and selling good, on behalf of the firm and giving valid receipts for them
- Receiving payments of the debts due to the firm and giving valid receipts or discharge for them
- Contracting debts and paying debts on behalf of the firm
- Settling accounts with persons dealing with the firm
- Employing servants for the partnership of the firm
- Drawing cheques, accepting or endorsing bills of exchange and promissory notes in the name of the firm
- Pledging movable property of the firm
- Suing on behalf of the firm and defending suits in the name of the firm

► **Example 03:**

Jazib and Ghalib are partners in a firm. The partnership deed restricts the implied authority of Jazib to borrow money in the name of firm. Jazib borrows money from Sahar Bank Limited (SBL). The firm of Jazib and Ghalib is liable to SBL as SBL did not know of restriction.

► **Example 04:**

Azam and Babar are partners. Azam with the intention to bind the firm, goes to a shop and purchases certain articles on behalf of the firm which are generally used in the partnership business. Here firm will be liable for the price of the goods because Azam acted within his authority.

► **Example 05:**

Naima and Raima are partners in a cash business. Naima orders in firm's name and on the firm's letter-head to be supplied with two bags of wheat at her residence. The firm is not liable to pay because Naima's act in question is beyond the scope of her implied authority for which the firm cannot be bound.

► **Example 06:**

Imran and Kamran are working in partnership as chartered accountants. Sajid gives Rs 90,000 to Imran for investment in some good security. Imran does not tell anything to his co-partner Kamran about it and misappropriates the money. Sajid files a suit on the firm for the recovery of his Rs 90,000. Sajid will not succeed. The firm cannot be made liable because it is no part of the ordinary business of chartered accountants to receive money to be invested at their direction. Of course an action will lie against Imran individually.

► **Example 07:**

Adeel, a partner in the firm of chartered accountants, borrows money and executes a promissory note in the name of the firm. The other partners won't be liable on the note because it is not part of the ordinary business of chartered accountants to draw, accept or indorse a promissory note.

1.2.3 Statutory restrictions on the implied authority of a partner [Section 19]

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

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

- Arbitration: Submit a dispute relating to the business of the firm to arbitration
- Bank account: Open a banking account on behalf of the firm in his own name
- Compromise: Compromise or relinquish any claim or portion of a claim by the firm
- Withdrawal of suit: Withdraw a suit or proceeding filed on behalf of the firm
- Acceptance of liability: Admit any liability in a suit or proceeding against the firm
- Acquisition: Acquire immovable property on behalf of the firm
- Transfer: Transfer immovable property belonging to the firm
- Partnership: Enter into partnership on behalf of the firm.

► **Example 08:**

Amjad, Babar and Zahid are partners. Zahid an active partner signed a land transfer deed on behalf of firm (without authorisation from other partners) to improve cash flows of the firm. Such transfer is not valid, a partner does not have implied authority to transfer immovable property belonging to firm.

1.2.4 Restriction of Implied Authority by Contract [Section 20]

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

► *Example 09:*

The partnership deed of a trading firm placed a restriction on the authority of the partners to sell the goods. One of the partners sells the good. If the third party did not know of the restriction the firm is liable toward such third party and if the third party know of the restriction the firm will not be liable.

1.2.5 Extension of Implied Authority by Contract [Section 20]

The partners in a firm may, by contract between partners, restrict the implied authority of any partner. When a partner exceeds his authority, that is act outside his actual authority, the other partners may ratify such unauthorized act and thus partners can remove any questions about whether implied authority existed or whether the other party knew that the partner did not have the actual authority to make the contract.

► *Example 10:*

Sajid, Majid and Wajid are partner in a firm. By an agreement, they decided that no partner would have authority to sell goods of the firm above the value of Rs. 50,000/- without the consent of other partners. Sajid sold goods worth Rs. 70,000/- on credit without consulting other partners. The customer defaulted. Sajid has to compensate the firm for loss caused due to him exceeding his authority. However, Majid and Wajid may ratify his act and in that case the firm shall bear the loss.

1.2.6 Partner's Authority in an Emergency [Section 21]

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

► *Example 11:*

Wajid, Yasir and Zahid are partner in a firm. By an agreement, they decided that no partner would have authority to sell goods of the firm above the value of Rs. 50,000/- without the consent of other partners. Owing to a sudden slump in the market, the prices crashed. Yasir, in order to save the firm from loss, sold all the stock worth Rs. 5,000,000 without consulting any other partner. Such act would bind the firm.

1.2.7 Mode of Exercising Authority [Section 22]

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

1.3 Liability of Partner and Firm**1.3.1 Effect of admissions by a partner [Section 23]**

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

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

► *Example 12:*

One of the partner of XYZ firm admitted in court that the firm has been involved in tax evasion. Such admission by one partner is evidence against the firm.

1.3.2 Effect of notice to an active partner [Section 24]

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

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

► *Example 13:*

Sajid, Abid and Majid are partners in a firm. Abid and Sajid are active partners and Majid is sleeping partner. A legal notice was served by one of their customer to Sajid. Sajid did not tell other partners. When the customer takes further legal action, Abid and Majid cannot plead ignorance of the notice as it was served on one of active partners.

► *Example 14:*

Sajid, Abid and Majid are partners in a firm. Abid and Sajid are active partners and Majid is sleeping partner. A legal notice was served by one of their customer to Abid for alleging that Abid committed the fraud with the customer in ordinary course of business. The notice is not enough. The notice must be served to partner who did not commit the fraud.

1.3.3 Joint and Several Liability [Section 25]

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

► *Example 15:*

Babar, Saleem and Dawood are in partnership. Babar purchases equipment for the partnership business. The equipment itself cost Rs. 20,000 and the installation costs were Rs. 15,000. There is a dispute with the supplier, and the firm refuses to pay the installation costs. The supplier decides to sue for the unpaid Rs. 15,000.

If the supplier succeeds in his action, all the partners will be liable jointly for the Rs. 15,000 liability.

If the dispute goes to court, the supplier can either:

- sue all three partners jointly, or
- he can sue any individual partner, Babar, Saleem or Dawood. If he chooses to sue Babar personally, and succeeds with his claim, Babar will be required to pay the supplier. It will then be for Babar to obtain from his partners Saleem and Dawood their share of the liability that they now owe.

1.3.4 Liability of the firm for wrongful acts of a partner [Section 26]

Where by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, loss or injury is caused to any third party or any penalty is incurred the firm is liable to the same extent as the partner.

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

► *Example 16:*

SBMQ is a partnership firm in which Shabbir, Bashir, Muneer and Qadeer are partners. Shabbir, the only active partner, knowing the goods were stolen ones, purchased and sold them in the name of the firm. All the partners (including sleeping partners) are liable to the owner of goods for the 'tort of conversion'.

1.3.5 Liability for Misapplication by Partners [Section 27]

The firm is liable to make good the loss where:

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

► *Example 17:*

Arif, Basit and Qasim are partners in an instalment sales business. Arif asked one of the customer to deposit a security worth Rs. 100,000 in order to purchase goods on instalments. Subsequently, Arif misappropriated the security and absconded. The other partners will be liable for the misappropriation as security was given to Arif while he was acting within his scope of his apparent authority.

► *Practice Question 01:*

Saima, Ahsan and Bari are partners in a law firm. Bari received an advance of Rs. 150,000 from one of firm's clients for defending a law suit. Bari, without proceeding on client's request and informing other partners about the receipt of the amount, utilised the money for personal use. Discuss the rights and liabilities of partners and that of the firm with regard to Bari's act.

► *Solution:*

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

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

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

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

► *Practice Question 02:*

The authority of a partner to bind the firm is called "Implied Authority." List the acts which cannot be exercised by a partner as his implied authority.

► *Solution:*

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

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

► *Practice Question 03:*

Describe the liabilities of:

- a partner for the acts of the firm.
- the firm for wrongful acts of a partner.
- the firm for misapplication of money or property by a partner.

► *Solution:***Part (a) Liability of a partner for acts of the firm**

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

Part (b) Liability of the firm for wrongful acts of a partner

Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable to the same extent as the partner.

Although the firm is liable to the third party for the loss caused to him (third party) by fraud committed by a partner, but, as between the partners, the same must be borne by the partner committing the fraud and cannot be shared among all the partners.

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

The firm is liable to make good the loss where:

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

► *Practice Question 04:*

Asghar, Babar and Careem are carrying on agricultural business in partnership. They have agreed to share the profits in the ratio of 4:3:2 respectively. Careem is not liable for the losses of the firm. In February 2026, the partnership incurred substantial losses due to heavy floods in the area and the partnership assets are not sufficient to meet the firm's liabilities. A number of creditors have filed a suit for recovery of the amount from Careem. Under the provisions of the Partnership Act, 1932 analyse and comment.

► *Solution:*

Every partner is liable jointly with all the other partners and also severally to third parties for all acts of the firm done while he is a partner. A partner may not share in the business losses, yet his liability towards outsiders shall be unlimited. If the partnership assets are insufficient to meet the firm's liabilities, Careem would have to repay the amount personally. However, Careem can recover the amount which he is called upon to pay to the creditors from Asghar and Babar.

► *Practice Question 05:*

In 2014, Majid and Ebad started a business of sale and repair of vehicles under the name of ME Motors (MEM). Majid sold one of the vehicles which came for repair to Zahid for Rs.10 million. Zahid on finding out that Majid did not have the legal title of the car sued MEM. Under the provisions of the Partnership Act, 1932 discuss who would be liable for damages in the above situation.

► *Solution:*

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

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

► *Practice Question 06:*

Taqi, Saqib and Abrar are partners in a trading firm. By an agreement among themselves they decided that no partner shall have the authority to buy or sell goods beyond the limit of Rs. 20,000 without the consent of other partners. Ignorant of this restriction, Wajid sold goods worth Rs. 45,000 to Saqib who did not consult with the other partners. In view of the provisions of the Partnership Act, 1932 explain whether the firm and its partners are liable to Wajid under the above circumstances.

► *Solution:*

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

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

► *Practice Question 07:*

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

► *Solution:*

The firm cannot be made liable since the receiving of money by Sarim for investment purposes is not in ordinary course of a lawyer's business and accordingly, is beyond the scope of his implied authority as a partner.

► *Practice Question 08:*

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

► *Solution:*

A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm. Hence, Faizan cannot be held responsible for misconduct.

► *Practice Question 09:*

Under the provisions of the Partnership Act, 1932 list down any four restrictions imposed on the implied authority of a partner.

► *Solution:*

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

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

► *Practice Question 10:*

Nomi, Sultan and Behram have decided to establish a partnership business to run a departmental store. The partnership business was started in January 2026. In March 2026 Behram received an overdraft of Rs. 100,000 from the partnership's bank. He informed the bank that the money would be used to construct a new cash counter in the departmental store. However, he used the money to pay for his wife's Dubai trip. Advise Nomi, Sultan and Behram about their rights and liabilities and that of the firm in relation to the above transaction.

► *Solution:*

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

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

However, Behram would be personally liable to the other partners for Rs. 100,000 and shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

► **Practice Question 11:**

Doves & Co. (DC) is a partnership firm engaged in the selling of various species of pet birds. The firm's operations are managed by two partners namely Faizan and Usama.

In February 2023, Usama attended an exhibition where he met Sarah, a well-known animal enthusiast and social media influencer. Usama requested Sarah to join DC as a partner at a monthly remuneration of Rs. 100,000. Sarah agreed and joined DC as a partner on 6 March 2023. Under the provisions of the Partnership Act, 1932, describe Sarah's acts which would bind DC. Also identify the restrictions on Sarah's implied authority as a partner.

► **Solution:**

While Sarah is DC's partner, DC shall be bound by Sarah's acts done while:

- Carrying on, in the usual way, business of the kind carried on by DC i.e. selling of various species of pet birds;
- Taking actions, in an emergency, to protect DC from any potential loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances;
- Acting in DC's name, or in any other manner expressing or implying an intention to bind DC;
- Acting on behalf of DC which falls within Sarah's implied authority, unless the person with whom she is dealing knows of the restriction or does not know or believe Sarah to be DC's partner.

Restrictions on Sarah's implied authority as DC's partner

In the absence of any usage or custom of trade to the contrary, Sarah's implied authority as DC's partner, would not empower her to:

- submit a dispute relating to DC's business to arbitration
- open a banking account on behalf of DC in her own name
- compromise or relinquish any claim or portion of a claim by DC
- withdraw a suit or proceeding filed on behalf of DC
- admit any liability in a suit or proceeding against DC
- acquire immoveable property on behalf of DC
- transfer immoveable property belonging to DC
- enter into partnership on behalf of DC

► **Practice Question 12:**

Under the provisions of the Partnership Act, 1932, list the restrictions imposed on the implied authority of a partner.

