



STUDY NOTES

**ESSENTIALS
MODULE-III**

Mercantile Law

E-301



ICPAP

The Institute of Certified Public

Accountants of Pakistan



Question No 1:- What is contract? Give the meaning and definitions of a contract. Also state the essential elements of valid contract.

Or

Question No 2:- "An agreement enforceable at law is a contract" Discuss the definition, bringing out clearly the essentials of a valid contract.

Or

Question No 3:- What do you understand by the term "contract" Describe briefly the essentials of a valid contract.

Answer:-

Definition of Contract:

Salmond defines a contract as, "an agreement creating and defining obligations between the parties" Sir William Anson observes, "A contract is an agreement enforceable at law made between two or more persons, by which rights are acquired by one or more to acts or forbearance on the part of the other or others." According to Sir Frederick Pollock, "Every agreement and promise enforceable at law is a contract."

Contract is defined by Sec. 2(h) as _____

"An agreement enforceable at law is a contract."

Thus to make a contract, there must be;

1. An agreement and
2. That agreement should be enforceable by law.

Contract = Agreement + Enforceability,

Agreement becomes a contract when it is enforceable at law. Agreement is defined as "every promise or every set of promises forming the consideration for each other." Sec. 2(e).

Sec. 2(b) indicates promise to be an "accepted proposal." "A proposal when accepted becomes a promise." Therefore an agreement is an "accepted proposal". In the ultimate analysis, agreement is made of 'proposal' on one side, and of "accepted" by other.

Agreement = Proposal + Acceptance.



An agreement becomes enforceable when it fulfills the conditions laid down in Sec. 10 which state, "An agreement is a contract if it is made by the free consent of the parties, competent to contract, for a lawful consideration and for a lawful object."

Thus every contract is an agreement but not vice versa. An agreement becomes a contract when the following conditions are satisfied:

1. There is some consideration.
2. Parties are competent to contract.
3. Consent is free.
4. The object is lawful.

In addition to these, the offer and acceptance must be 'consensus ad idem', Consensus ad idem means that both the parties agree on the same thing in the same sense. Before a contract comes into being, there is proposal by one or more persons and acceptance by other or others. "Offer and acceptance must concur to bring about a valid contract". The term "consensus" connotes identity of minds. Unless minds of both the sides agree on the 'same thing in the same Sense', a valid contract will not be formed.

Agreement:-

'Agreement' is a comprehensive term including.

1. Social agreements,
2. Legal agreements.

Social Agreements. A social agreement is social in nature and do not enjoy the benefits of law. These agreements are not enforceable and as such cannot be called 'contract'.

Legal Agreements. A contract is concerned with legally enforceable agreements. Legal agreement is the sum of (a) an agreement and (b) an intension to create legal obligations. Obligations requires that parties must do or abstain from doing something, such act or abstinence may relate to social or legal matters. Obligation has the following essentials:

1. Two parties.
2. Promise to do or abstain from doing something.
3. Obligation must relate to legal matters.

Intention to Create Legal Relations. There are agreements which do not result into contract within the meaning of that term. The ordinary example is "where



two parties agree to take a walk together there is no contract because parties do not intend that they should be attended by legal consequences". Intention of parties is known from the terms of agreement and surrounding circumstances.

In *Balfour v. Balfour* (1919) 2 KB 571. A husband promised to pay his wife, a domestic allowance of £ 30 per month. Later the parties separated and the husband defaulted the payment. Held, the wife could not recover since there was no intention to create legal relations at the time of entering into the agreement.

Essentials of a valid contract:-

It is essential to determine when does an agreement become a contract. In order to have knowledge about so many things, e.g., in respect of an agreement which is not a contract there is no legal remedy available to either of the parties if one of them fails to carry out the agreement. But breach of a contract gives rise to legal remedy.

According to Sec. 10 "Every agreement is a contract if it is made by the free consent of parties, competent to contract for a lawful consideration and with lawful object and not hereby expressly declared to be void".

An agreement becomes enforceable by law when it fulfills some conditions. These conditions may be called as the essentials of a valid contract. Following are the essentials:

1. **Agreement.** Two parties - one making 'offer' and the other 'accepting' it. Acceptance must be unconditional and in the same mode as 'prescribed' and communicated to the proposer. To constitute a valid contract, there must be "consensus ad idem".
2. **Legal relationship.** Parties must intend to create legal relationship. It arises when parties know that if one of them does not fulfill his part of promise, he shall be liable for the failure of a contract. (*Balfour v. Balfour*).
3. **Lawful consideration.** Consideration is 'something in return'. It is the doing of or abstinence from an act. It may be past or present. Usually a promise to give or to do something for nothing in return is not enforceable at law, it need not be in cash or kind.

The consideration or object of an agreement is unlawful if-

- 1) It is forbidden by law; or
- 2) It is of such a nature that, if permitted, it would defeat the provisions of any law; or
- 3) It is Fraudulent; or



- 4) Involves or implies injury to the person or property of another; or
 - 5) Is opposed to public policy.
4. **Capacity of parties. (Sec 10, 11, 12).** Every person is competent to contract if he is of the age of majority, is of sound mind and is not disqualified from contracting by law to which he is subject.
Flaw in capacity arises from minority, idiocy, drunkenness etc.
5. **Free consent (Sec. 13-22).** "Two or more parties are said to consent when they agree upon the same thing in the same sense". [Sec. 13]. This emphasizes the need of "consensus ad idem"- Free consent is absent if contract is induced by coercion, mis-representation, fraud, undue influence etc.
6. **Lawful object. (Sec. 23,24).** The object of contract must not be:
- 1) Illegal or unlawful.
 - 2) Immoral or
 - 3) Opposed to public policy.
- Object must not be forbidden by law or is of such nature that if permitted it will defeat the provisions of law or imputes injury to the person or property of another.
7. **Agreement must not have been declared void by any law in force in the country.**
A void agreement is not enforceable by law. It has no legal existence, neither it gives rise to any rights or obligations. Example of void agreement are: Agreements is restraint of trade, agreements is restraint of legal proceedings, agreements in restraint of marriage, wagering agreements etc.
8. **Certainty and possibility of performance.** Contract must not be uncertain, vague, or indefinite. Where the agreement is vague and its meaning can't be ascertained, it shall be unenforceable. An agreement to do something impossible is void. Terms of agreement should be definite.
9. **Legal formalities** regarding the following should be fulfilled; wherever necessary.
- 1) Writing
 - 2) Registration and
 - 3) Attestation etc.

Conclusion. If any of the essential elements is missing the contract is either voidable, void, illegal or unenforceable in the eyes of law.



Question No 4:- What is an offer? Discuss the types of offer. State the rules of valid offer.

Or

Question No 5:- What essential conditions are necessary to convert a proposal into a promise.

Or

Question No 6:- How is an offer made, revoked and accepted? What rules do apply when an offer is made through the post office? Illustrate your answer.

Answer:-

Proposal: "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". Sec. 2 (a).

A proposal means an offer.

Person making the offer is known as offerer.

Person to whom the offer is made is called offeree.

