



**THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF
PAKISTAN (ICPAP)**

(Suggestion Solution)

Stage	Essentials	Course Code	E-301
Examination	Summer-2012	Course Name	Mercantile Law
Time Allowed	03 Hours	Maximum Marks	100
NOTES: 1) All questions are to be attempted. 2) Answers are expected to the precise, to the point and well written. 3) Neatness and style will be taken into account in marking the papers.			

Question No 1:- What is the Implied Authority of a partner?

Answer:- Implied Authority of a partner:-

Subject to the provisions of the Partnership Act, a partner is the agent of the firm for the purposes of the business of the firm. Therefore, a transaction entered into by one partner on behalf of the firm is binding on the firm and makes every partner liable, provided the following conditions laid down in S. 19 (1) of the Partnership Act are satisfied. The authority of a partner to bind the firm conferred by this section is called his "Implied Authority".

1. The transaction must be related to the normal business of the firm. If A and B carry on business as partners in a shoe shop, a contract signed by A in the firm name to supply books would not be binding on the firm or B unless it is made with the express authority of B, for the supply of books is not connected with the normal business of a shoe shop.
2. The transaction must be an act for carrying on business in the usual way. It is difficult to lay down any criterion as to the usual way of carrying on any business. It is for the court to decide from all the facts and circumstances of each case as to what is an act for carrying on business in the usual way.

3. The transaction must be executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

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

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

It should be noted that the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. But notwithstanding any such restriction, 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 of the restriction or does not know or believe that partner to be a partner.

A partner has also 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.

Question No 2:- Explain

- a) Reciprocal Promise
- b) Quantum Meruit
- c) Coercion
- d) Agreement Expressly Declared as Void

Answer:-

a) Reciprocal Promise:-

Promise which form the consideration or part of the consideration for each other are called reciprocal promises. Each promise is a consideration for the other.

These are of two types:

1. Reciprocal promise to be simultaneously performed.
2. If the order in which the reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order and

in a situation where the order is not expressly fixed by the contract they shall be performed in that order which the nature of the prosecution requires.

b) Quantum Meruit:-

This is a doctrine which means:

“Payment in proportion to the amount of work done”.

This doctrine goes into operation in the following three situations:-

1. Where the contract of parties leads to an interference of a promise to pay reasonable remuneration.
2. Where the breach of contract is such that it discharges the whole contract, the ensuring party can recover from the other party proportionate compensation for the work already done under the contract.
3. Where the law implies a contract to pay for the work done e.g., in case of services rendered under a contract which is not enforceable on account of some technical objection such as want of registration.

c) Coercion:-

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. Coercion renders the contract voidable at the option of the party, who has been coerced. In order that coercion be effective in law, the following things are necessary:

- i. It must have been exercised.
- ii. The object of coercion must be to cause any person to enter into an agreement. Coercion without this intention will not be legally effective. It is, however, immaterial whether the Pakistan Penal Code is or is not in force in the place where the coercion is employed.

d) Agreement Expressly Declared as Void:

In order to be a valid contract, it must not be one of those agreements which have been expressly declared to be void by law. These cases are discussed below:

Question No 3:-

a) What are different types of damages awarded for breach of contract?

Answer:-

Types of Damages:-

The principle underlined damages is not punishment, but compensation. Various types of damages awarded for the breach of contract are as under:

1. Nominal Damages:-

These generally consist of a very small sum of money, usually one rupee, and are awarded by a court where the plaintiff has proved a breach of contract.

2. Exemplary Damages:-

These are also known as vindictive damages and are specially penal and consist of heavy sum awarded by court in cases where the injured feelings of the party are also taken into account.

3. General Damages:-

These consist of compensation for the loss resulting from the breach of contract e.g., on breach of a contract of sale, general damages amount would represent the difference between the contract price and the market price on the date of the breach.

4. Special Damages:-

These are damages which are awarded by the court on the ground that they were in the contemplation of both the parties to the contract at the time they entered into it.

5. Contemptuous Damages:-

These are awarded where the court determines that the wrong is of a such trifling nature that no reasonable minded person would think of coming before a court in a situation there has undoubtedly been a wrongful act on the part of the defendant.

6. Liquidated Damages:-

It is the amount fixed beforehand by the party for the just protection of the injured party and is recoverable in full.

b) What are the rights of the Bailee?

Answer:-

Rights of the Bailee:-

1. A bailee is entitled to recover damages from the bailor if he suffers any injury resulting from the defects of the goods bailed.
2. The bailee is entitled to be reimbursed for all legitimate expenses incurred for the purpose of the bailment.

3. The bailee can recover compensation from the bailor for any loss caused to him due to any defect in the bailor's title.
4. Bailee's particular line: If in pursuance of a bailment the bailee has rendered services in respect of goods bailed, the bailee, in the absence of a contract to the contrary, has a right to certain such goods until he receives due remuneration for services he has rendered. This is known as bailee's particular line.

Question No 4:-

a) What are the rights of an unpaid seller against the goods?

Answer:-

Rights of unpaid seller against the goods: - The seller of the goods is deemed to be an unpaid seller:

- i. When the whole of price has not been paid or tendered; or
- ii. When a bill of exchange, cheque, etc., has been received and the same has been dishonored.