► **Solution:**

In the absence of any contrary usage or custom of trade, the following are the restrictions imposed on the implied authority of a partner:

- i. submit disputes relating to the firm's business to arbitration;
- ii. open a bank account on behalf of the firm in his own name;
- iii. compromise or relinquish any claim or portion of a claim by the firm;

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

► *Practice Question 13:*

Squash Management (SM) specializes in organising large-scale destination events, managing all aspects including travel, accommodation and event venue management such as catering and decoration arrangements.

In August 2024, SM paid an advance of Rs. 100,000 to Farhan for purchasing a vending machine from Karate Transports (KT) for office use. KT is a partnership firm with two partners, Haroon and Farhan. When the machine was not delivered within agreed time, SM contacted KT and learned that, under the partnership agreement, Farhan was not authorised to sell KT's assets and that Farhan spent the advance on personal expenses without informing KT. Under the Partnership Act, 1932, discuss the remedies available to SM, if any.

► *Solution:*

SM has the right to seek remedies against KT because Farhan acted within his apparent authority as a partner of KT's firm. Since the vending machine is a movable property, the sale of such a machine generally falls within the implied authority of Farhan being KT's partner. Although the partnership agreement restricted Farhan's implied authority to sell KT's assets, SM was unaware of this restriction when the contract was made. As a result, KT is bound by Farhan's actions concerning the sale of the vending machine.

Since Farhan, acting under his apparent authority, received an advance payment of Rs. 100,000 from SM and misappropriated it for personal use, SM can claim compensation from KT for the misapplied funds. KT, as the liable party, must compensate SM for the loss caused by Farhan's actions.

Furthermore, since every partner is liable jointly and severally with all the other partners for the acts of the firm done while he is a partner, Haroon would also be jointly and severally liable towards SM, therefore, SM may hold Haroon and Farhan jointly or severally liable to recover the loss.

2 MINOR ADMITTED TO THE BENEFITS OF PARTNERSHIP

2.1 Introduction [Section 30]

Since a minor is not capable of entering into a contract, a contract by or with a minor is void ab-initio i.e. from the beginning. Since partnership is formed by a contract, a minor cannot enter into a partnership agreement but with the consent of all the partners for the time being a minor may be admitted to the benefits of existing partnership.

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

► **Example 26:**

Musharaf enters into a partnership with Karzai, a minor, for the benefit of Karzai. The partnership is not valid. There must be a partnership in existence before a minor can be admitted to its benefits.

2.2 Position of a minor before attaining majority [Section 30]

2.2.1 Rights

The minor admitted to benefits of partnership has right:

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

2.2.2 Limited liability

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

2.2.3 Disabilities

The minor admitted to benefits of partnership:

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

2.3 Position of a minor on attaining majority [Section 30]

2.3.1 Decision to Continue or Leave

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

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

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

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

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

- to become; or
- not to become a partner in the firm.

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

► **Example 27:**

Celina, a minor, was admitted to the benefits of a firm consisting of Angelina, Jennifer and Julia, three adult partners. Within six months after attaining majority, Celina gives public notice that she has become a regular partner. But Julia and Jennifer refuse to take her. Their refusal is not justified. Celina becomes a full-fledged partner as she has elected to become a partner within six months of her attaining majority, and other partners cannot refuse to take her as a partner.

► **Example 28:**

A, B and C, partners of a firm, admitted D, a minor to the benefits of the firm. D attained majority on 6th March 2007. He became aware of the fact that he has been admitted to the benefits of the firm on 16th August 2007. Being undecided about the situation he preferred to wait for some time before announcing his decision about joining the firm.

On 27th February 2008, the firm suffered heavy losses due to an unforeseen event. A, B and C informed D that on account of such losses, his capital in the firm has been reduced by 40%. Discuss the rights and liabilities of D in the above situation.

D becomes a partner in the firm after 6 months of the date on which he became aware of the fact that he was entitled to the benefits in the firm i.e. on 16th February 2008. Therefore, he shall be liable to share the losses of the firm, incurred thereafter. His failure to announce his decision will have no bearing on the situation.

2.3.2 Elected to become a partner

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

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

2.3.3 Elected not to become a partner

Where such minor elects not to become a partner:

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

► **Practice Question 14:**

Rustum, Mahmood and Wali are partners in a firm. Wali wants to admit his sixteen-year-old son Raghieb as a new partner.

Under the provisions of the Partnership Act, 1932 can Raghieb be admitted to the partnership business? State the rights, liabilities and limitations of Raghieb, if he is admitted to the partnership business.

► **Solution:**

Partnership is created by a valid contract. Since a minor is not capable of entering into a contract, a contract by or with a minor is void ab-initio. Accordingly, a minor cannot be a partner in the firm.

However, a minor can be admitted to the benefits of partnership with the consent of all the partners for the time being. i.e. before admission of a minor there must be an existence of partnership.

Rights, liabilities/limitations of Raghieb (minor):

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

Rights:

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

Liabilities:

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

Limitations:

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

► **Practice Question 15:**

Wasim, Ahmed and Salman are partners in a firm. Salman died in a plane crash. Wasim and Ahmed agreed to admit Salman's minor son, Noman, to the benefits of the Partnership. Noman attained majority on 6 June 2016. He became aware of the fact that he had been admitted to the benefits of the Partnership on 16 July 2016.

Being undecided about joining the firm as a partner, he preferred to wait for some time.

On 10 January 2017, the firm suffered heavy losses due to a fire in one of its factories. Wasim and Ahmed informed Noman that on account of losses, his entire capital has been wiped off and he is required to contribute Rs. 100,000 to enable the firm to settle its liabilities.

Under the provisions of the Partnership Act, 1932 analyse the above situation and advise whether Noman would be regarded as a partner in the firm. Also state his liabilities towards the losses, if any.

► **Solution:**

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

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

If Noman fails to give such notice he shall become a partner on the expiry of the above six months. i.e. 15 January 2017 in the given case. Since up to 10 January 2017, when the firm suffered heavy losses, Noman's status in the firm had not been determined, i.e. whether he is or is not a partner in the firm, Noman would not be liable to pay additional Rs. 100,000 and would only be liable up to the extent of his share in the firm.

► **Practice Question 16:**

Masoom, Rahul and Naila are partners in a trading firm. In 2016, they borrowed Rs. 500,000 from Ishtiaq for purchasing a shop in Multan. The loan was agreed to be repaid in two years' time. However, due to financial crises the loan could not be re-paid in time. For the purpose of settling the loan, Ishtiaq has offered Naila to admit his seventeen-year-old son Muneer to the partnership business. Under the provisions of the Partnership Act, 1932 discuss whether Muneer can be admitted to the partnership business. State Muneer's rights and liabilities if he is so admitted.

► **Solution:**

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

Rights and liabilities of Muneer (minor):

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

- Right to share property and profits of the firm as agreed by the partners.
- Right of inspecting and taking copies of accounts of the firms ONLY.
- Right not to be adjudged insolvent.
- Personally not liable to third parties for the debts of the firm i.e. limited liability. His share is liable for the acts of the firm.

► **Practice Question 17:**

- a) Raheel, Samina and Umair have agreed to constitute a partnership for carrying on a business of printing study text for CA students in Peshawar. Raheel wants to specify the rights and duties of partners in the partnership agreement so that these can be changed with mutual consent of all the partners whereas Samina and Umair do not consider it necessary and believe that the implied authority may be extended to bind the firm whenever required.

Under the provisions of the Partnership Act, 1932 list:

- i. the general duties of partners which cannot be modified by an agreement amongst them.
- ii. the restrictions imposed on the implied authority of a partner in the absence of any usage or custom of trade.

- b) In the above partnership business, assume Umair is a minor who has been admitted to the benefits of the partnership with the consent of Raheel and Samina.

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

► **Solution:****Part (a) (i) General duties of partners:**

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

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

Part (b) (ii) Restrictions on the implied authority:

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

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

Part (b) Position of a minor before attaining majority:

The rights and disabilities of Umair before attaining majority are as follows:

Rights:

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

Disabilities:

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

► **Practice Question 18:**

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

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

► **Solution:****Admittance of minor as a partner:**

By giving notice of her willingness to be a partner in the firm to the existing partners, Laila would not become a partner in the firm.

In order to be a partner, Laila may give a public notice that she has elected to become a partner in the firm and such notice may be given at any time within six months of her attaining majority i.e. up to 26 September 2020, or her obtaining knowledge that she has been admitted to the benefits of partnership i.e. 20 October 2020, whichever date is later. And such public notice shall determine her position as regards the firm.

If Laila fails to give public notice till 20 October 2020, she will become a partner in the firm on the expiry of the said six months.

Laila's liability with regard to firm's debts:

Laila would be personally liable to third parties for all debts of the firm from the date she was admitted to the benefits of partnership i.e. 26 March 2019.

► **Practice Question 19:**

On 30 June 2021, Noman, Salim, Ahmed and Sana entered into a partnership for carrying on business of manufacturing and export of denim fabrics under the name and style 'Damask Traders' (DT).

At the time of commencement of partnership, Noman disclosed to other partners his interest in family business of export of velvet fabrics. Due to his connections with foreign buyers, Noman brought in many export orders for DT. Salim handled operations and ensured timely delivery of orders to customers.

Being the consultant of DT, consider the following matters under the Partnership Act, 1932:

- On 5 September 2022, a meeting was held to discuss the financial performance of DT for the year ended 30 June 2022. Following matters were discussed in the meeting:
 - Profit for the year was determined after accruing Salim's salary of Rs. 100,000 per month for running DT's operations. Noman found this unjustified and demanded an equivalent salary for his efforts to establish DT's business. Discuss the validity of Noman's viewpoint.

- ii. 20% of the export orders were combined orders for denim and velvet fabrics which were jointly fulfilled by DT and Noman's family business. Salim argued that 50% of the velvet business's profits should be paid to DT. Comment on the validity of Salim's argument.
 - iii. Ahmed informed that he had paid Rs. 900,000 from his personal bank account to a supplier on 31 January 2022 due to non-availability of cash in DT's bank account. On 31 May 2022, the amount was paid back to Ahmed. He demanded Rs. 27,000 as profit which he would have earned if the funds were maintained in his bank account. Evaluate the validity of Ahmed's demand.
 - iv. During the meeting, Noman stated that since he had brought most of the orders for DT, remaining partners cannot use the brand 'Damask Traders', if he decides to leave the partnership. Discuss the validity of Noman's statement.
- b) On 15 August 2021, Sana died in a car accident and her seventeen-year old daughter Sarah was admitted to the benefits of DT. On 8 September 2022, Sarah is to celebrate her eighteenth birthday.

Advise Sarah regarding her rights and liabilities in respect of DT on attaining the age of majority.

► **Solution:**

Part (a) (i)

Noman finding remuneration accrual unjustified indicates that it was not in accordance with the contract terms agreed between partners.

Under the Partnership Act, 1932 a partner is entitled to receive remuneration for taking part in conduct of business, only if it is agreed by all the partners. Therefore, Salim can get salary for handling DT's operations subject to consent of all the partners.

Further, Noman can also get salary for establishing DT's business, subject to consent of all the partners.

Part (a) (ii)

DT is a newly established business and it is clear that instead of using DT's name or business connections, Noman is using his own family business goodwill to establish DT's reputation. Under the Partnership Act, 1932, Noman would have been liable to pay the profits derived by himself to DT, if:

- the businesses were of same nature or competing with each other. Trading in denim fabrics is entirely separate from dealing in velvet fabrics, it is neither of same nature nor competes with each other.
- there exists a contract between the partners to share personal profits. Noman had disclosed his interest in family business dealing with velvet fabrics at commencement of partnership but there was no contract to share profits earned by him.

Due to the abovementioned reasons, Salim's argument is invalid and Noman and his family are not liable to share velvet business's profits with DT.

Part (a) (iii)

Subject to contract between the partners a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of 6% per annum. Ahmed is entitled to receive interest amount of Rs. 18,000 ($900,000 \times 6\% \times 4 \div 12$) only, as he made the payment beyond the firm's capital irrespective of the fact that the actual profit offered by the bank would have been Rs. 27,000.

Part (a) (iv)

Subject to contract between the partners, the property of the firm includes the goodwill of the business. Since there was no earlier contract between the partners as to treatment of goodwill, Noman's claim on goodwill of the firm is not valid.

Part (b)

Sarah has to decide whether or not she wants to become a partner and such decision has to be taken by her within six months from the date of attaining majority i.e. by 7 March 2023.

If Sarah decides not to become DT's partner:

Sarah will have to give public notice of her intention not to become DT's partner by 7 March 2023 and in this scenario:

- her rights and liabilities shall continue to be those of a minor up to the date on which she gives public notice;
- her share shall not be liable for any acts of DT done after the date of public notice; and
- she shall be entitled to sue DT's partners for her share of property and profits.