Types of offer. 1. (A) Express. If the proposal is made in words spoken or written it is called 'Express Proposal'.

(B) Implied. When offer is made otherwise than in words. The promise is "Implied". Conduct may convey as clearly as words. Thus when offer is "expressed by conduct", the offer is "Implied".

2. (A) Specific. When offer is made to a definite person or definite class of persons, it can be accepted by that particular person only.

(B) General. When offer is made to the world at large and which could be accepted by anyone e.g. reward to a person supplying information pertaining to something.

But the contract is not made with the entire world. Contract is made with the person who comes forward and performs the conditions of the proposal. Following is a famous case:



In *Carlill v. Carbolic. Smoke Ball Co Ltd.* (1893) 1 QB 256. A company offered to pay Rs. 100 to any person who contracts influenza after using the smoke balls manufactured by them, in accordance with printed directions. A lady used the smoke balls and subsequently suffered from influenza. She was held entitled to recover the reward.

Sec. 8 clearly states “performance of the conditions of the proposal is an acceptance of the proposal”.

Offer and Invitation to Offer. The above two must be distinguished. Invitation to offer are ‘offers to negotiate’, offers to receive offers. On the other hand ‘offer’ is the final expression of willingness by the offerer to be bound by his promise, should the other choose to accept it. But where a party without expressing its final willingness proposes certain terms on which he is willing to negotiate, he does not make an offer but only invites the other party to make an offer on those terms.

Legal Rules as to offer:

1. Offer must be capable of being accepted and giving rise to legal relationship.
Example. A social invitation does not create legal relationship.
2. Terms of offer. Offer must not be ambiguous, uncertain and vague, for example – A promise to pay extra Rs. 100 if the horse proves to be lucky is too vague to be enforceable.
3. Offer is different from:
 - i. Declaration of intention, tenders etc.
 - ii. Invitation to make offers, quotations, circular etc.

In *Pharmaceutical v. Boots* case, “Goods are sold in a shop under the “self service” system, customers select goods in the shop and take them to the cashier for payment of the price. The contract in this case, is made, not when the customer select the goods, but when the cashier accepts the offer to buy and receives the price”.

When a person calls for tenders, this only amounts to an invitation to offer and not all offer. Advertisement in papers are not offers. Where goods are sold under “self service system”, offer is made not on customer’s selecting the goods but on cashier’s accepting the payment.

4. Offer must be communicated. According to Sec. 4 ‘the communication of a proposal is complete when it comes to the knowledge of the person to



whom it made',. An offer can't be accepted unless it has been brought to the knowledge of the person to whom it is made.

5. Offer must be made with a view to obtaining the assent

The offer to do or not to do something must be made with a view to obtaining the assent of the other party to whom the offer has been addressed and not merely with a view to disclosing the intention of making an offer.

6. Offer should not contain a term, the non-compliance which would amount to acceptance. Thus the offer should not contain a term like that "if the acceptance is not communicated upto Sunday next, the offer would be considered as accepted."

Question No 7:- Define the terms acceptance. What are the essentials of a valid acceptance?

Or

Question No 8:- How can an offer be accepted? State briefly the rules relating to the communication of acceptance. Can there be a tacit acceptance of an offer? How can an offer be accepted by acting upon it?

Answer:-

Acceptance. "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 [Sec. 2(b)].

Who can accept? Acceptance can be made only by the person to whom offer is made. If it is made to a particular person, it can be accepted only by him and by no third person on his behalf.

In *Boulton v. Jones* (1857) 2 H & N 564, A bought a business from B, C to whom B owed some money ordered to supply him certain goods. Instead of B, A supplied the goods, C refused to pay, because he intended to contract with B only. Held, offer was made to B only and he alone could accept it.

Where an offer is made to the world, at large, any person or persons, with notice of the offer, may accept the offer.

In case a reward has been offered for giving specific information, acceptance can be made, only by the first person who gives the information.



Communication of acceptance should be from a person who has the authority to accept it. Information received from unauthorized person is ineffective. [Powell Vs Lee]

In certain cases, communication of acceptance is not necessary. This offer may prescribe a particular mode then what the acceptor is to do is to follow that mode.

Legal Rules as to acceptance

1. **Acceptance must be absolute and unqualified.** There must be no variation in terms of offer otherwise acceptance shall amount to counter offer. Acceptance should be of the whole of the offer. The offeree can't accept a part of its terms which are favorable to him and reject the rest. Such an acceptance amounts to counter proposal or counter offer.
2. **Acceptance must be in the prescribed mode:** If no particular manner is prescribed it must be made in a reasonable manner. If acceptance is not according to the prescribed mode, the offerer may refuse to be bound. But offerer must reject such acceptance within reasonable time. If he fails to do so, he is bound by the acceptance. [Sec. 7(2)]
3. **Acceptance must be communicated to the offerer:** Offeree must not only intend to accept but also convey it. There must be some external manifestation by way of speech; writing or such other act. In some cases, offerer may dispense communication of acceptance. Example - when doing of an act amount to acceptance.
In *Cartill v. Carbolic smoke Ball Co.* (1893) 1 Q.B.D. 256 "where Cartill used the smoke ball of the company according to its directions and contacted influenza. It amounted to the acceptance of the offer by doing the required act and she could claim the reward".
4. **Acceptance must be given within reasonable time or within specified time limit:** If any time limit is specified acceptance must be given within that period. If no time limit is stipulated, it must be given within a reasonable time.
5. **Acceptance cannot be given before communication of offer;** e.g., a company allotting shares to a person before he applies for them. Any acceptance given before the communication of offer is not a valid acceptance.
6. **Acceptance must be made before the offer lapses or offer is withdrawn.**



7. **Acceptance can be made by the party to whom the offer is made.**
8. **Acceptance must show intention to fulfill the promise:** Acceptance can't be implied from the silence of the offeree or his failure to answer, unless the offeree has by his previous conduct indicated that his silence means that he accepts.

Question No 9:- Discuss briefly the law relating to communication of offer, acceptance and revocation. When does an offer comes to an end?

Or

Question No 10:- How and on what grounds does a proposal stand revoked? Is there any limit in time after which revocation of a proposal can't be made.

Or

Question No 11:- What is meant by

- i. **Lapse of an offer;**
- ii. **A Counter-offer.**

Answer:- Communication: An offer and an acceptance, to be complete must be communicated. Unless an offer is communicated it cannot be accepted. An acceptance, for instance, in ignorance of the offer, is no acceptance and does not confer any right on the acceptor. Lord Lyndley observes in this regard "A state of mind not notified cannot be regarded in dealings between man and man."

The rules regarding communication of offer and acceptance are as follows:

Sec. 4. The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete 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:

as against the acceptor when it comes to the knowledge of the proposer.

Communication of revocation Sec. 4. Revocation means "cancellation". It may be a revocation of offer or acceptance. The communication of revocation is complete - as against the person who makes it, when it is put into a course of



transmission to the person to whom it is made, so as to be out of the power of the person who makes it, as against the person to whom it is made, when it comes to his knowledge.