Even though the property in the goods may have passed to the buyer, the unpaid seller of goods has the following rights against the goods:

- a. A lien on the goods while he is in possession of them;
- b. Right of stopping the goods in transit after he has parted with their possession; and
- c. Right of resale.

1. Unpaid Seller's Lien:-

The unpaid seller of goods, who is in possession of them, is entitled to retain possession of them until payment or tender of the price. This is known as seller's lien. The unpaid seller is entitled to retain the goods in the following cases:

- a. Where the goods have been sold without any stipulation as to credit;
- b. Where the goods have been sold on credit but the term of credit has expired;
- c. Where the buyer becomes insolvent.

The unpaid seller of goods loses his lien thereon:

- a. When he delivers the goods to a carrier or other bailee for the purpose of transmission by the buyer without reserving the right of disposal of the goods;
- b. When the buyer or his agent lawfully obtains possession of the goods;
- c. When the seller waives his lien.

2. Stoppage in Transit:-

When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit; that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment of the price. The right of stoppage may be exercised either by taking actual possession of the goods or by giving notice of this claim to the carrier or other bailee in whose possession the goods are.

The unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto. But if the seller issues a document of title to goods to the buyer and he transfers the documents to a person who takes the document in good faith and for consideration by way of sale, the unpaid seller's right of lien or stoppage in transit is lost. But if the transfer of documents or titles is by way of pledge, the unpaid seller can exercise his right of lien or stoppage in transit subject to the right of the transferee.

3. Rights of Resale:-

Where the goods are a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit given notice to the buyer of his intention to resell, the unpaid seller, may, if the buyer does not within a reasonable time pay the price, resell the goods, within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract. But the buyer shall not be entitled to any profit which may occur or resale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the resale.

SALE BY AUCTION

In the case of a sale by auction:

- 1) Where the goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale.

- 2) The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract his bid.
- 3) A right to bid may be reserved expressly by or on behalf of the seller and where such right is expressly so reserved, but not otherwise, the seller or any person on his behalf may bid at the auction.
- 4) Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
- 5) The sale may be notified to be subject to a reserved or upset price below which the article will not be sold.
- 6) If the seller makes use of pretended bidding to raise the price the sale is voidable at the option of the buyer.

BREACH OF CONTRACT

Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the goods. If the buyer wrongfully neglects or refuses to accept and pay for goods, the seller may sue him for damages for non-acceptance.

Where under a contract of sale the price is payable on a certain day irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not yet been appropriated to the contract. If the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific performance or delivery of the goods are not usually granted by the Court except in the case of goods having some peculiar value. Where there is a breach of warranty by the seller, the buyer may deduct the damages from the price of the goods and pay the balance to the seller, or he may pay the full price and bring a suit for damages against the seller. The damages that can be claimed are only those

which are directly and naturally, caused by the breach, and are usually measured by the excess of the contract price over the market price of the goods at the time of the delivery or acceptance of goods.

b) Who is holder in due course?

The Holder in Due Course:- The Holder in due course means any person who became the possessor of a promissory note, bill of exchange or cheque if payable to bearer or payee or endorse thereof if payable to order (1) for consideration, (2) before the amount mentioned in it became payable and (3) without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. In simple language any person who becomes a holder of a negotiable instrument (1) for value, (2) before maturity of the instrument, and (3) in good faith, is known as a holder in due course. A fourth condition is sometimes added to the other three, namely, that the document must be in proper form.

The instrument must be received for value if the holder is to become holder in due course. Otherwise he will remain just a holder. If I give a cheque of Rs. 20,000 to the trustees of the Commerce College, Lahore, for the benefit of that institution, the trustees receive the cheque without paying any value. Hence they are holders of the cheque but not holders in due course. In case my title to the cheque turns out to be bad, the title of the trustees to that cheque will also be bad; for the title of the holder of a negotiable instrument cannot be better than that of the transferor.

Again, the holder must act honestly and must receive the instrument in good faith. He must know that the title of the transferor is good.

Finally, the holder in due course must receive the instrument with due exercise of intelligence and caution, and must see that the instrument is complete and in proper order.

When a negotiable instrument has been lost, or has been obtained from any maker, acceptor, or holder thereof by means of an offence or fraud or for an unlawful consideration, no possessor or endorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or endorsee is, or some person through whom he claims was, a holder thereof in due course.

The main who finds a lost instrument or who steals an instrument acquires no title to it; and the real owner of the instrument can take it back from him. But if the instrument is a bearer instrument or bears a blank endorsement, and the

finder or thief transfers it to an innocent person for value and before maturity, the transferee gets a goods title to it inspite of a defect in the title of the transferor. But if the instrument happens to be payable to order and the finder or the thief who finds it without endorsement transfers it to an innocent holder without endorsement or with a forged endorsement, the transferee does not acquire a good title. Forgery gives no title.

The holder for value:-

The holder for value should be distinguished from holder in due course. A holder for value is the holder of an instrument for which value has been paid at some time though not necessarily by him. For instance, you may donate a cheque of Rs. 2,000 received from your debtor to a mosque. In this case, value has been paid for the cheque by you and not by the trustees of the mosque who are holders for value. As against this, a holder in due course always pays value for the instrument himself. Again, the title of a holder for value cannot be better than that of its transferee; but a holder in due course requires a good title to the instrument.