If Sarah decides to become DT's partner:

Sarah will have to give public notice of her intention to become DT's partner by 7 March 2023 and in this scenario:

- her rights and liabilities as a minor continue up to the date on which she becomes a partner;
- she becomes personally liable to third parties for all acts of DT done since she was admitted to the benefits of partnership; and
- her share in the property and profits of DT shall be the share to which she was entitled as a minor.

Provided that, if she fails to give public notice as above, she shall become DT's partner on expiry of six months from the date of attaining majority.

► Practice Question 20:**Part (a)**

Granite Tiles (GT) is engaged in the business of designing and manufacturing tiles. Hakim was a partner at GT, and when he passed away in December 2022, his minor son Wasim was admitted to the benefits of GT.

Under the Partnership Act, 1932, provide guidance to Wasim concerning his rights and limitations pertaining to GT.

Part (b)

On 1 November 2023, Wasim will attain the age of majority, and he intends to become GT's partner.

Under the Partnership Act, 1932, state the course of action that Wasim should take to become GT's partner. Also, advise Wasim about his duties, mutual rights and liabilities, concerning GT after becoming a partner.

► Solution:**Part (a)**

The rights and limitations of Wasim as a minor admitted to the benefits of GT are as follows:

Rights

- Wasim has the right to a share of GT's property and profits, according to the terms agreed upon by the partners.
- He is entitled to access, inspect, and make copies of GT's accounts.

Limitations

- Wasim will not be considered as GT's partner.
- He cannot initiate legal action against the partners for profits or property unless he disconnects his relationship with GT.
- He is not entitled to access any of GT's books other than the accounts.

Part (b)**Actions to be taken by Wasim for becoming a partner in GT**

In order to become a partner in GT, Wasim must issue a public notice indicating his intention to become a partner within six months of attaining majority. The notice will establish his status as a partner in GT. If Wasim fails to issue this notice, he will automatically become a partner in GT six months after reaching the age of majority i.e., on 1 May 2024.

Wasim's duties

After becoming a partner, Wasim is obligated to:

- carry on GT's business to the greatest common advantage;
- be just and faithful to the other partners in GT;
- render true accounts and full information of all things affecting GT to any partner or their legal representative;
- indemnify GT for any loss caused by his fraudulent conduct in the business.

Wasim's mutual rights and liabilities

Subject to the contract between the partners, the following are Wasim's mutual rights and liabilities:

- i. He has the right to participate in the conduct of the business;
- ii. He is obligated to attend diligently to his duties in the business;
- iii. He has the right to be consulted in case of disagreements over ordinary business matters, and in case of change to be made in the nature of GT's business;
- iv. He has the right to access, inspect, and copy any of GT's books;
- v. He is not entitled to receive remuneration for participating in the business;
- vi. He is entitled to an equal share of the profits and must contribute equally to any losses sustained by GT;
- vii. If he is entitled to interest on the capital he contributed, such interest shall be payable only from the profits;
- viii. If he contributes more money to the business than the capital amount initially agreed upon, he is entitled to interest on the additional amount @ 6% per annum;
- ix. GT shall indemnify him for payments made and liabilities incurred:
 - In the ordinary and proper conduct of the business, and
 - For act carried out in an emergency to protect the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances;
- x. He must indemnify GT for any loss caused by his wilful neglect in conducting GT's business; and
- xi. He is obligated to pay personal profits derived by him due to his association with GT or from any competing business carried on by him which is of the same nature as GT.

► **Practice Question 21:****Part (a)**

Surfing Athletics (SA), a partnership firm engaged in the business of manufacturing various types of sports equipment, is managed by its partners, Shahid and Wahaj. SA now wants to expand its business, and they have approached Mohsin primarily to arrange capital investment.

Mohsin is keenly interested in SA, due to the steep profit margins of SA's existing products. However, unfamiliar with SA's business practices and conduct, Mohsin is hesitant to join directly as a partner because he fears this might compromise his established reputation in the market. Mohsin discussed his concerns with SA's partners, and they have asked him to consider the following options for a prospective collaboration:

- i. Lend money to SA in exchange for an entitlement to receive a fixed profit share.
- ii. Invest capital into SA through his spouse, Saba, who would then become SA's partner.

Under the Partnership Act, 1932, identify the rights and duties, if any, of Mohsin and Saba separately under respective option to help Mohsin make an informed decision.

Part (b)

Assume that in (a) above, Mohsin invested capital in SA through his minor son, Aijaz, who was admitted to the benefits of SA in May 2024.

On 1 August 2024, Aijaz reached the age of majority. On 31 August 2024, Aijaz gave a public notice in the newspapers announcing that he has elected not to become SA's partner.

Under the Partnership Act, 1932, identify the rights of Aijaz with regards to SA before and after the issuance of the public notice.

► Solution:

Part (a)

The applicable rights and duties, of Mohsin and Saba, under respective options would be as follows:

(i) Mohsin's position as lender of money to SA

Investing money in SA in exchange for an entitlement to receive a fixed share in profit would make Mohsin a lender to the firm. In such situation, as Mohsin would not become a partner of the firm, therefore, he would have no specific duty or right under the Partnership Act.

(ii) Saba's position as a partner of SA

Subject to the contract between partners of SA, the following would be Saba's rights:

- i. Right to participate in the conduct of the business;
- ii. Right to be consulted in case of disagreements over ordinary business matters;
- iii. Right to decide for change in the nature of SA's business;
- iv. Right to access, inspect, and copy any of SA's books;
- v. Right to receive interest on the capital contribution, from SA's profits;
- vi. Right to be indemnified for payments made and liabilities incurred in the ordinary and proper conduct of SA's business;
- vii. Entitled to receive an equal share of profits;
- viii. Entitled to receive interest on the additional amount invested in SA @ 6% per annum;
- ix. Entitled to act in an emergency to protect SA from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

After becoming a partner of SA, the following would be Saba's duties:

- i. To carry on SA's business to the greatest common advantage;
- ii. To be just and faithful to the other partners of SA i.e., Shahid and Wahaj;
- iii. To render true accounts and full information of all things affecting SA to Shahid, Wahaj, or their legal representative;

- iv. To indemnify SA for any loss caused by her fraudulent conduct in the business;
- v. To be jointly liable with Shahid and Wahaj, and also severally liable, for all acts of SA done while she is a partner;
- vi. To attend diligently to her duties in the business;
- vii. To contribute equally to any losses sustained by SA;
- viii. To pay personal profits derived by her due to association with SA, or from use of SA's name, same nature as SA;
- ix. To indemnify SA for loss caused by her wilful neglect in conducting SA's business.

Saba's duties in respect of (vi) - (ix) would be subject to the contract between Shahid, Wahaj, and Saba, being the partners of SA.

Part (b) Rights of Aijaz before the issuance of the public notice

Aijaz, being a minor admitted to the benefits of SA, shall have the following rights:

- Right to receive such a share of SA's property and profits, according to the terms agreed upon by Shahid and Wahaj, being SA's partners.
- Entitled to access, inspect, and make copies of SA's accounts.

It is pertinent to mention that if Aijaz is admitted to the benefits of the SA while he is a minor, he would get the right to elect to become a partner after he reaches the age of majority. Till such time, he would not incur any personal liability in respect of SA.

Rights of Aijaz after the issuance of the public notice

Aijaz has given the public notice electing not to become a partner within the prescribed time i.e., within six months of having attained majority on 1 August 2024, therefore his position with regards to SA would be affected as follows:

- The rights of Aijaz shall continue to be of those of a minor up to the date of public notice i.e., 31 August 2024, and shall cease from there onwards;
- Aijaz's share of capital in SA shall not be liable for any debts or obligations of SA incurred after the date of public notice i.e., 31 August 2024;
- Aijaz would become entitled to sue Shahid and Wahaj for payment of his share of the property and profits pertaining to SA. In such case, Aijaz's share shall be determined by a valuation carried out under the applicable provisions of the Partnership Act, 1932.

1. OBJECTIVE BASED Q&A

- 1 The implied authority of a partner does NOT empower him to:
 - a) submit a business dispute to arbitration
 - b) withdraw a suit filed on behalf of the firm
 - c) open a banking account on behalf of the firm
 - d) all the above

- 2 A firm is liable to make good the loss of third party if:
 - a) one of the partners acting within his apparent authority misapplies the money or property received from a third party
 - b) one of the partners misapplies the money or property received from a third party by the firm in the course of its business while it is in the custody of the firm
 - c) by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, loss or injury is caused to any third party
 - d) all of the above

- 3 Hamid and Ismail are partners and work as legal advisors. Jehangir, an old client of theirs, gave a sum of money to Hamid while he was in the firm's premises for investment in some good security which Hamid misappropriated without knowledge of Ismail. Jehangir filed a suit against the firm for recovery of his money. Can Jehangir succeed?
 - a) Yes, as money was given to Hamid in firm's premises
 - b) No, as this transaction is not the ordinary business of legal advisors
 - c) Yes, as Hamid had previously carried out similar transactions with the knowledge of Ismail
 - d) Both b) and c)

- 4 Select the false statement.
 - a) On the death of a partner his heir becomes a partner.
 - b) Minor partner has no right to see secret books/records of the partnership.
 - c) A partner has no authority to submit a dispute relating to the business of the firm to arbitration.
 - d) A partner has no authority to enter into partnership with other firm on behalf of the firm.

- 5 Partner is
 - a) Only an agent of the firm
 - b) Only principal to other partners
 - c) An agent as well as principal
 - d) None of these

- 6 Mr. X, Mr. Y and Mr. Z are partners in a firm. By an agreement, they decided that no partner would have authority to sell goods of the firm above the value of Rs. 50,000/- without the consent of other partners. Owing to the sudden slump in the market, the prices crashed. One partner sold all the stock worth Rs. 500,000/- without consulting other partners. Is the partner liable for this breach of partnership agreement?
- a) The partner is liable as he is in breach of agreement
 - b) The partner is liable because he is acting without the consent of other partners
 - c) The partner is not liable as he is acting in order to save the firm from loss
 - d) The partner is not liable as he has express authority to do so
- 7 For the debts of the firm, partners are liable
- a) Jointly
 - b) Jointly and severally
 - c) Severally
 - d) Individually
- 8 A minor
- a) Can be a partner in the firm
 - b) Can be held personally liable when he is admitted in the partnership
 - c) Cannot be admitted to the benefits of the firm with the consent of all partners
 - d) Can be admitted to the benefits of the firm with the consent of all partners.
- 9 A minor admitted to the benefits of the firm, towards third party
- a) He is personally liable
 - b) He is liable for half of the loss
 - c) He is liable only up to his share in the firm
 - d) He has no liability at all
- 10 Mr. A, Mr. B and Mr. C are partners in an instalment sales business. Mr. A asked one of the customers to deposit a security worth Rs. 100,000/- in order to purchase goods on instalments. Subsequently, Mr. A misappropriated the security and absconded. Who will be liable for such loss?
- a) Mr. A and Mr. B will be liable to compensate the loss
 - b) No one is liable to compensate the loss
 - c) Mr. A is liable only to compensate the loss
 - d) All the partners are liable to compensate the loss

- 11 Restrictions on the partner by partnership deed is binding on third party provided
- Such restrictions are valid
 - Are according to the provisions of the partnership Act
 - Such restrictions have been imposed by mutual agreement.
 - Such restrictions are in the knowledge of third party
- 12 Mr. A tells Mr. B (Supplier) within the hearing of Mr. C (Partner) that he (Mr. A) is a partner in the partnership firm of Mr. C. Mr. C does not object to this statement of Mr. A. Later Mr. B supplies certain goods to Mr. A who pretends to act as partner with Mr. C. State the legal position
- Mr. C will not be held liable to pay the price
 - Mr. A will be held liable personally to pay the price
 - Mr. B cannot claim the price from Mr. C
 - Mr. C will be liable to pay the price.
- 13 On attaining majority, the minor partner has to decide within six months whether he shall continue in the firm or leave it. Where such minor elects to become a partner, he will be personally liable
- From the date when he attained majority
 - From the date when he gives public notice
 - Since the date of admission to the benefits of the firm
 - After the lapse of six months
- 14 Under the implied authority the partner may not
- Employ servants for the business of the firm
 - Pledge movable property of the firm
 - Buy movable property of the firm
 - Transfer immovable property of the firm
- 15 Kamran and Maria entered into a partnership to run a mobile shop. Kamran obtained a loan of Rs. 500,000 in the name of partnership for purchasing 20 mobiles for the shop's inventory. However, he used the loan proceeds to pay for his family's vacation in Bhurban. Subsequently, the partnership business went bankrupt. In this scenario:
- Kamran is severally liable for repayment of loan
 - Kamran and Maria are jointly liable for repayment of loan
 - Kamran and Maria are severally liable for repayment of loan
 - Kamran and Maria are jointly and severally liable for repayment of loan