An offer may come to an end by revocation or lapse, or rejection. Sec. 6 deals with various modes of revocation of an offer. In all these cases offer comes to an end.

1. **Revocation of offer by communication of notice.** Offer can be revoked any time before acceptance, the offer doing so by giving notice of revocation to the offeree. Communication of acceptance is complete as against the offerer when it is put into a course of transmission so as to be out of the power of the person accepting it.
2. **Revocation by lapse of time.** If a time is prescribed for acceptance, the offer gets revoked by non-acceptance within that time. If no time has been fixed, the offer lapses by expiry of reasonable time.
3. **Revocation by failure to fulfill a condition precedent to acceptance.**
Illustration: A seller agrees to sell the goods subject to the condition that the buyer pays the price before a particular date. If the buyer fails to pay the price, the offer stands revoked.
4. **Revocation by death or insanity of the offerer.** Death of the offerer puts an end to the offer provided the fact of his death or insanity comes to offeree's notice before acceptance. If he accepts the offer in ignorance of death of offerer, the acceptance is valid as against the heirs of offerer. Under English law, death or insanity puts an end to the offer, although the acceptance was made in ignorance of this fact.
5. **Revocation by cross offer.** An offer is revoked, when a counter offer is made to it.

In Hyde v. Wrench (1840) 3 Begg., 334; A, offered to sell his land to B for £1,000. In reply B offered to pay £950. A refused. Subsequently, B wrote accepting the original offer at £1,000. Held there was no contract as the original offer had lapsed by counter-offer.

Rejection of offer by the offeree: Once he does so, he can't subsequently accept it. Rejection may be expressed or implied:

Express- by words spoken or written.

Implied - by counter offer or conditional acceptance.

Rules governing the procedure of revocation of offer.



1. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterwards (Sec. 5).
2. Revocation takes place only when it is actually communicated to the offeree.
3. If offeror has agreed to keep the offer open for a certain period, he can revoke it before expiration of the period only if;
 - A. The offer has not in the meantime been accepted.
 - B. There is on consideration for keeping the offer open.

Agreement to agree in future. An agreement to agree in future is a contradiction. It is absurd to state that a man enters into an agreement till the terms of the contract are settled. Until those terms are settled he is free to return from the bargain.

Moreover, there can be no binding contract unless all the material conditions of contract have been agreed upon. Thus agreement to agree in future is no contract, nor is there a contract if material conditions are not agreed upon.

Contracts over Telephone. In business many a contracts are negotiated over telephones. A contract over Telephone or Telex is treated on the same principles as if the parties are facing each other. No binding contract can arise unless the offeree's acceptance is audible, heard and understood by the offeror.

Question No 12:- "A mere mental acceptance not evidenced by words or conduct is in the eye of law no acceptance." Explain.

Or

Question No 13:- "Acceptance is to offer what a lighted match is to a train of gunpowder." Anson. Discuss.

Answer:- According to Sir William Anson, "Acceptance is to offer what a lighted match is to a train of gunpowder. It produces something which cannot be recalled or undone. But the powder may have laid until it has become damp or the man who has laid the train may remove it before the match is applied. Thus an offer may lapse for want of acceptance or be revoked before acceptance.

Acceptance converts the offer into a promise and then it is too late to remove it."

Thus the main emphasis in the above statement is on two points:



1. There can't be an acceptance after revocation of an offer.
2. When once there is an acceptance, there can then be no revocation.

Thus when acceptance is given to an offer, it ripens into a contract, just as when a lighted match is applied to a train of gunpowder it explodes.

Question No 14:- Discuss the difference types of contracts.

Or

Question No 15:- distinguish between the following classes of contract:

- i. **Express and Implied contracts.**
- ii. **Executed and Executory contracts.**
- iii. **Valid, void, voidable and unenforceable contracts.**
- iv. **Void agreements and void contract.**

Answer:- The classification of contracts may be done as follows:

1. According to validity
 - i. Voidable contract.
 - ii. Void contract.
 - iii. Unenforceable contract.
2. According to formation
 - i. Express contract.
 - ii. Implied contract.
 - iii. Quasi-contract.
3. According to performance
 - i. Executed contract.
 - ii. Executor contract.
 - iii. Unilateral contract.
 - iv. Bilateral contract.

A brief discussion of these different types of contracts is given below:

1. **Voidable Contract.** An agreement which is enforceable by Law at the option of one or more of parties thereto, but not at the option of the other or others is a voidable contract. (Sec. (j)).
2. **Void Contract.** A contract which ceases to be enforceable by law becomes void which it ceases to be enforceable. (Sec. (j))
Void Agreement. An agreement not enforceable by law is said to be void. (Sec. 2(g). It is unllity and devoid of legal effects.
Void Agreement v. Void Contract. A void agreement is void abinitio i.e., void from the very beginning. For instance, an agreement with a minor or



an agreement without consideration. On the other hand void contract is valid when it is originally entered into, but subsequently becomes void on the happening of some event.

3. **Unenforceable Contract.** It is one which can't be enforced in a court of Law because of some technical defect such as absence of writing, registration, stamp, attestation etc. the aggrieved party in such a contract is not entitled to the legal remedies.
4. **Express Contract.** Where the offer or acceptance of any promise is made in words, the promise is said to be express. (Sec. 9) An express promise results in an express contract.
5. **Implied Contract.** Contracts which are inferred from the acts or conduct of the parties are called implied contracts. According to Section 9, "where the proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied.
6. **Quasi-contract.** A quasi-contract is created by law and is termed as 'certain relations resembling those of contract. it rests on the principle of equity that, "no person shall be allowed to enrich himself unjustly at the expense of another."
7. **Executed Contract.** An executed contract is one in which both the parties have performed their obligations.
8. **Executor Contract.** Where both the parties to the contract have yet to perform their obligation under the contract, it is an executor contract.
9. **Unilateral Contract.** A unilateral contract is one where one party has discharged his obligation either before or at the time of entering into the contract.
10. **Bilateral Contract.** A bilateral contract is one in which both the parties to the contract have yet to perform the obligations arising out of the contract.

Question No 16:- 'Define Consideration'? "What are the legal rules regarding consideration"?

Or

Question No 17:- Discuss the rule that a stranger to a contract cannot sue on the contract. Are there any exceptions to the rule?

Or

Question No 18:- Comment on consideration as defined in the Indian Contract Act. Can a contract be valid without it?

Answer:-



Consideration. Consideration is used in the sense of quid pro quo (something in return). It is the price for which promise “of another is bought” says Pallock. It is some benefit or detriment gained or suffered by either or both of the parties unless there is no consideration. Sec 2(d) defines consideration in the following manner:-

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

Legal rules as to consideration.

1. It must move at the desire of the promisor.
 2. It may move from the promise or any other person.
 3. It may be past, present or future.
 4. It must be real and not illusory.
 5. It need not be adequate.
 6. It must be something that the promisor is not already bound to do.
 7. Consideration must not be unlawful.
-
1. At the desire of the promisor. An act (or abstinence) shall not be good consideration for a promise unless it is done at the desire of the promisor.
 2. From the promise or any other person. Act which is to constitute consideration may be done by the “promisor or any other person”. Under English law consideration must move from the promise only. However Indian Act recognizes consideration moving from a third party than the promise. Accordingly, even a stranger to consideration can sue upon a contract.
 3. Consideration may be Past, Present or Future:
 - a) Past Consideration: If the act has been done before a promise is made, it is called past consideration.
 - b) Where consideration and promise move simultaneously it is called present consideration. In a cash sale consideration is always present.
 - c) Where consideration is to move subsequently to the making of the contract it is called future consideration. A promises to deliver certain goods to B after a week. B promises to pay the price after a week. It is a case of future consideration.
 4. Consideration must be of some value, but need not be adequate. It is not necessary that consideration necessary that consideration should be



adequate to the promise. "An agreement to which the consent of the promisee has been freely given is not void only because the consideration is inadequate". But courts will not inquire whether a promise given is equivalent to promise obtained. The adequacy of the consideration is for the parties to consider at the time of making the agreement and not for the court when it is sought to be enforced.

Thus there must be "something in return" to support the contract. Courts do not have to inquire whether consideration is adequate or not.

However, the inadequacy of consideration may be taken into account in determining the question, whether the consent of the promisor was freely given. "But once the court is satisfied that a person has entered into an agreement freely and with knowledge of its effect, the agreement will be valid notwithstanding the inadequacy of consideration."

5. Consideration must be real and not illusory
 - a) Illusory: Consideration must be real and of same value in the eyes of law although it need not be adequate. Consideration is illusory (and not real) when it is uncertain, or is physically or legally impossible to perform. Thus, a promise to create treasure by magic or to join two parallel straight lines together cannot be regarded as valid contracts.
 - b) Legally impossible.
 - c) Uncertainty
 - d) Physical Impossibility.
6. Consideration must be something that the promisor is not already bound to do. Where a person is already bound to do something, new consideration to perform the pre-existing contract is not valid.
7. Consideration must not be unlawful. The consideration given for an agreement must be lawful. Where the consideration is unlawful, the courts do not allow an action on the contract -
Consideration is unlawful if:
 - a) It is forbidden by law.
 - b) It is fraudulent.
 - c) It involves property of another.
 - d) It is immoral or opposed to public policy.
 - e) It is of such a nature that if permitted, it would defeat the provisions of law.



Question No 19:- “Insufficiency of consideration is immaterial: but an agreement without consideration is void”. Comment

Or

Question No 20:- “A contract without consideration is void”. Discuss.

Or

Question No 21:- Explain the term consideration and state the exceptions to the rule “No consideration, no contract.”

Or

Question No 22:- Define ‘consideration’ and state the exceptions to the rule that an agreement made without consideration is void.

Or

Question No 23:- “The legal effects of a contract are confined to the contracting parties” Comment.

Or

Question No 24:- “Consideration in law is sometimes the real purchase price of a promise and sometimes it is a mere fiction devised to make a contract enforceable.” Comment.

Answer:- Consideration is one of the essential elements to support a valid contract. When a party to an agreement promises to do something he must get “something” in return. If he does not get something in return, the contract is not valid. This something is defined as consideration. A promise without consideration is void.

Section 2 (d) defines consideration as –

“When at the desire of the promisor, the promisee or any other person has done or abstained from doing something 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 general rule is that an agreement made without consideration is void (section 25). However Pakistani Contract Act contains certain exceptions also. In such cases the agreements are enforceable even though they are made without consideration. These cases are:



1. Natural love and affection. (Sec. 25 (1)). A written and registered agreement based on natural love and affection between near relatives is enforceable without consideration. Relation may be between Doctor-Patient, Teacher Student, Father-Son, Brother-Sister etc. where an agreement is expressed in writing and registered under the law and is made on account of nature love and affection between the parties standing in a near relation to each other, it is enforceable even if there is no consideration. Thus a contract without consideration shall be enforceable if following conditions are satisfied.

- 1) The contract is made out of natural love and affection.
- 2) The contract is registered.
- 3) The contract is in writing.
- 4) Parties to it stand in near relation to one-another.

All the above requirements must be satisfied to made an agreement, without consideration enforceable at law. Held, agreement is not covered by exceptions, as the essential requirement, that the agreement is made on account of natural love and affection, between the parties, is missing.

2. Compensation for voluntary services [Sec. 25 (2)]. A promise to compensate wholly or in part a person who has already voluntarily done something for the promisor is enforceable. In order that a promise to pay for past voluntary services is binding; two things are necessary:-

- 1) The service should have been rendered voluntarily, and
- 2) For the promisor.

3. Promise to pay Time barred debt [25 (3)].

- 1) Promise should be in writing, signed by the promisor or his agent specially authorized on that behalf. Promise must not be merely an acknowledgement of the debt.
- 2) Promise may be absolute or conditional. If it is conditional it can be fulfilled only after the condition has been performed.
- 3) Promise may be to pay the whole or any part of the debt.
- 4) The debt must be such of which the creditor have enforced payment but for the law of limitation.

4. No consideration is required to create an agency (Sec. 185).

5. 'No consideration no contract' does not apply to completed gifts – Sec. 25 Expl. (1). When it is an agreement in respect of a gift that has been made. This means that the rule of 'No consideration, no contract' does not apply to completed gifts.

It means gifts do not require any consideration. Absence of consideration shall not affect the validity of any gift actually made.



6. Contracts under Seal: Under the English Law, a contract made in the form of a deed under seal is valid even though it is made without consideration.

In all the above cases, contracts shall be valid and effective without consideration.

Question No 25:- What do you understand by the term “capacity of parties?” State the position of a minor under the Pakistani Contract Act.

Or

Question No 26:- State briefly the law relating to competence of position to a contract.

Or

Question No 27:-What do you understand by ‘Capacity to contract’? What is the effect of agreements made by persons not qualified to contract.

Or

Question No 28:- What are necessities? What is a minor liable on a contract for necessities?

Or

Question No 29:-“Every person is not competent to enter into valid contract.” Explain. What is the effect of any agreement made by persons not qualified to contract?

Or

Question No 30:- A, a minor, borrows Rs. 5000 from B and executes a promissory note for the amount in favor of B. After attaining majority, A executes another promissory note in settlement of the first promissory note. Will B succeed in recovering money from A? Give reasons in support of your answer.

Answer:- Section 10 states “All agreements are contracts if they are made by the free consent of the parties competent to contract.” Thus Section 10 requires the parties to be ‘competent to contract.’

Section 11 defines competency as “Every person is competent to contract if he is of the age of majority according to the law to which he is subject, is of sound mind and is not disqualified from contracting by any law to which he is subject”.

Thus, Incompetency is caused by:



1. Minority.
2. Unsoundness of mind.
3. Status.

MINOR

Who is minor? Sec. 3 of Pakistan Majority Act 1875 declares that everyone domiciled in Pakistan shall be deemed to have attained the age of his majority when he shall have completed his age of eighteen years and not before. In the following two cases, a minor attains majority after 21 years of age where

1. A guardian of minor's person and property has been appointed by the court under the guardians and wards Act 1890.
2. A minor is under the guardianship of court of wards. In these two cases the age of majority shall be 21 years. Sec. 2 declares that nothing contained in this Act shall affect the capacity of any person to act in matters of marriage, divorce.