- 16 Fluorine & Sons (FS) is a partnership firm in which Ali, Abid and Arif are partners. During a business trip in January 2022, they convinced a well-known businessman Haris to join FS. Haris agreed and joined FS as a partner.
- Recently, it has been revealed that last year Abid intentionally consigned poor quality goods to a customer while sending consignment on behalf of FS due to which the customer suffered a huge loss. Will Haris be liable to the customer for wrongful act of Abid?
- No, because Haris was unaware of Abid's act at the time of becoming a partner
 - No, because the act was carried out by Abid before Haris became a partner
 - Yes, because all the partners are jointly and severally liable to the customer
 - Yes, because Haris is considered as partner by estoppel (holding out) towards the customer
- 17 Which of the following statements is correct in the context of a minor admitted to the benefits of a partnership firm?
- His share in the partnership firm will not be liable for the acts of the firm
 - He can have such right on partnership's property as may be agreed upon
 - He cannot inspect accounts of the partnership firm
 - He shall be personally liable for the acts of the partnership firm
- 18 Starling Clinics (SC), an animal care clinic, is a partnership firm in which Zia and Sohail are partners. SC purchases medical equipment from Rizwan Medicals (RM).
- On 6 March 2023, Zia contacted RM to purchase an automatic wheelchair worth Rs. 900,000 for his disabled son and promised to make payment after three weeks. RM delivered the wheelchair. Sohail was not aware of the order placed by Zia.
- Can RM hold SC liable for Rs. 900,000 if Zia subsequently refuses to pay?
- Yes, because the wheelchair was purchased in the ordinary course of business
 - Yes, because SC is bound by the act of its partner Zia
 - No, because the wheelchair was purchased without Sohail's consent
 - No, because the wheelchair was not purchased in the ordinary course of business
- 19 Saima, Murtaza and Zahid are partners in Eagle Enterprises (EE), a bridal boutique. The operations of EE are run by Murtaza and Zahid. On 1 March 2023, one of EE's customers, Farah, paid an advance of Rs. 500,000 to Murtaza for 10 customised bridal dresses to be delivered on 6 March 2023. However, EE did not deliver the dresses on agreed date.
- On EE's default to deliver the dresses on time, Farah wants to send a legal notice to claim damages. In order to serve the notice to EE, Farah:
- may have the notice served to any of the three partners
 - may have the notice served to either Murtaza or Zahid
 - must have the notice served to Murtaza and Zahid
 - must have the notice served to Zahid

- 20 Under the Partnership Act, 1932, which of the following actions falls within the implied authority of a partner?
- a) Transferring immovable property of the partnership firm
 - b) Borrowing money on behalf of the partnership firm
 - c) Entering into a new partnership on behalf of the partnership firm
 - d) Purchasing immovable property on behalf of the partnership firm

- 21 Aqib and Haris are partners in Quadrilateral Sports (QS). Maaz placed an order to purchase 10,000 footballs from Aqib and paid an advance of Rs. 100,000 to him. Aqib neither informed Maaz about his partnership in QS nor did he inform Haris about Maaz's order and spent the advance on his personal expenses. When Maaz did not receive the order on agreed date, he investigated Aqib's background and found out that Aqib is a partner in QS.

Under the Partnership Act, 1932, can Maaz hold QS liable for the delivery?

- a) No, because Aqib had not informed Haris regarding Maaz's order
 - b) No, because Maaz was unaware of Aqib's partnership in QS upon purchase
 - c) Yes, because an act done by Aqib in the ordinary course of business binds QS
 - d) Yes, because QS is liable for the misapplication of payment by its partner
22. Zia, Zahid and Zeenat formed a partnership called Zee Traders (ZT) and agreed to share profits equally. It was mutually agreed that Zeenat would not participate in the business operations, and in case ZT incurs a loss, it would be shared equally by Zia and Zahid.
- Recently, a supplier named Soccer Textiles (ST) has filed a suit for the recovery of Rs. 5 million against all partners.
- Under the Partnership Act, 1932, can Zeenat be held liable by ST for payment?
- a) No, because Zeenat is a partner of ZT in profits only
 - b) No, because only Zia and Zahid share the losses equally
 - c) Yes, because Zeenat being ZT's partner is also severally liable for all acts of ZT
 - d) Yes, but Zeenat is liable only to the extent of her share in the profits

ANSWERS

1	d)	Implied authority of a partner does not empower him to all of the acts mentioned.
2	d)	A partner will be liable to third party in all of the situations mentioned.
3	b)	No, as this transaction is not the ordinary business of legal advisors
4	a)	Partnership is created by contract and not status or inheritance.
5	c)	There must exist a mutual agency relationship among partners. Mutual agency relationship means that each partner is both an agent and a principal.
6	c)	It is the duty of the partner to do all such acts for the purpose of protecting their firm from loss as would be done by a person of ordinary prudence, in his own case.
7	b)	The liability of all the partners is not only joint and several but is also unlimited.
8	d)	With the consent of all the partners for the time being a minor may be admitted to the benefits of partnership but cannot become a partner
9	c)	A minor's share is liable for the acts of the firm. But the minor is not personally liable for any such act as his liability is limited.
10	d)	The firm is liable to make good the loss means all the partners will be liable for the misappropriation as security was given to Mr. A while he was acting within the scope of his apparent authority.
11	d)	A restriction in partnership deed is effective only against the person dealing with the firm having knowledge of it.
12	d)	Mr. C will be liable to pay the price. Mr. C by keeping quiet had led Mr. B to believe that Mr. A is a partner.
13	c)	When minor elects to become a partner, he is personally liable since the date of admission to the benefits of the firm.
14	d)	It is the restriction on the implied authority of the partner that a partner cannot transfer immovable property of the firm without the express authority from the other partners.
15	d)	Kamran and Maria are jointly and severally liable for repayment of loan
16	b)	No, because the act was carried out by Abid before Haris became a partner
17	b)	He can have such right on partnership's property as may be agreed upon
18	d)	No, because the wheelchair was not purchased in the ordinary course of business
19	b)	may have the notice served to either Murtaza or Zahid
20	b)	Borrowing money on behalf of the partnership firm
21	b)	No, because Maaz was unaware of Aqib's partnership in QS upon purchase
22	c)	Yes, because Zeenat being ZT's partner is also severally liable for all acts of ZT

STICKY NOTES

A partner is the agent of the firm (i.e. all the partners) for the purpose of the business of the firm. The authority of the partner as agent may be expressed or implied.

Statutory Restrictions on implied authority

- | | |
|-----------------------|--------------------------------------|
| 1. Arbitration | 5. Acceptance of liability |
| 2. Bank account | 6. Acquisition of immovable property |
| 3. Compromise | 7. Transfer of immovable property |
| 4. Withdrawal of suit | 8. Entering into partnership |

The authority of a partner may be extended or restricted by partnership contract. Especially, a partner has authority in case of emergency to protect the firm from loss.

Liability of Partner and Firm

Effect of admission by a partner:

It is evidence against the firm if made in ordinary course of business.

Effect of notice to an active partner:

It operates as notice to all the partners relating to affairs of the firm.

Joint and several liability:

A partner may be sued individually or jointly with other partners by third parties for the debts of the firm.

Liability of the firm for wrongful acts of a partner:

The firm is liable to third parties for wrongful acts of a partner subject to certain conditions.

Liability for Misapplication by Partners:

The firm is liable to third parties for wrongful acts of a partner for misapplication of money or property by the partner subject to certain conditions.

Minor admitted to the benefits of partnership**Rights**

1. To share of property and profits
2. To access and inspect accounts
3. To have limited liability

Disabilities

1. No status of partner
2. Not entitled to other books
3. Cannot sue until disconnecting his relationship with the firm

A minor has to decide to become or not to become partner within six months of attaining the majority or first coming to knowledge of being admitted to the benefits of partnership, whichever is later.

Elected to become Partner

1. Personally liable for debts since his admission to partnership
2. Same share in property and profits of the firm

Elected not to become a partner

1. Rights and liabilities as minor to continue till public notice
2. His share shall not be liable from the date of public notice.
3. He has right to sue for his share of property and profits.

NEGOTIABLE INSTRUMENTS

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Introduction
- 2 Promissory Note
- 3 Bill of Exchange
- 4 Cheque
- 5 Objective Based Q&A

STICKY NOTES

AT A GLANCE

The law relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881, which deals with promissory notes, bill of exchange and cheque.

The property in a negotiable instrument passes from one person to another by a simple process, i.e. by mere delivery if it is payable to bearer, and by indorsement and delivery if it is payable to order. The holder in due course (one who acquires the instrument in good faith and for consideration) gets it free from all defects.

A “promissory note” is an instrument in writing (not being a bank note or currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument. The person who makes the promissory note is called the maker; the person to whom the payment is to be made is called the payee.

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. The person who makes the bill is called the drawer. The person who is directed to pay is called the drawee. The person to whom the payment is made is called the payee.

A cheque is a bill of exchange drawn on specified banker and payable on demand.

1 INTRODUCTION

1.1 Short title, extent and commencement [Section 1 & 1A]

The law relating to negotiable instruments is the Negotiable Instruments Act, 1881 (the Act). It extends to the whole of Pakistan and it is applicable since the first day of March 1882.

The Act does not affect the provisions of Section 24 and Section 35 of the State Bank of Pakistan Act, 1956.

Every negotiable instrument shall be governed by the Act regardless of any usage or custom that is different from the provision of the Act.

1.2 Negotiable Instrument

In simple terms, negotiable means transferable by delivery and instrument means a written document by which a right is created in favour of some person. Thus negotiable instrument may mean a written document transferable by delivery.

The term “delivery” means transfer of possession, actual or constructive, from one person to another. [Section 3(d)]

1.2.1 Definition of negotiable instrument [Section 13]

A negotiable instrument means a:

- Promissory note
- Bill of exchange or
- Cheque

payable either to order or to bearer.

The above definition reveals that when a promissory note, bill of exchange and cheque is issued it can be termed as negotiable instruments.

The term “issue” means the first delivery of a promissory note, bill of exchange or cheque complete in form to a person who takes it as a holder. [Section 3(e)]

1.3 Characteristics of negotiable instrument

1.3.1 Either payable to order or bearer [Section 13]

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

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

► Example 01:

The following words on a negotiable instrument are indicating that the instrument is payable to order:

- “Pay Azam....”
- “Pay Azam or order.....”
- “Pay Azam or Babar.....”

A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank. If an instrument is payable to any person whosoever bears it then it is called payable to bearer.

The term “bearer” means a person who by negotiation comes into possession of a negotiable instrument, which is payable to bearer. [Section 3(c)]

► **Example 02:**

The following words on a negotiable instrument are indicating that the instrument is payable to bearer:

- “Pay Azam or bearer....”
- “Pay bearer.....”
- “Pay to bearer of this instrument.....”

► **Example 03:**

A bill of exchange is payable to Aslam. Aslam indorses it merely by putting his signature on the back and delivers it to Babar with the intention of negotiating it (without making it payable to Babar or Babar’s order). In the hands of Babar the bill is a bearer instrument.

A negotiable instrument may be made payable to two more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. For example, “Azam or Babar.....”.

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

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

► **Example 04:**

The following bill of exchange is not valid: “Pay bearer Rs. 10,000 whenever he asks for.”

1.3.2 Easy transferability [Section 13]

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

► **Example 05:**

Kamran bought goods from Dawood on 15th January and paid him by a bearer cheque dated 25th January. Dawood gave the same cheque to Waqas for supply of raw materials. Waqas may encash the cheque on or after 25th January.

► **Example 06:**

Kamal bought goods from Jamal on 15th January and made a promissory note for the amount payable to Jamal or order. Jamal signed and indorsed (transferred) this promissory note to Khalil to settle his dues with him. On due date, Khalil can get payment from Kamal.

1.3.3 Title of holder in due course [Section 9]

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

► **Example 07:**

Ajmal gave a promissory note to Bashir. Bashir lost the instrument and it was found by Habib. Habib cannot recover the amount on the negotiable instrument as he is not the holder in due course but if Habib transfer the instrument to Dawood and Dawood becomes holder in due course, as he did not know that instrument was lost, he can recover the amount on the instrument from Ajmal or all prior parties.

1.4 Parties to negotiable instrument**1.4.1 Primary parties [Section 7 & 3(b)]**

Maker	The person who makes a promissory note.
Payee	The person named in an instrument, to whom or to whose order money is to be paid.

Drawer	The maker of a bill of exchange or cheque.
Drawee	The person on whom bill of exchange or cheque is drawn and who is directed to pay the amount.
Acceptor	A bill of exchange (other than a cheque) must be presented to the drawee for acceptance first, and then presented for payment on due date. Drawee becomes acceptor when he accepts the bill duly signing it.