Position of Minor at Law. Law protects the minor against his own inexperience and the improper designs of those advanced in years. Thus it is construed that in a minor's case. Judges are his counselors, Jury in his servant, law is his guardian.

Nature of Minor's Agreements

1. **Agreement with a minor is void ab initio.** *Mohiri Bibi v. Dhamodas Ghoses*(1903) 30 Cal. 539. In case a minor executed a mortgage for the sum of Rs. 20,000. Mortgagee paid Rs. 8000. Later on mortgagee wanted the mortgage to be put aside and to get return of his money. The Privy Council held that an agreement by a minor was absolutely void and therefore the question of refunding the money did not arise. The decision of the Privy Council that, an agreement by a minor is void is based upon a strict interpretation of section 11 of the Indian Contract Act. The reason underlying the rule is that a minor is supposed to be incapable of judging what is good for him. His mental faculties are not mature and therefore the law protects him.
2. **Minor may be a promisee or beneficiary.** Incapacity arises while it comes to imposing obligations. Law does not regard a minor as incapable of accepting a benefit. If an agreement is made for the benefit of the minor then the minor can take benefit of that agreement. A minor may enforce a promissory note execute in his favour. Similarly, where a mortgage is



executed in favour of a minor who has advanced money, it is enforceable by him or any other person on his behalf.

3. **Minor can't become a partner nor can a new partnership be started with minor as a partner** but he can be admitted into the benefits of partnership with the consent of all the other partners.
4. **Minor can be an agent;** A minor can act as an agent. As an agent, he can bind his principal by his acts, but he is himself not liable to his principal by his acts, but he is himself not liable to his principal for his acts.
5. **There can be no specific performance of an agreement made by a minor.** Sec. 65 and 66 do not apply to contract by minor. In *Leslie v, Sheill* (1914) 3 KB 607. A. a minor succeeded in deceiving some money lenders by falsely representing his age and getting some loan from them. Their attempt to recover the principal and interest plus damages for fraud failed on the ground that it is not possible to enforce in a twisted way a void contract.
6. **A minor can always plead minority.** Minor is not stopped from setting up the defense of his infancy. Law protects a minor from contractual liability. A minor cannot be sued even if he has induced the other party to contract with him by misrepresentation of his age. However, where minor has obtained a loan by fraudulent means, the court may on equitable grounds, order him to restore the money so obtained.
7. **"Minor can't ratify the agreements entered into during minority on the attainment of majority"**. It would be a contradiction in terms to say that a void contract can be ratified. If it is necessary, a fresh contract should be made on attaining majority. New contract shall require new consideration.
8. **Section 64 and 65 do not apply to a minor i.e.,** where he has received a benefit under a void agreement he can't be required to pay for or compensate it.
9. **A minor can't be adjudged insolvent.** This is because he is incapable of contracting debts.
10. **A minor is liable for the necessaries** supplied to him or to his dependants.

Section. 68 provides for liability of person incompetent to contract when necessaries have been provided to him. So, "If a person incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries stated to his condition of life the person who has furnished such supply is entitled to be reimbursed from the property of such incapable person.

Therefore, where a minor or any other person whom he is legally bound to support, is supplied with necessaries of life, the minor's estate is liable to pay for it.



There is no definition of the term 'necessaries' in the Act. Things necessary are those without which an individual can't reasonably exist. Necessaries include goods, services, loan etc.

PERSON OF UNSOUND MIND

A person's soundness of mind depends on two facts (i) his ability to understand the business concerned, and (ii) his liability to form a rational judgment as to its effect on his interests. (Sec. 12) etc. contracts with such persons are void when entered into at a time when the person was in an unsound state of mind. But the estate persons is liable under Section 68 for the necessaries supplied to him or their dependents, to whom they are legally bound to support.

DISQUALIFIED PERSONS

1. **Ambassadors, Envoys etc.** These persons can enter into contracts and enforce them in our courts. But they can't be sued unless they or their own submit to the jurisdiction of the court.
2. **Corporations.** Corporations and companies are artificial persons created by law. As such, they can enter into contracts, sue and be sued.
3. **Convicts.** A convict while undergoing imprisonment as incapable of entering into a contract, except under a special license called 'Ticket of leave'.

Question No 31:- What is free consent? When is a contract said to be given under 'coercion'? What is its effect on the contract? Does a threat to commit suicide amount to coercion?

Or

Question No 32:- State when a consent is not said to be free. What is its effect on the formation of a contract?

Or

Question No 33:- "Two or more persons are said to consent when they agree upon the same thing in the same sense". For in this statement and give illustrations.

Or

Question No 34:- What is the effect of 'coercion on a contract? Also discuss the position of the parties to a contract entered into under coercion.

Or

**Question No 35:- Write a note on 'coercion'.**

Answer:- Contract is formed when two or more parties are ad idem i.e., agree upon the same thing in the same sense. Sec. 10 states, "All agreements are contracts if they are made by the free consent of the parties." Sec. 13 explains free consent as "Two or more parties are said to consent when they agree upon the same thing in the same sense."

According to Sec. 14, "Consent is said to be free when it is not caused by:

1. Coercion Sec. 15.
2. Undue influence Sec. 16.
3. Fraud Sec. 17.
4. Misrepresentation Sec. 18.
5. Mistake Secs. 20, 21, 22.

When consent to a contract is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. For instance, if a person is induced to enter into an agreement by fraud, he may, on discovering the truth either uphold the contract or reject it. If he confirms it, the contract is enforceable at the option of one of the parties, namely the party whose consent was not free.

Where consent is caused by mistake, the agreement is void. It is not enforceable at the option of either party, so when there is no consent there is no contract. Salmond calls an error in consent an "**error in consensus**"

Coercion (SEC. 15)

Simply stated, consent is caused by coercion when it is obtained by coercion exerted by any one of the following ways:

1. Committing or threatening to commit an act forbidden by Pakistani Penal Code.
2. Unlawfully detaining or threatening to detain any property.
3. The act must have been done to cause the other person to enter into an agreement.
4. It is immaterial whether Pakistani Penal Code is or is not in force.

Effect of coercion. Sec 19 points out that a contract induced by coercion is voidable at the option of the party whose consent was obtained through coercion.



Sec. 72 provides, "A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it."

Burden of proving that consent of the other party or person was not caused by coercion, is upon the party which wants to be relieved of the burden of the blame of coercion. The contract entered into by coercion may be rescinded within a reasonable time under the Specific Relief Act, 1963.

Threat to Commit suicide

In a case interesting question arose up before Lahore High Court. "A person threatened to commit suicide if his wife and son didn't execute a release in favor of his brother in respect of certain properties which they claimed as their own," Held, threat to commit suicide amounted to coercion and the release deed was therefore voidable.

Attempt to commit suicide is punishable under the code, but suicide is not punishable. The court held that one committing suicide places himself beyond the reach of law and also beyond the reach of punishment. But this doesn't mean that it is not forbidden by Pakistan Penal Code.

Thus, a threat to commit suicide amounts to coercion.

Question No 36:- When is a contract said to be induced by "Undue influence"? When is a party deemed to be in a position to be in a position to dominate the will of another? What is the effect of undue influence on a contract?

Or

Question No 37:- Explain undue influence as defined in the Pakistani Contract Act and state its effect on the validity of a contract.

Answer: - According to Sec. 16(1), "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 other and uses that position to obtain an unfair advantage over the other."

A person is deemed to be in a position to dominate the will of another:

- a) Where the holds real or apparent authority over the other. Capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress [Section 16 (2)].



In order to establish the presumption of undue influence, two essentials have to be proved.

1. The relation between the parties in such that one of them is in a position to dominate the will of the other, and
2. The party uses that position to obtain an undue influence over the other.

In the following cases, a person is deemed to be in a position to dominate the will of another.

1. Where he holds a real of apparent authority over the other.
2. Where he stands in a fiduciary relation to another.
3. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, mental or bodily distress.
4. Trustee and beneficiary.
5. Doctor and patient.
6. Solicitor and client.

No such presumption exists in the following cases:

1. Husband and wife.
2. Landlord and tenant.
3. Creditor and debtor.

Presumption of undue Influence. Once it is shown that defendant was in a position to dominate plaintiff's will be presumed that he must have used that position to obtain an unfair advantage.

Unconscionable Bargains. Where one of the parties is in a position to dominate the will of other and the contract is apparently unconscionable i.e. unfair, the law presumes that the consent must have been obtained by undue influence. The burden is shifted to the stronger party to prove that he did nothing to overbear the will of another. Unconscionable transaction seems to be "shocking to the conscience" as exorbitant profit is made out of other's distress.

High rate of interest in relation to money lending transaction doesn't necessarily mean the use of undue influence. But where court holds a rate of interest to be unconscionable the burden of proving that no such undue influence was used lies on the person lending the money.

How to rebutt the presumption?

The party deemed to be in a position to dominate can rebutt the presumption by showing that:



1. Full disclosure was made regarding all facts by the party alleged to be in a position to dominate the will of the other.
2. Consideration was adequate. Inadequacy of consideration is only an evidence of the use of undue influence.
3. Dominated party was in a position to receive independent advice.

Effect of undue influence. Where consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so obtained. Any such contract may be set aside absolutely or if the party who is entitled to avoid it has received any benefit thereunder, upon such terms and conditions as the court may consider just and equitable.

Question No 38:- Define fraud and point out its effect on the validity of an agreement. Give suitable examples.

Or

Question No 39:- Under what circumstances does fraud vitiate a contract?

Or

Question No 40:- "Mere silence as to facts is not fraud" Explain with illustrations.

Or

Question No 41:- "An attempt at deceit which does not deceive is not fraud." Explain.

Or

Question No 42:- Define 'fraud' as defined in the Pakistani Contract Act. What remedies are open to the aggrieved party when a contract has been entered into by fraud?

Answer:-

FRAUD

Fraud Broadly speaking is "intentional misrepresentation"

According to Sec. 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,

1. The suggestion as to a matter of fact of that which is not true by one who does not believe it to be true.



2. The active concealment of a fact by one having knowledge or belief of the fact.
3. A promise made without an intention of performing it.
4. Any other act fitted to deceive.
5. Any such act or omission as the law specially declares to be fraudulent:

In other words 'fraud' exists if it is shown that a false representation has been made:

1. Knowingly,
2. Without belief of its truth.
3. Recklessly (whether it be true or false).

Elements of Fraud

On analysis, fraud seems to contain the following elements:

1. There must be a representation which must be false. Without representation there can be no fraud, except in cases where silence may itself amount to fraud or where there is no active concealment of fact.
2. The representation must relate to a fact. For example A tells B, "My horses are as good and X's". This is a statement of opinion and not of fact.
3. Representation must have been made before the conclusion of the contract with the intention of causing the other party to enter into a contract.
4. Representation must have been made with the knowledge of its falsity or without believing it to be true or recklessly.
5. The other party must have been induced to act on such representation.
6. The other party must have been deceived. If the representation doesn't come to the notice of the party, it cannot be said to have misled the party.
7. The other party acting on the representation must have suffered a loss. Rule of common law is that there can be no damage without an injury. Consequences of fraud. A contract tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid.

Remedies

Following remedies in case of fraud are available:

1. The injured can rescind the contract, but it must be done within a reasonable time. If in the meanwhile other parties have acquired interest in the property for value, the remedy is lost.



2. Suit for damages can be filed.
3. He can insist on specific performance of the contract so that parties are put in a position in which they would have been if the fraud were not committed.

The rights are available only if:

1. Any third party has not acquired rights in the property.
2. He does not affirm the contract on becoming aware of fraud.
3. The parties can be restored to their original position.

Rights are lost in the following circumstances”

A contract shall not be voidable merely because consent is caused by fraud or misrepresentation if;

- a) The party alleged to have been defrauded could discover the truth with ‘ordinary prudence’.
- b) The consent was caused in ‘ignorance of fraud or misrepresentation’ i.e., party did not give consent on the basis of such misrepresentation.
- c) The party after becoming aware of the fraud didn’t show his intention to avoid it or does anything consistent with the acceptance of the contract.
- d) The parties cannot restore to their original position.

Silence Whether Fraud?

‘Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that regard being has to them it is the duty of the person keeping silence to speak, or unless his silence is in itself, equivalent to speech’. (Expl. to Sec. 17)

Duty to speak and disclose arises where one contracting party eposes trust and confidence in other. Mere passive non-disclosure of the truth, however deceptive in fact, does not amount to fraud, unless there is duty to speak.

Question No 43:- What is misrepresentation? Distinguish it from fraud.

Or

Question No 44:- What is misrepresentation? Distinguish it from fraud. Discuss the remedies available to a person induced to enter into a contract by (a) misrepresentation, (b) fraud.

Or



Question No 45:- What remedies are available to a person induced to enter into a contract by (a) misrepresentation which is not fraudulent and (b) fraud.

Or

Question No 46:- Write a short note on 'Misrepresentation'.

Answer:-

Misrepresentation

Misrepresentation means "mis-statement of a fact material to the contract."

According to Sec. 18. "Misrepresentation means and includes:

1. The positive assertion in a manner not warned by the information of the person making it, of that which is not true though he believes it to be true.
2. Any breach of duty which, without an intent to deceive, obtains an advantage to the person committing it or any one claiming under him, by misleading another to his prejudice or any other person claiming under him.
3. 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.