► **Example 08:**

Anum signed a promissory note worded as “One month after date, I promise to pay Maha or order sum of Rupees ten thousand for value received.” Here, Anum is maker and Maha is payee.

► **Example 09:**

Maria drawn a bill of exchange on Zahra worded as “Two months after date, pay to Hussain or order the sum of Rupees five thousand for value received.” Here, Maria is drawer, Zahra is drawee and Hussain is payee. Once Zahra accepts this bill, she will be called acceptor.

► **Example 10:**

Saima drawn a cheque on ABC Bank, payable to Bilal or order. Here, Saima is drawer, ABC Bank is drawee and Bilal is payee.

1.4.2 Holder [Section 8]

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

- He must be entitled to the possession of the instrument in his own name (“holder” does not include a beneficial owner claiming through a Benamidar); and
- He must be entitled to receive / recover the amount due on the instrument from the parties liable under the instrument.

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

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

► **Example 11:**

Kamran bought goods from Dawood on 15th January and paid him by a bearer cheque dated 25th January. Dawood became holder of the cheque. Then, Dawood gave the same cheque to Waqas for supply of raw materials. Now, Waqas became holder of the cheque.

1.4.3 Holder in due course [Section 9]

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

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

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

Holder	He must be a holder i.e. He fulfils the essentials of a holder.
Holder for valuable consideration	There must be a lawful and adequate consideration.
Before maturity	A person should receive the instrument before its maturity. In case of instrument payable on demand, he must have taken the instrument within a reasonable time of its issue.

Complete and regular	It is the duty of every person who takes a negotiable instrument to examine its form and contents thoroughly, for if it contains any material alteration which has not been confirmed by the drawer through his signature or it is incomplete like drawer name is missing or not properly stamped.
Holder in good faith	A person should take the instrument without any negligence on his part and in good faith without having any reason to believe that any defect existed in the title of the transferor. If there is any suspicion and he takes the instrument without making proper inquiries he cannot be said to be acting in good faith.

The term “material alteration” in relation to a promissory note, bill of exchange or cheque includes any alteration of that date, the sum payable, the time of payment, the place of payment, and where any such instrument has been accepted generally the addition of a place of payment without the acceptor’s assent. [Section 3(f)].

► **Example 12:**

Kamal transferred a bill of exchange to Jamal for goods purchased one day after its maturity. Jamal is holder but not a holder in due course.

► **Example 13:**

Anum received a bill of exchange transferred to her by her brother as gift. She is holder but not holder in due course as she became holder without valuable consideration.

► **Example 14:**

Kamal transferred a bill of exchange to Jamal for goods purchased a week before its maturity. Jamal knew that the bill was stolen by Kamal. Jamal is not a holder in due course.

► **Example 15:**

Ajmal gave a promissory note to Bashir. Bashir lost the instrument and it was found by Habib. Habib cannot recover the amount on the negotiable instrument as he is not the holder in due course but if Habib transfer the instrument to Dawood and Dawood becomes holder in due course if he did not know that instrument was lost, he can recover the amount on the instrument from Ajmal or all prior parties.

1.4.4 Difference between Holder and Holder in due course

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

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

Holder	Holder in due course
Maturity A person can become holder, before or after the maturity of the negotiable instrument.	A person can become holder in due course, only before the maturity of negotiable instrument.

1.5 Definition: Negotiation [Section 14]

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

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

► Example 16:

A bill is payable to the order of Kamran. Kamran signs on the back of the bill with words "Pay to Bilal or order" and delivers it to Bilal. This is valid negotiation by Kamran to Bilal and Bilal is now entitled to receive the payment of the instrument and to further negotiate the instrument.

► Practice Question 01:

Under the provisions of Negotiable Instruments Act, 1881 define 'Holder in due course'

► Solution:

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

► Practice Question 02:

What do you understand by the terms 'Holder', 'Holder in due course' and 'Payment in due course' under the Negotiable Instruments Act, 1881?

► Solution:

Holder:

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

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

Thus, a holder is a bearer of the bearer instrument and the indorsee or payee of the order instrument.

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

Holder in due course:

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

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

Payment in due course:

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

► *Practice Question 03:*

Under the provisions of the Negotiable Instruments Act, 1881 briefly describe the term 'Negotiation'.

► *Solution:*

Negotiation:

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

2 PROMISSORY NOTE

2.1 Definition of promissory note [Section 4]

A “promissory note” is an instrument in writing (not being a bank note or currency note) containing an unconditional undertaking, signed by the maker, to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

The analysis of the definition shows that, a promissory note is a written and signed promise to pay a certain sum of money to a specified person or his order.

2.2 Parties to a promissory note [Section 7]

Following are the two main parties in a promissory note:

2.2.1 Maker

It is a person who makes the promissory note and promises to pay the money stated in it. The maker is liable to pay according to tenor of the note and compensate any party to the note for loss sustained because of his default.

2.2.2 Payee

It is a person to whom the amount of promissory note is payable i.e. to whom the promise to pay is made.

2.3 Specimen of a promissory note

Date: September 15, 20XX Rs. 10,000/- only Three months after the date I promise to pay Ashraf or to his order the sum of Rupees Ten Thousand, for value received To Ashraf Jail Road Karachi	Sign: _____ Zahid Saddar Karachi
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In the specimen Zahid is the maker and Ashraf is the payee

2.4 Essential elements of a promissory note

These essential elements of a promissory note are discussed below:

2.4.1 In writing [Section 4]

A promissory note has to be in writing. An oral promise to pay does not become a promissory note. The writing may be on any paper, on any book. The words used must impart a clear undertaking to pay, but it is not necessary that the word promise should be used.

► Example 17:

- a) Azam signs the instruments in the following terms: “I promise to pay Babar or order Rs. 500”. This is valid promissory note.
- b) Asif signs the instruments in the following terms: “I acknowledge myself to be indebted to Basit in Rs.1,000 to be paid on demand, for value received”. This is valid promissory note.
- c) Adeel promise to pay Behram a sum of Rs. 500 on telephone. This promise will not make a promissory note because it is not in writing.

2.4.2 Promise to pay [Section 4]

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

► *Example 18:*

- a) Azam signs the instruments in following terms: "Mr. Bilal I owe you Rs. 1,000". The instrument is not promissory note as there is no clear undertaking or promise to pay. There is only an acknowledgement of indebtedness.
- b) Asif signs the instruments in following terms: "I am liable to pay to Baqir Rs. 500". The instrument is not promissory note as there is no clear undertaking or promise to pay. There is only an acknowledgement of indebtedness.
- c) Adeel signs the instruments in following terms: "I have taken from Behzad Rs.2,000 and I am accountable to him for the same with interest". The instrument is not promissory note as there is no clear undertaking or promise to pay. There is only an acknowledgement of indebtedness.
- d) Akmal signs instrument in following terms: "I acknowledge myself to be indebted to Bano in Rs.1,000 to be paid on demand for value received." This is a valid promissory note.

2.4.3 Definite and unconditional [Section 4 & 5]

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

► *Example 19:*

- a) Azam signs the instrument in the following terms: "I promise to pay Basit Rs.500 seven days after my marriage with Shahzadi". The instruments is not valid as the payment is made dependent upon the happening of an uncertain event which may never happen and as a result the sum may never become payable.
- b) Amir signs the instrument in the following terms: "I promise to pay Bilal Rs. 500 on Dawood's death, provided Dawood leaves me enough to pay the sum". The instruments is not valid as the payment is made dependent upon the happening of an uncertain event which may never happen and as a result the sum may never become payable.
- c) Asif signs the instrument in the following terms: "I promise to pay Babar Rs. 500 as soon as I can". The instruments is not valid as the payment is made dependent upon the happening of an uncertain event which may never happen and as a result the sum may never become payable.

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

- at a particular place or
- after a specified time or
- on the happening of an event which must happen, although the time of its happening may be uncertain.

► *Example 20:*

Ajmal signs an instrument stating "I promise to Pay Babar Rs.500 seven days after Saleem's death", the promissory note is valid because it is not considered to be conditional, for it is certain that Saleem will die one day.

2.4.4 Signed by maker [Section 4]

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

► *Example 21:*

Asif writes the instrument but does not sign thereon: "I promise to pay Bilal Rs. 5,000". The note is not valid promissory note.

2.4.5 Certain parties [Section 4 & 5]

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

Where the person intended can reasonably be ascertained from the promissory note, he is a certain person although he may be misnamed or designated by description only.

► *Example 22:*

A promissory note payable to the principal of a college is regarded as payable to a certain person. The person can be identified specifically. Hence, it will be considered a valid promissory note.

2.4.6 Sum payable must be certain [Section 4 & 5]

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

► *Example 23:*

- a) Azam signs instrument in following terms: "I promise to pay Bilal Rs.500,000 and all other sums which shall be due to him". The instrument is invalid as promissory notes because the amount is not certain.
- b) Amir signs instrument in following terms: "I promise to pay Babar Rs.300,000 and all fines according to rules". The instrument is invalid as promissory notes because the amount is not certain.

The sum payable is certain:

- a) when it is payable with interest (or return in any other form).; or
- b) When it is payable at an indicated or current rate of exchange; or
- c) When it is payable in instalments, with a provision that on default being made in payment, the balance unpaid shall become due.

A promise to pay is not 'conditional' nor is the sum payable 'uncertain' by reason of the sum payable being subject to adjustment for profit or loss, as the case may be, of the business of the maker.

2.4.7 Sum payable must be legal tender

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

► *Example 24:*

An instrument signed by Asif, "I promise to pay Kamal Rs. 50,000 and to deliver him my black horse" is not a valid promissory note.

► *Practice Question 04:*

Based on the provisions of Negotiable Instruments Act, 1881 briefly explain whether the following are promissory notes or not.

- i. I promise to pay Rahat on demand Rs. 5,000 at my convenience.
- ii. On demand, I promise to pay Sonu or order Rs. 5,000, for value received.
- iii. I promise to pay Adil or order Rs. 5,000 and 500 shares of Sigma Limited.
- iv. I promise to pay Mahi or order Rs. 5,000 with interest calculated at quarterly rests.

- v. I promise to pay you or your successors on demand Rs. 10,000.
- vi. I promise to pay Rafi or order Rs. 10,000 seven days after Salik's death.
- vii. I am liable to pay Ahmad Rs. 5,000.

► **Solution:**

- i. It is not a promissory note as promise to pay is not "unconditional".
- ii. It is a valid promissory note containing all the essential elements.
- iii. It is not a promissory note as the payment is not in terms of money only.
- iv. It is not a promissory note as the amount payable under it is not certain.
- v. It is not a promissory note as the payee in the instrument is not certain.
- vi. It is a valid promissory note. It is not considered to be conditional, for it is certain that Salik will die, though the exact time of his death is uncertain.
- vii. It is not a promissory note as it lacks unconditional undertaking. There is only an acknowledgement of indebtedness.

► **Practice Question 05:**

Sarwat owes Rs. 500,000 to Zain. The amount is payable on 11 August 2025. Sarwat intends to issue a negotiable instrument to Zain in satisfaction of her debt. Under the provisions of the Negotiable Instruments Act, 1881 advise Sarwat about the type of negotiable instrument which may be issued to Zain, assuming that Sarwat does not want to involve a third party in making the payment. Also prepare a draft of the said instrument. (You may make assumptions wherever you consider necessary).

► **Solution:**

Sarwat would issue a promissory note to Zain.

Draft of the promissory note

Rs. 500,000/- only Five months after the date I promise to pay Zain or to his order the sum of Rupees Five Hundred Thousand, for value received To Zain ABC Road Karachi	Date: March 12, 2025 Sd/- _____ Sarwat New Town Karachi
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► **Practice Question 06:**

Mujahid bought readymade garments worth Rs. 600,000 from Shoaib on credit. The amount is payable on 25 December 2025. Mujahid wants to issue a negotiable instrument in satisfaction of his debt to Shoaib without involving a third party for the payment.

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

► *Solution:*

Mujahid would issue a promissory note as time instrument to Shoaib in satisfaction of his debt.

Draft of the promissory note

Rs. 600,000/- only		Date: September 26, 2025
Three months after the date I promise to pay Shoaib or to his order the sum of Rupees Six Hundred Thousand, for value received		
To		Sd/- _____
	Shoaib	Mujahid
	XYZ Street	Down Town
	Karachi	Karachi

3 BILL OF EXCHANGE

3.1 Definition of bill of exchange [Section 5]

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

The analysis of the definition shows that, a bill of exchange is a written and signed order directing a person to pay a certain sum of money to the bearer of the instrument or to a specified person or his order.

Generally, a bill of exchange is drawn by a creditor, who directs his debtor to pay the money to the person specified in the instrument.

3.2 Parties to a bill of exchange [Section 7]

Following are the three main parties in a bill of exchange:

3.2.1 Drawer

It is a person who draws a bill of exchange. The drawer is liable on a bill of exchange as principal debtor until the drawee accepts the bill.