Thus, misrepresentation occurs in the following cases:

1. Positive statement of facts. When a person positively asserts a fact as true when his information doesn't warrant it to be so though he believes it to be true.
2. Breach of duty. Any breach of duty which brings an advantage to the person committing it by misleading the other to his prejudice.
3. Mistake about subject matter. The subject matter of every agreement is supposed to possess certain value. If one of the parties causes other however innocently, to make a mistake as to the matter or quality of the subject matter, there is misrepresentation.
4. Misrepresentation of facts. Misrepresentation should be of facts material to the contract. Mere, "puffing expression" such as men of business usually make about their goods are not sufficient to avoid the contract. For example, "My goods are as good as that of B's" is a commendatory statement providing no chance to the purchaser to avoid contract.
5. Inducement. Again, misrepresentation must be the cause of the consent otherwise the consenting party cannot avoid the contract.



6. The representation must be made with the intention that it shall be acted upon by the other party. A party cannot complain of misrepresentation if, he had the means of discovering the truth with ordinary prudence.

Consequences of misrepresentation. An aggrieved party can:

- A. Avoid rescind the contract.
- B. Accept the contract but insist that he shall be placed in a position in which he would have been if the representation made were true.

These rights are lost if:

1. Consent was given with the knowledge of fraud or misrepresentation by the other party.
2. Parties can't be restored to their original position and the contract can't be rescinded.
3. Third party has acquired rights in the subject matter of contract in good faith and for value.

Distinction between Fraud and Misrepresentation

1. Intention. Misrepresentation in innocent or unintentional. Fraud is willful and intentional misrepresentation.
2. Rescission and damage. In misrepresentation, aggrieved party can rescind the contract or sue for restitution. In fraud, remedy available is not only rescission but claims for damages too.
3. Where truth can be discovered with ordinary diligence. In misrepresentation aggrieved party can't avoid it if it should discover the truth by ordinary diligence.

But in case of active fraud, the contract is voidable at the option of the aggrieved party even though it had the means of discovering the truth by ordinary diligence.

4. Knowledge. If there is lack of knowledge about the defects or one party has no knowledge about the main defects there we can say is misrepresentation. But if someone has knowledge of facts there is a fraud.

Question No 47:- 'A contract caused by mistake is void.' Explain.

Or

Question No 48:- Discuss the effect of mistake on the validity of a contract.

Or



Question No 49:- ‘An agreement requires a meeting of minds.’”

Or

Question No 50:- Discuss the law relating to the effect of mistake on contracts.

Answer:-

Mistake

It is necessary for the creation of a valid contract that both the parties to the contract should agree to the same thing in the same sense and the consent is freely given. Where there is no consent at all, there is no agreement. Mistake is of two kinds:

1. Mistake of Fact.
2. Mistake of Law.

Mistake of fact is of two kinds:

1. A Bilateral mistake and
2. A unilateral mistake

Mistake of law is also of two kinds:

1. Mistake of Pakistani Law
2. Mistake of Foreign Law.

Mistake affects the validity of a contract. The effect of mistake on a contract is discussed below:

Mistake of Fact

1. Bilateral Mistake. Under Section 20 of the Act, where both the parties to an agreement are under a mistake as a matter of fact essential to the agreement is void. But 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.
2. A agree to buy from B a certain horse. It turns out what the horse was dead at the time of bargain. Neither party was aware of this fact. The agreement is void.
3. A being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement but both parties were ignorant of the fact. The agreement is void.



A bilateral mistake of fact may be (i) as to subject matter or (ii) as to possibility of performance.

Mistake as to subject matter may be of any of the following types:

1. Mistake as to existence of subject matter.
In *Courtesior v. Hastie* (1856) 5 H.L.C. 673, A agreed to sell a specific cargo supposed to be on way from England to Bombay. It turned out that on the date of bargain, the ship had been cast away and the goods lost. Neither party was aware of the fact. Held, the agreement was void.
2. Mistake as to identity of subject matter.
In *Raffles v. Wichelhaus* (1864) 2 H & C 906, A agreed to buy from B a cargo of cotton to arrive by a ship Ex-Peerless from Bombay. Infact, two ships by the same name sailed from Bombay; A meant the former ship and B the latter. Held, there was no contract.
3. Mistake regarding title (ownership) of subject matter.
In *Cooper v. Phibbs* (1867) L.R. 24 H.L. 149, a person took a lease of land, which unknown to him, already belonged to him. Held, the lease was void.
4. Mistake regarding the price of subject matter.
In *Webster v. Cecil* (1861) 30 BEAV. 62, a seller, to the knowledge of the buyer, mistakenly wrote the figure as £ 1250 instead of £ 2250, being the price of a property, Held, the agreement was void.
5. Mistake regarding the quantity of subject matter.
6. Mistake as to the quality of subject matter.

Mistake as to the possibility of performance. If the existence of certain circumstances is necessary for the performance of the contract and it is not capable of performance in their absence, the contract will be void if both the parties were ignorant about the non-existence of such circumstances at the time of agreement.

Unilateral Mistake. Under Section 22 of the Act, 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. Unilateral mistake is mistake of one party and does not render the contract voidable.



If the mistake is unilateral, the contract can only be avoided if it can be proved that the mistake was caused by fraud or misrepresentation on the part of other party.

A unilateral mistake may be of the following kinds:

1. Mistake as to the nature of the transaction.
2. Mistake as to the identity of the contracting party.

Mistake of Pakistan Law. Under Section 21 of the Act, a contract is not voidable because it was caused by a mistake as to any law in force in Pakistan. It is because everyone is supposed to know the law of his country. Therefore mistake of Pakistani Law does not affect the validity of the contract.

Mistake of Foreign Law. Under Section 21 of the Act, a mistake as to a law not in force in Pakistan (a foreign law) has the same effect as the mistake of fact. The Contract may be rendered void if both parties are under mistake as to a foreign law.

Question No 51:- Discuss the doctrine of Public Policy. Give examples of agreements contrary to public policy.

Or

Question No 52:- Name several types of agreements which are illegal because they are contrary to public policy.

Or

Question No 53:- Discuss the doctrine of Public Policy. Explain the statement that the categories of public policy are closed.

Answer:-

Public Policy

The term 'Public Policy' in its broadest sense means that sometimes the courts will, on consideration of public interest, refuse to enforce a contract. A judge protesting against 'public policy' stated, "It is very unruly horse and when once you get astride it, you never know where it will carry you".

Public policy is a vague and unsatisfactory term because Judges are interpreters of law than expoundees of what is called public policy. The doctrine should be applied in clear cases. The primary duty of the court of law is to enforce a



promise which the parties have made. Following heads are included under “public policy”.