3.2.2 Drawee / Acceptor

It is a person who is ordered to pay the amount of the bill of exchange (on whom the bill is drawn). When drawee accepts the bill of exchange (when he gives consent to make the payment) he is called the acceptor. The drawee is not liable until acceptance. On acceptance he becomes liable as acceptor to pay holder on demand after maturity.

3.2.3 Payee

It is a person to whom the amount of bill of exchange is payable.

3.3 Specimen of a bill of exchange

Rs. 10,000/- only Three months after the date pay to Yaseen or to his order the sum of Rupees Ten Thousand, for value received. Accepted Aslam To Aslam Jail Road Karachi	Date: September 15, 20XX Sign: _____ Mohsin Saddar Karachi
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In the specimen Mohsin is the drawer, Aslam is the drawee and Yaseen is the payee.

3.4 Essential elements of a bill of exchange

The essential elements of a bill of exchange are shown below:

3.4.1 In writing [Section 5]

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

► *Example 25:*

- a) Azam signs the instruments in the following terms: "Pay Rs. 5,000 to Azam or order". It is a valid bill.
- b) Asif orders to Behram to pay a sum of Rs. 500 on telephone. This order will not make a bill of exchange because it is not in writing.

3.4.2 Order to pay [Section 5]

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

► *Example 26:*

- a) The following instrument signed by Azam is valid bill of exchange as it contains an order to pay, though the language used is very polite: "Babar, please pay Rs. 50,000 to Ehsaan or order."
- b) The following instrument signed by Adeel is valid bill of exchange as it contains an order to pay, though the language used is very polite: "Bilal will much oblige me by paying to Dawood Rs. 30,000."
- c) The following instrument signed by Akbar is not valid bill of exchange as it contains only a request to pay and no order to pay: "Babar, please let Jazib have Rs. 50,000, and place it to my account and oblige."
- d) The following instrument signed by Asif is not valid bill of exchange as it contains only a request to pay and no order to pay: "Bushra, I shall be highly obliged if you make it convenient to pay Rs.10,000 to Ghalib."

3.4.3 Definite and unconditional [Section 5]

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

► *Example 27:*

Asif draws a bill on Behram as "Pay Rs. 5,000 to Saleem as early as possible". It is not a valid bill of exchange on account of uncertainty.

But an order to pay is not conditional if the amount is made payable

- at a particular place or
- after a specified time or
- on the happening of an event which must happen, although the time of its happening may be uncertain.

3.4.4 Signed by drawer and drawee [Section 5]

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

► *Example 28:*

Asif draws a bill on Behram as "Pay Rs. 10,000 to Saleem or order" but does not sign it. It is not a valid bill of exchange.

3.4.5 Certain parties [Section 5]

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

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

► *Example 29:*

Asif draws a bill as "Pay Rs. 10,000 to Jameel or order" but does not specify the name of drawee. It is not a valid bill of exchange.

Where the payee is fictitious or non-existing person, the bill of exchange may be treated as payable to bearer.

3.4.6 Sum Payable must be certain [Section 5]

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

► **Example 30:**

Majeed draws a bill on Naveed as “Pay to Saeed Rs. 20,000 and all other sums due to him”. It is not a valid bill.

The sum payable is certain:

- when it is payable with interest (or return in any other form); or
- When it is payable at an indicated or current rate of exchange; or
- When it is payable in instalments, with a provision that on default being made in payment, the balance unpaid shall become due.

An order to pay is not ‘conditional’ nor is the sum payable ‘uncertain’ by reason of the sum payable being subject to adjustment for profit or loss, as the case may be, of the business of the maker.

3.4.7 Sum payable must be legal tender

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

► **Example 31:**

Azam draws a bill on Babar as “Pay Rs. 50,000 and deliver 100 bags of wheat to Saleem”. It is not a valid bill.

3.5 Difference between promissory note and bill of exchange

Following are the few differences between promissory note and bill of exchange:

Promissory note	Bill of exchange
Number of parties There are two parties i.e. the maker and the payee.	There are three parties i.e. the drawer, the drawee and the payee.
The maker of the note cannot be payee The maker of a promissory note cannot be the payee for the simple reason that the same person cannot be both the promisor and the promisee.	The drawer and the payee may be one and the same person as where a bill is drawn as “Pay to me or my order”.
Promise and order There is a promise to make the payment.	There is an order for making the payment.
Acceptance A promissory note requires no acceptance as it is signed by the person who is liable to pay.	A bill of exchange needs acceptance by the drawee before it is presented for payment.
Nature of liability The liability of the maker of a promissory note is primary and absolute.	The liability of a drawer of a bill of exchange is secondary and conditional. It is only when the acceptor does not honour the bill that the liability of the drawer arises as a surety.
Maker's position The maker of a promissory note stands in immediate relation with the payee.	The drawer of an accepted bill stands in immediate relation with the acceptor and not the payee.

Promissory note	Bill of exchange
Payable to bearer A promissory note cannot be drawn “payable to bearer”.	A bill of exchange can be so drawn provided that it is not drawn “payable to bearer on demand”.
Notice of dishonour In case of dishonour of a promissory note, no notice of dishonour is required to be given to the maker.	In case of dishonour of a bill of exchange, notice of dishonour must be given by the “holder” to all prior parties who are liable to pay (including the drawer and indorser).

► *Practice Question 07:*

Specimen of a Negotiable Instrument

Date: September 12, 2025	
Rs. 10,000/- only Please pay on demand to Tauseef or to his order the sum of Rupees One Hundred Thousand only, for value received. Accepted Laila To Laila Busy Road Karachi Sd/- _____ Laeq Saddar Karachi	

Identify the type of above negotiable instrument and briefly describe its essential characteristics under the provisions of the Negotiable Instruments Act, 1881.

► **Solution:**

Bill of Exchange:

The above negotiable instrument is a bill of exchange.

Essential characteristics of a bill of exchange:

Following are the essential characteristics of a bill of exchange:

- i. **In writing:** A bill of exchange is required to be in writing.
- ii. **Order to pay:** The drawer orders the drawee to pay money to the payee. Mere request does not constitute an order.
- iii. **Definite and unconditional:** The order to pay should not depend upon a condition or upon the happening of an uncertain event.
- iv. **Signed by drawer:** The instrument must be signed by the maker (drawer) and accepted by the drawee.
- v. **Certain parties:** All the parties must be certain i.e. indicated in a bill of exchange with reasonable certainty.
- vi. **Sum payable must be legal tender:** The order must be to pay money and money only.
- vii. **Sum Payable must be certain:** It is essential that sum of money ordered to be payable must be certain and definite. However, it may include future interest or return in any other form or is payable at an indicated rate of exchange, or is payable at the current rate of exchange or the sum payable being subject to adjustment for profit or loss of the business of the maker.
- viii. **Time for payment:** The time for payment may be on demand or at a fixed or determinable future time.
- ix. **It must be delivered:** A bill of exchange is incomplete until it is delivered to the payee.

► *Practice Question 08:*

In view of the provisions of the Negotiable Instruments Act, 1881 comment on the type and validity of each of the following instruments signed by Rahul:

- i. Nauman please pay to Mahreen Rs. 100,000.
- ii. Nauman, I shall be highly obliged if you make it convenient to pay Rs. 100,000 to Mahreen.
- iii. I acknowledge myself to be indebted to Nauman in Rs. 100,000 to be paid on demand, for value received.
- iv. I promise to pay Mahreen or order Rs. 100,000 six days after Nauman's death.

► *Solution:*

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

► *Practice Question 09:*

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

- i. I promise to pay Zahid Rs. 350,000 and all the applicable interest amounts.
- ii. Pay Rs. 350,000 to Jafer along with interest of Rs. 3,500.
- iii. I hereby acknowledge that I have taken Rs. 350,000 from Abid and shall pay the interest to him on the amount at agreed interest rate.

► *Solution:*

- i. This instrument is a promissory note. It should not be accepted as it is invalid since the amount payable under it is not certain.
- ii. This instrument is a bill of exchange. It will be considered valid if signed by drawer and drawee as it meets rest of the conditions of bill of exchange hence should be accepted.
- iii. This instrument is a promissory note. It should not be accepted as it is invalid since payment of principal amount has not been promised.

► **Practice Question 10:**

On 5 September 2025, Aftab bought goods from Kamran for Rs. 950,000 on credit of two months and immediately sold them to Abdullah for Rs. 960,000. Aftab received Rs. 10,000 in cash from Abdullah and the remaining amount was agreed to be received after two months. Aftab intends to settle both the transactions through a negotiable instrument.

Under the provisions of the Negotiable Instruments Act, 1881 prepare a draft of the negotiable instrument that Aftab may issue in settlement of both the transactions. (Assume necessary details for the preparation of the negotiable instrument)

► **Solution:**

Aftab may issue following negotiable instrument i.e. bill of exchange in settlement of both the transactions:

Draft of the bill of exchange

Dated: 5 September 2025	
Rs. 950,000/- only	
Two months after the date, pay to Kamran or to his order the sum of Rupees Nine Hundred and Fifty Thousand only, for value received.	
Accepted Signed by Abdullah To Abdullah ABC Road Name of city Sign: _____ Aftab XYZ Road Name of city	

► **Practice Question 11:**

Doves & Co. (DC) is a partnership firm engaged in the selling of various species of pet birds. The firm's operations are managed by two partners namely Faizan and Usama.

Following matters are under consideration of the firm:

- a) On 1 March 2026, DC supplied 50 finch birds to Raven Parks (RP) for Rs. 200,000. Rizwan, RP's owner, holds a bill of exchange originally issued to him for Rs. 200,000 which is due to mature on 31 March 2026. He has offered to endorse the aforesaid bill of exchange in DC's favour. Under the provisions of the Negotiable Instruments Act, 1881, discuss the essentials which must be ensured by DC before accepting the bill of exchange.
- b) Assume that in (a) above, Rizwan is a holder in due course in respect of the bill of exchange which has been offered to be endorsed in DC's favour. Under the provisions of the Negotiable Instruments Act, 1881, discuss the conditions to be fulfilled by a person to become a holder in due course.

► **Solution:****Part (a)**

DC must ensure that the bill of exchange (B/E) which was issued to Rizwan and is going to be endorsed in DC's favour is valid i.e. it fulfils all of the following essentials of a negotiable instrument and endorsement:

- B/E contains an unconditional order to pay;
- Drawer name is appearing on B/E and B/E is properly stamped;
- B/E is signed by the drawer and the drawee;

- All the parties mentioned on the B/E are certain;
- If B/E contains any material alteration, the same is confirmed by the appropriate party through signature;
- Rizwan is entitled to the possession of B/E in his name;
- The sum payable under B/E must be certain and contain legal tender only;
- Rizwan is entitled to receive/recover Rs. 200,000 from the parties liable under the B/E;
- Rizwan has endorsed B/E in DC's favour on the instrument itself for the purpose of negotiation;
- B/E is delivered to DC with the intention of passing the property in it.

Part (b)

Following conditions are required to be fulfilled by Rizwan in order to become a holder in due course:

- He must fulfil all essentials of a holder and must be a holder for valuable consideration;
- He should receive the B/E before its maturity; and
- He should take the B/E without any negligence on his part and in good faith without having any reason to believe that any defect existed in the title of the transferor. If there is any suspicion and he takes the B/E without making proper inquiries, he cannot be said to be acting in good faith.

► Practice Question 12:

Zareen has signed the following instruments:

- I promise to pay Rs. 5 million to Maria and further undertake to deliver her my car with registration number FNT-23 on 30 September 2025, for value received.
- Zainab, pay Rs. 20 million to Saeed as early as possible.
- I acknowledge that I am indebted to Mehreen for USD 200,000 to be paid on demand, for value received.

Under the Negotiable Instruments Act, 1881, comment on the type and validity of each of the above instruments.

► Solution:

- It is not a valid promissory note because it includes Zareen's undertaking to deliver her car. A promissory note is an instrument in writing that contains an unconditional undertaking to pay a certain sum of money only.
- It is not a valid bill of exchange on account of uncertainty.
- It is not a valid promissory note because the promise to pay must not be for foreign currency.

► Practice Question 13:

Under the Negotiable Instruments Act, 1881, identify four differences between promissory note and bill of exchange.

► Solution:

	Promissory note	Bill of exchange
1.	There are two parties i.e. the maker and the payee.	There are three parties i.e. the drawer, the drawee and the payee.
2.	The maker of a promissory note cannot be the payee because the same person cannot be both the promisor and the promisee.	The drawer and the payee may be the same person where a bill of exchange is drawn as "Pay to me or my order".
3.	There is a promise to make the payment.	There is an order for making the payment.

	Promissory note	Bill of exchange
4.	It requires no acceptance as it is signed by the person who is liable to pay.	It needs acceptance by the drawee before it is presented for payment.
5.	The liability of the maker is primary and absolute.	The liability of the drawer is secondary and conditional. It is only when the acceptor does not honour the bill of exchange that the liability of drawer arises as a surety.
6.	The maker stands in immediate relation with the payee.	The drawer of an accepted bill stands in immediate relation with the acceptor and not the payee.
7.	It cannot be drawn "payable to bearer".	It can be drawn "payable to bearer" provided that it is not drawn "payable to bearer on demand".
8.	In case of dishonour, no notice of dishonour is required to be given to the maker.	In case of dishonour, notice of dishonour must be given by the "holder" to all prior parties who are liable to pay (including the drawer and indorser).

► **Practice Question 14:**

Squash Management (SM) specializes in organising large-scale destination events, managing all aspects including travel, accommodation and event venue management such as catering and decoration arrangements.

SM agreed to manage a corporate event on 2 September 2025 and received full payment in advance from its customer, Rizwan. On the day of the event, Rizwan additionally requested SM to arrange 500 kg of fresh flowers for venue decoration. SM purchased the flowers from Climbing Florals for Rs. 600,000, agreeing to pay within a week. The flowers were used in the venue decor and Rizwan has promised to pay Rs. 600,000 to SM on 8 September 2025. Under the Negotiable Instruments Act, 1881, prepare draft of a single negotiable instrument that SM may issue in settlement of both transactions. (Assume necessary details for the preparation of negotiable instrument)

► **Solution:**

SM may issue the following negotiable instrument i.e., bill of exchange, in settlement of both transactions:

Aftab may issue following negotiable instrument i.e. bill of exchange in settlement of both the transactions:

Draft of the bill of exchange

Rs. 600,000/- only		Dated: 3 September 2025
Five days after date, pay to Climbing Florals or to their order the sum of Rupees Six Hundred Thousand only, for the value received.		
Accepted Signed by Rizwan		
To	Rizwan ABC Road Name of city	Sign: _____ Squash Management XYZ Road Name of city

4 CHEQUE

4.1 Definition of cheque [Section 6]

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

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

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

4.2 Parties to a cheque [Section 7 & 3(b)]

Following are the three main parties in a cheque:

4.2.1 Drawer

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

4.2.2 Drawee

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

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

4.2.3 Payee

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

4.3 Specimen of a cheque

ABC Bank Limited Main Branch, Karachi	Cheque no: 1234 Date: September 15, 20XX
Pay _____ OR BEARER	
Rupees _____	
Account no: 56789 _____ Title of account: Mr. JK	<u>Signature</u>
_____ Do not write below this line	

4.4 Essential elements of a cheque [Section 5 & 6]

The essential elements of a cheque are as below:

- It must be in writing
- There must be an express order to pay and not a request to pay
- The order must be definite and unconditional

- It must be signed by the drawer
- The three parties (drawer, drawee and payee) must be certain.
- The order must be to pay a certain sum
- The order must be to pay money only
- It must always be drawn upon a specified banker
- It must always be payable on demand

► **Example 32:**

Adeel draws a bearer cheque on 1st July 2025. It is valid for six months. The holder of cheque may get cash by demanding payment over the counter of the banker on whom the cheque is drawn during this time.

4.5 Difference between cheque and bill of exchange

Following are the few differences between cheque and bill of exchange:

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

1. OBJECTIVE BASED Q&A

- 1 A promissory note is a document in writing containing
 - a) A conditional promise to pay
 - b) A conditional order to pay
 - c) An unconditional promise to pay
 - d) An unconditional order to pay

- 2 If a document contains an order directing a person to pay, it is
 - a) A promissory note
 - b) Not a promissory note
 - c) A bill of exchange
 - d) A conditional promissory note

- 3 A promise to pay is conditional if
 - a) It depends upon certain event i.e. death
 - b) The promise is to pay on X's death if he leaves the maker enough to pay
 - c) It is to pay on demand
 - d) It is to pay after a certain period

- 4 In promissory note, there are
 - a) Two parties
 - b) Three parties
 - c) Four parties
 - d) Five parties

- 5 A holder in due course gets an instrument
 - a) Subject to defects
 - b) Free from defects
 - c) Subject to certain rights
 - d) Which cannot be further negotiated

- 6 A promissory note, cheque or bill of exchange is an inland instrument if it is
 - a) Drawn in Pakistan and payable outside
 - b) Drawn upon any person resident in Pakistan
 - c) Drawn and payable in Pakistan
 - d) Drawn and payable outside Pakistan

- 7 The maker of a bill of exchange is called:
- a) Drawee
 - b) Drawer
 - c) Acceptor
 - d) Payee
- 8 Which of the following is not applicable to negotiable instruments?
- a) It must be in writing.
 - b) It must be transferable.
 - c) It must be registered.
 - d) It must be signed.
- 9 Bearer instrument means an instrument:
- a) Which is expressed to be payable to bearer.
 - b) On which the last indorsement is in blank.
 - c) Either a) or b)
 - d) Which is payable after certain days of making the instrument.
- 10 Which instrument is immediately payable on demand?
- a) Cheque
 - b) Promissory Note
 - c) Bill of exchange
 - d) All of above
- 11 Which of the following may be regarded as a valid promissory note (duly signed) under the provisions of the Negotiable Instruments Act, 1881?
- a) I promise to pay Zubair on demand Rs. 6,000 at my convenience
 - b) I promise to pay Ali or order Rs. 6,000 with interest charged at quarterly rests
 - c) I promise to pay you or your successors on demand Rs. 11,000
 - d) I promise to pay Khalid or order Rs. 12,000 six days after Saad's death
- 12 Promissory note is an instrument in writing containing an unconditional _____, to pay a certain sum of money.
- a) Instruction
 - b) Order
 - c) Undertaking
 - d) Demand

- 13 For which of the following instruments, the drawee will always be a banker:
- Promissory Note
 - Bill of exchange
 - Cheque
 - All of above
- 14 Nadeem draws a bill of exchange on Bilal which states "Bilal, pay Rs. 100,000 to Sarah's successors or order". The bill of exchange drawn by Nadeem shall be considered to be:
- invalid because it does not mention the date by which payment must be made
 - invalid because the parties indicated in the bill of exchange are not certain
 - valid because it contains an order to pay
 - valid since all the essential elements of a negotiable instrument are satisfied
- 15 Waqar draws a bill of exchange on Dawood which states "Dawood, please pay Rs. 900,000 to Afshan only". The bill of exchange drawn by Waqar is:
- a valid negotiable instrument because payee's name is clearly mentioned
 - an invalid negotiable instrument because it contains an order to pay
 - not a negotiable instrument since it restricts payment to Afshan only
 - a valid negotiable instrument because it contains a request to pay
- 16 On 1 September 2025, Zahid wrote a promissory note undertaking to pay Rs. 300,000 in three equal monthly instalments to the Chairman of Flannel Traders & Co. or order. In the aforesaid promissory note:
- amount of money to be paid and payee both are certain
 - amount of money to be paid is certain but payee is not certain
 - amount of money to be paid is not certain but payee is certain
 - amount of money to be paid and payee both are not certain
- 17 Which of the following instruments issued by Mohsin is a valid negotiable instrument?
- I promise to pay Maria Rs. 50,000 as soon as possible
 - I promise to pay Maria Rs. 50,000 and all fines according to the rules
 - I promise to pay Maria Rs. 50,000 one month after my marriage with Zainab
 - I promise to pay Maria Rs. 50,000 two months after Furqan's death
- 18 Under the Negotiable Instruments Act, 1881, which of the following is an essential condition for a person to be considered a 'holder in due course' of a negotiable Instrument?
- He must have obtained the negotiable instrument for valuable consideration
 - He must have taken possession of the negotiable instrument after the maturity date
 - He must not hold the negotiable instrument in good faith
 - He must have the right to sue at least one party liable under the negotiable instrument

- 19 Under the Negotiable Instruments Act, 1881, which of the following instruments issued by Karim is a valid negotiable instrument?
- a) I am bound to pay Ali Rs. 500,000 that I have taken from him
 - b) I promise to pay Ali Rs. 500,000 for goods delivered to me on 31 August 2024
 - c) I promise to pay Ali Rs. 500,000 and deliver my entire collection of books to him
 - d) I am liable to pay Ali Rs. 500,000 two months after Kamran's death

ANSWERS

1	c)	A promissory note is a written and signed unconditional undertaking to pay a certain sum of money to a specified person or his order.
2	c)	A bill of exchange is a written and signed order directing a person to pay a certain sum of money to the bearer of the instrument or to a specified person or his order.
3	b)	The promise must not depend upon the happening of some uncertain event.
4	a)	There are two parties in a promissory note i.e. Maker and Payee
5	b)	It means that once an instrument is received in the hands of the holder in due course it becomes free from all defects.
6	c)	An inland instrument is made or drawn in Pakistan and also made payable in Pakistan.
7	b)	Drawer
8	c)	A negotiable instrument is not required to be registered.
9	c)	(a) and (b) both are bearer instruments.
10	a)	Cheque is bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.
11	d)	I promise to pay Khalid or order Rs. 12,000 six days after Saad's death
12	c)	an undertaking
13	c)	In case of cheque, the drawee will always be a banker.
14	b)	invalid because the parties indicated in the bill of exchange are not certain
15	c)	not a negotiable instrument since it restricts payment to Afshan only
16	a)	amount of money to be paid and payee both are certain
17	d)	I promise to pay Maria Rs. 50,000 two months after Furqan's death
18	a)	He must have obtained the negotiable instrument for valuable consideration
19	b)	I promise to pay Ali Rs. 500,000 for goods delivered to me on 31 August 2024

STICKY NOTES

Parties to the negotiable instruments

Maker	The person who makes a promissory note.
Payee	The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."
Drawer	The maker of a bill of exchange or cheque is called the "drawer".
Drawee	The person on whom bill of exchange or cheque is drawn and who is directed to pay the amount.
Acceptor	After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."
Holder	The "holder" of a promissory note, bill of exchange or cheque means the payee or indorsee who is in possession of it or the bearer thereof but does not include a beneficial owner claiming through a benamidar.
Holder in due course	"Holder in due course" means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective.

Important definitions

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

1. It must be in writing
2. There must be promise to pay
3. The promise must be definite and unconditional
4. It must be signed by maker
5. The parties should be certain
6. Sum payable must be certain
7. Sum payable must be legal tender

Essential elements of bill of exchange

1. It must be in writing
2. There must be order to pay
3. The order must be definite and unconditional
4. It must be signed by drawer and drawee
5. The parties should be certain
6. Sum payable must be certain
7. Sum payable must be legal tender

Essential elements of Cheque

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

1. Drawee will always be a banker
2. Always payable on demand

Parties to a cheque include drawer, drawee and payee.

AT A GLANCE

SPOTLIGHT

STICKY NOTES

ANTI-MONEY LAUNDERING AND ARBITRATION ACT

IN THIS CHAPTER:

AT A GLANCE

SPOTLIGHT

- 1 Anti-Money Laundering
- 2 Arbitration Act, 1940
- 3 Objective Based Q&A

STICKY NOTES

AT A GLANCE

Money Laundering is a process whereby the proceeds of crime are converted into such an assets appearing to have a legitimate origin.

Anti-Money Laundering laws seeks to deter criminals by making it harder for them to hide ill-gotten money by prescribing the wider scope for the offence and strict punishment thereof.

The Arbitration Act, 1940 is main alternative dispute resolution mechanism of civil matters in Pakistan. The law provides for rules, inter alia, relating to:

- a) Implied conditions in arbitration agreement;
- b) Appointment of arbitrators by third party;
- c) Authority of appointed arbitrator or umpire irrevocable except by leave of Court;
- d) Powers of arbitrator;
- e) Out of court settlement by parties to a civil suit.

1 ANTI-MONEY LAUNDERING

1.1 Introduction

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

► Example 01:

A person is involved in money laundering if he has Rs. 5 million from smuggling and sale of illegal drugs and he represents this money as being earned from his legitimate business of trading in used cars.

Anti-money laundering (AML) laws are the rules for businesses, institutions, and even countries to eliminate money laundering and terrorist financing activities. Initially, AML laws were implemented only on financial institutions to control drug trafficking.

Since then, AML and counter financing of terrorism (CFT) have become global concerns. International authorities such as FATF and world bank are collaborating with national authorities and state banks to control money laundering. .

In Pakistan, the relevant legislation is the Anti-Money Laundering Act, 2010.

AML laws seeks to deter criminals by making it harder for them to hide ill-gotten money. Among other requirements, AML regulations require financial institutions to monitor customers' transactions and report on suspicious financial activities .

1.2 Definition of Financial Institution [Section 2(xiv)]

It is important to understand the definition of "financial institution" since most of the requirements of Anti-Money Laundering Act, 2010 are applicable to financial institutions.

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

- a) acceptance of deposits and other repayable funds from the public;
- b) lending in whatsoever form;
- c) financial leasing;
- d) money or value transfer;
- e) issuing and managing means of payments including but not limited to credit and debit cards, cheques, traveller's cheques, money orders, bank drafts and electronic money;
- f) financial guarantees and commitments; and
- g) trading in:
 - i. money market instruments;
 - ii. foreign exchange;
 - iii. exchange, interest rate and index instruments;
 - iv. transferable securities;
 - v. commodity futures trading;
 - vi. participation in shares issues and the provision of services related to such issues;
 - vii. individual and collective portfolio management;
 - viii. safekeeping and administration of cash or liquid securities on behalf of other persons;
 - ix. investing, administering or managing funds or money on behalf of other persons;

- x. insurance business transactions;
- xi. money and currency changing; and
- xii. carrying out business as intermediary.

Notice that the definition is not limited to banks only, but also includes various entities involved in financial transactions.

► **Example 02:**

JazzCash (money or value transfer), EasyPaisa (money or value transfer), Mastercard (debit & credit cards) and Western Union (money transfer and currency changing) are also financial institutions.

1.3 Offence of Money Laundering [Section 3]

The following are considered offences of money laundering:

1.3.1 Acquisition, Conversion or Possession of Criminal Property

If a person acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime, the person shall be guilty of offence of money laundering.

► **Example 03:**

A government official received bribes for official work and bought a house using the proceeds. He has committed offence of money laundering.

1.3.2 Concealment of Criminal Property

If a person conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime, the person shall be guilty of offence of money laundering.

► **Example 04:**

A banker, knowing that the transactions in a client's account represented proceeds of crime, concealed it from law enforcement agencies, the banker has committed offence of money laundering.

1.3.3 Possession of Criminal Property on behalf of others

If a person holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime, the person shall be guilty of offence of money laundering.

► **Example 05:**

An employee holds Rs. 10 million on behalf of his employer, knowing that the amount was proceeds of crime, he has committed offence of money laundering.

1.3.4 Participation in Money Laundering

If a person participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified above, the person shall be guilty of offence of money laundering.

► **Example 06:**

An accountant advised one of his client to conceal criminal property and facilitated for such concealment, he has committed offence of money laundering.

1.4 Evidence of Offence of Money Laundering [Section 3]

The knowledge, intent or purpose, required to be proved as an element of an offence of money laundering may be concluded from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984.

In order to prove an offence of money laundering the conviction of an accused for the respective predicate offence shall not be required.

Predicate offence means any criminal offence which is listed down in the AML Act, 2010 and by way of which proceeds used in money laundering were generated e.g. corruption, tax evasion or kidnapping.

1.5 Punishment for Money Laundering [Section 4]

1.5.1 General Provision

Whoever commits the offence of money laundering shall be:

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

► Example 07:

An individual (natural person) committed the offence of money laundering, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but may extend upto ten years, and also liable to fine which may extend upto Rs. 25 million, and also liable to forfeiture of property involved in money laundering or property of corresponding value.

1.5.2 Special Provision as to Legal Persons

In case of a legal person (e.g. a company), the fine may extend upto Rs. 100 million.

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

► Example 08:

A company (legal person) committed the offence of money laundering and one of its directors was found guilty.

The company shall be liable to fine which may extend upto Rs. 100 million.

The director shall be punished with rigorous imprisonment for a term which shall not be less than one year but may extend upto ten years, and also liable to fine which may extend upto Rs. 25 million, and also liable to forfeiture of property involved in money laundering or property of corresponding value.

► Practice Question 01:

Under the provisions of the Anti-Money Laundering Act, 2010 explain when a person may be held accountable for a money laundering offence. Also discuss the possible consequences, if he is proven guilty.

► Solution:

In following situations, a person may be held accountable for a money laundering offence if he:

- i. acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime;
- ii. conceals or disguises true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime;
- iii. holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime;
- iv. participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified above.

Possible consequences of a money laundering offence: If a person is proven guilty for money laundering offence, he shall be punished with rigorous imprisonment for a term of one to ten years, liable to fine up to Rs. 25 million and also liable to forfeiture of property involved in money laundering or property of corresponding value.

► *Practice Question 02:*

Define the term 'financial institution' under the Anti-Money Laundering Act, 2010.

► *Solution:*

A person involved in carrying following activities, would fall within the ambit of a 'financial institution' as envisaged in the Anti-Money Laundering Act, 2010:

- i. acceptance of deposits and other repayable funds from the public;
- ii. lending in whatsoever form;
- iii. financial leasing;
- iv. money or value transfer;
- v. issuing and managing means of payments including but not limited to credit and debit cards, cheques, traveller's cheques, money orders, bank drafts and electronic money;
- vi. financial guarantees and commitments; and
- vii. trading in:
 - money market instruments;
 - foreign exchange;
 - exchange, interest rate, and index instruments;
 - transferable securities;
 - commodity futures trading;
 - participation in shares issues and the provision of services related to such issues;
 - individual and collective portfolio management;
 - safekeeping and administration of cash or liquid securities on behalf of other persons;
 - investing, administering, or managing funds or money on behalf of other persons;
 - insurance business transactions;
 - money and currency changing; and
 - carrying out business as an intermediary.

2 ARBITRATION ACT, 1940

2.1 Introduction

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

Although the Arbitration Act 1940 is a very old enactment, it still serves as a clear and well settled piece of legislation with consistent chain of judicial precedents backing the interpretational aspects particularly in trade and commercial matters.

2.2 Relevant definitions [Section 2(a, d, e)]

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

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

“reference” means reference to arbitration.

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

2.3 Relevant provisions

2.3.1 Provisions implied in arbitration agreement [Section 3]

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

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

► *Example 09:*

Arslan and Faisal made a contract and agreed to refer to arbitration in case of dispute, one arbitrator to be appointed by either side. The dispute arisen and arbitrators appointed. In the absence of contrary intention, the arbitrators shall appoint an umpire within a month of their appointments.

2.3.2 Agreement that arbitrators be appointed by third party [Section 4]

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

► *Example 10:*

Two businessmen agreed in a contract that in case of any dispute the matter shall be referred to arbitration and for this purpose, the arbitrator shall be appointed by the Chairperson of the Chamber of Commerce of the city.

2.3.3 Authority of appointed arbitrator or umpire irrevocable except by leave of Court [Section 5]

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

2.3.4 Powers of arbitrator [Section 13]

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

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

2.3.5 Parties to suit may apply for order or reference [Section 21]

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

► *Example 11:*

Naeem had filed a suit against Kareem in court for breach of contract. Kareem contacted Naeem and requested out of court settlement. Naeem agreed and both of them signed and submitted a written arbitration agreement to court before pronouncement of judgement. Such an agreement is valid.

► *Practice Question 03:*

Under the provisions of the Arbitration Act, 1940 state any four powers of arbitrator.

► *Solution:*

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

- i. administer oath to the parties and witnesses appearing;
- ii. state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;
- iii. make the award conditional or in the alternative;
- iv. correct in an award any clerical mistake or error arising from any accidental slip or omission.

► *Practice Question 04:*

Under the Arbitration Act, 1940, state any four powers of arbitrator.

► *Solution:*

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

- i. administer the oath to the parties and witnesses appearing;
- ii. state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;
- iii. make the award conditional or in the alternative;
- iv. correct in an award any clerical mistake or error arising from any accidental slip or omission;
- v. administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators, be necessary.

1. OBJECTIVE BASED Q&A

- 1 Under the provision of Anti-Money Laundering Act, 2010 which of the following is not a 'financial institution'?
 - a) Lending business
 - b) Financial leasing business
 - c) Educational institute
 - d) A business trading in transferable securities

- 2 If a person holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is _____, he is guilty of offence of money laundering.
 - a) Illegally occupied
 - b) Not owned by that other person
 - c) Proceeds of crime
 - d) Owned by government

- 3 In which of the following case(s) a person is deemed to have committed an offence of money laundering?
 - a) If a person acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime.
 - b) If a person conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime.
 - c) If a person holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime.
 - d) All of above.

- 4 Habib is guilty of an offence of money laundering, the court may punish him with rigorous imprisonment for a term:
 - a) Which shall not be less than one year
 - b) which may extend upto ten years.
 - c) which shall not be less than one year but may extend upto ten years.
 - d) None of above.

- 5 Habib Limited is guilty of offence of money laundering, the court may punish it with rigorous imprisonment for a term:
 - a) Which shall not be less than one year
 - b) which may extend upto ten years.
 - c) which shall not be less than one year but may extend upto ten years.
 - d) None of above.

- 6 Abid is guilty of offence of money laundering, he shall be liable to fine which may extend upto:
- Rs. 10 million
 - Rs. 25 million
 - Rs. 100 million
 - Rs. 250 million
- 7 Abid Limited is guilty of offence of money laundering, it shall be liable to fine which may extend upto:
- Rs. 10 million
 - Rs. 25 million
 - Rs. 100 million
 - Rs. 250 million
- 8 Abid, in connection with his directorship in Abid Limited, is guilty of offence of money laundering, he shall be liable to fine which may extend upto:
- Rs. 10 million
 - Rs. 25 million
 - Rs. 100 million
 - Rs. 250 million
- 9 If a government officer is involved in money laundering, this act will be considered as:
- a primary offence
 - a predicate offence
 - an intentional tort
 - a minor offence
- 10 Reference to arbitration shall be, in absence of contrary intention expressed in arbitration agreement, to:
- Sole arbitrator
 - One arbitrator from each side
 - Even number (2 or more) of arbitrator from each side.
 - None of above.
- 11 In absence of contrary intention expressed in arbitration agreement, the arbitrators shall make their award within:
- One month
 - Two months
 - Three months
 - Four months

- 12 In absence of contrary intention expressed in arbitration agreement, If the arbitrators have allowed their time to expire without making an award:
- a) The matter shall be taken to the Court.
 - b) The parties shall appoint other persons as arbitrators.
 - c) The umpire shall forthwith enter on the reference in lieu of the arbitrators.
 - d) None of above.
- 13 In absence of contrary intention expressed in arbitration agreement, the umpire shall make his award within:
- a) One month of entering on the reference
 - b) Two months of entering on the reference
 - c) Three months of entering on the reference
 - d) Four months of entering on the reference
- 14 In absence of contrary intention expressed in arbitration agreement, the arbitrators or umpire shall have power to:
- a) administer oath to the parties and witnesses appearing.
 - b) correct in an award any clerical mistake or error arising from any accidental slip or omission.
 - c) make the award conditional or in the alternative.
 - d) All of above.
- 15 Which of the following statements is correct?
- a) An arbitration agreement may either be express or implied
 - b) Arbitration agreement cannot be made to submit future differences to arbitration
 - c) An arbitrator can correct any mistake made in the award
 - d) An arbitrator is empowered to make the award conditional
- 16 In the context of the Arbitration Act, 1940, which of the following is considered as a 'legal representative'?
- a) A lawyer appointed to represent a deceased's family disputes
 - b) A person who has no relation to the deceased but handles their financial affairs
 - c) A person who intermeddles with the estate of the deceased
 - d) A person who briefly assists in managing the estate of a deceased

ANSWERS

1	c)	An educational institute is not a financial institution.
2	c)	Proceeds of crime
3	d)	All the statements indicate offence of money laundering.
4	c)	Which shall not be less than one year but may extend upto ten years.
5	d)	A company is a legal person and legal person cannot be punished with imprisonment.
6	b)	Rs. 25 million
7	c)	Rs. 100 million
8	b)	Rs. 25 million
9	b)	a predicate offence
10	a)	One arbitrator
11	d)	Four months
12	c)	The umpire shall forthwith enter on the reference in lieu of the arbitrators.
13	b)	Two months of entering on the reference
14	d)	All three are implied powers of arbitrators or umpire.
15	d)	An arbitrator is empowered to make the award conditional
16	c)	A person who intermeddles with the estate of the deceased

STICKY NOTES**Offence of money laundering includes – AML Act, 2010**

1. Acquisition, conversion or possession of criminal property
2. Concealment of criminal property
3. Possession of criminal property on behalf of others
4. Participation in money laundering

Punishment for money laundering – AML Act, 2010

1. Imprisonment of at least one year and maximum ten years
2. Fine upto Rs. 25 million (for legal persons upto Rs. 100 million)
3. Forfeiture of property involved in money laundering (or property of corresponding value)

List of relevant rules – Arbitration Act, 1940

1. Provisions implied in arbitration agreement
2. Agreement that arbitrators be appointed by third party
3. Authority of appointed arbitrator or umpire irrevocable except by leave of court
4. Powers of arbitrator (implied)
5. Parties to suit may apply for order or reference.

AT A GLANCE

SPOTLIGHT

STICKY NOTES

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