1. Trading with enemy. Declaration of war imports a prohibition of commercial intercourse and correspondence with the enemy’s country. Contracts which are entered into before the out break of war are either suspended till the end of the war or are dissolved.
2. Trafficking in public offices. An agreement intended to induce a public officer to act corruptly is contrary to public policy. Sales of public offices i.e, appointments in consideration of money are also against public policy. Such agreements, if enforced, would lead to inefficiency of corruption in public life and are therefore held to be bad.
3. Interference with the administration of justice. It may take any of the following forms:
 - i. Interference with the course of justice. Any agreement which obstructs the ordinary process of justice is void e.g. a promise to give money to induce a person to give false evidence is held void. But an agreement to submit present or future dispute to arbitration is perfectly valid.
 - ii. Stifling prosecution. In public interest criminals should be prosecuted and punished. Hence an agreement not to prosecute an offender or to withdraw a pending prosecution is void if the offence is of public nature. However, the law allows compromise agreements in respect of the compoundable offence. If a person has committed a crime, he must be punished. But a compromise in case of commercial transactions and an arbitration agreement are valid.
 - iii. Maintenance and champerty. Maintenance is agreement to give assistance financial or otherwise, in defending or launching legal proceedings when one has no legal interest of his own in the subject matter.
Champerty is ‘a bargain whereby one party is to assist the other in recovering property and is to share in the proceeds of the action’ under English law. Both these are void.
Under Pakistan law these are not absolutely void. If object of contract is not to stir up litigation but to assist other in making a reasonable claim arising out of a contract it is valid.
 - iv. Agreement varying period of limitation. All agreements which curtail or extend the period of limitation as prescribed by the law



of limitation are void as their object is to defeat the provisions of the law.

4. Marriage brokerage contracts. An agreement to procure the marriage of a person in consideration of a sum of money is called 'marriage brokerage'. Such agreements are void e.g. agreement to sell a gild. Similarly an agreement to pay money to the parent of a minor to induce them to give daughter in marriage is void.
5. Agreement in restraint of parental rights. An agreement which interferes with parental rights of a legal guardian over his/her minor child is void as it is against public policy.
6. Agreement tending to create interest opposed to public duty. Whereby a person agrees to do something which is against his public duty, the agreement is void.
7. Agreement to influence election to public offices. An agreement with voters to procure their votes for monetary consideration and an agreement with third person to influence voters by indirect means are void on the ground of public policy.
8. Agreement creating monopolies. Agreements having or their object the creation of monopolies are void, being opposed to public policy.
9. Agreement intended to defraud creditors. An agreement the object of which is to defraud the creditors or the revenue authorities is not enforceable being opposed to public policy.
10. Agreement is restraint of trade. (discussed below)
11. Agreement in restraint of marriage: Every agreement restraint of marriage of any person, other than minor, is void. (Sec. 26)

Question No 54:- "An agreement is restraint of trade is void". Explain this statement mentioning exceptions, if any.

- b) A partner agrees with his other partner that as long as the partner remains a partner, he shall not carry on any business other than that of the firm. Is this agreement valid?

Or

Question No 55:- Discuss fully the Pakistani Law with regard to agreements partner remains a partner, he shall not carry on any business other than that of the firm. Is this agreement valid?

Or

Question No 56:- Discuss fully the Pakistani Law with regard to agreements in restraint of Trade. Also discuss the exception to the rule.



Answer: Agreement is restraint of Trade. An agreement that interferes with a person's right to engage himself in any lawful trade, occupation or profession is called an "agreement is restraint of trade". Every agreement by which any one is restraint from exercising a lawful profession, trade or business of any kind is to that extend void. [Sec. 27].

It is in the interest of the community that every man should be at liberty to take up any trade or business and use his skill to the best of his capacity.

1. All restraints of trade, in the absence of special circumstances of a particular case, are contrary to public policy and therefore void.
2. A restraint is justified only if:
 - i. It is reasonable.
 - ii. It is in the interest of the contracting parties.
 - iii. It is in the interest of public.

In Pakistan, all restrains whether general or partial, qualified or unqualified, in place of time or place are void.

Exceptions to the rule. "All agreements in restraint of trade are void".

Q No. 57. WHAT ARE THE DIFFERENT TYPES OF PARTNERSHIP?

OR

Q No.58 WRITE NOTES ON (I) PARTNERSHIP AT WILL; AND (II) PARTICULAR PARTNERSHIP.

Answer: Partnership at will (Sec.7) A partnership is called partnership at will when the partnership is not for a fixed period of time and where no provision is made by contracting partners for the duration of their partnership or



for the determination of their partnership. Such a partnership may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. In such case, the firm will be dissolved from the date mentioned in the notice or from time to time of communication of notice. (sec.43)

Particular Partnership (sec.8) A person may become a partner with another person in particular adventures or undertaking. Such partnership is also called 'joint venture'.

Q No.59 WHAT DO YOU UNDERSTAND BY 'IMPLIED AUTHORITY OF A PARTNER AS AN AGENT OF THE FIRM? ARE THERE ANY ACTS WHICH HE CANNOT DO UNDER HIS IMPLIED AUTHORITY? IF SO, STATE THEM.

Or

Q No.60 WHAT IS MEANT BY 'IMPLIED AUTHORITY' OF A PARTNER? WHAT ACTS ARE INCLUDED OR EXCLUDED FROM THE SAME?

Or

Q No.61 EXPLAIN THE EXTENT OF THE IMPLIED AUTHORITY OF A PARTNER THE AS AN AGENT OF THE FIRM.

OR

Q No.62 A PARTNER IS AN AGENT OF THE FIRM FOR THE PURPOSE OF BUSINESS OF THE FIRM! EXPLAIN.

Answer: Section 19 determines the scope of Implied Authority. It says "..... the act of a partner which is done to carry on, in the usual way, business of the carried on by the firm, binds the firm.

"The scope of authority is linked with the nature of business and the usual manner of carrying it. Whether a given act was done by a partner in carrying on business in the usual way, is determined by the nature of business, and by the practice of persons engaged in it". Requirement of one business may be wholly different from those of another. That is why a distinction is made between trading, none trading or professional business.

The authority of a partner to act may be

1. Express or



2. Implied

Where authority is express it is called express, ostensible or a apparent authority. But where there is no express agreement, “the act of a partner which is done to carry on in the usual way, the business of the kind carried on by the firm binds the firm” sec 19(1) this is implied authority and flows from the principle of agency.

Implied authority is subject to the following conditions. 1. The act done relates to ‘normal businesses of the firm. If the partner of a clothing firm buys books, the firm is not liable.

2. The act is done in the usual way. It is difficult to lay down a hard and fast rule of determining as to what is the usual way of carrying on the business.
3. The Act is done in the name of the firm or in any other manner expressing or implying an intention to bind the firm.

Acts within the implied authority of the partner, in order to bind the firm. An act must be done in the name of the firm, or in any other manner expressing or implying an intention to bind the firm (sec 22).

Implied Authority includes (i) Purchasing goods on behalf of the firm i.e. the goods in which the firm details.

- (ii) Selling goods of the firm.
- (iii) Receiving payments or issuing receipts for them.
- (iv) Settling accounts with person dealing with the firm.
- (v) Engaging servants for partnership business.

Besides the above, a partner of a trading firm may:

1. Borrow money on the credit of the firm.
2. Draw, accept or endorse a nut or a note in the name of the firm.
3. Pledge goods of the firm for the purpose of borrowing money.
4. Engage solicitor to defend an action against the firm. Trading firm is one which is engaged is buying and selling goods.



Acts outside implied Authority: Following acts are beyond the scope of partner's implied authority.

- (i) To submit a dispute relating to business of the firm to arbitration.
- (ii) To open an account on firm's behalf in his own name
- (iii) To acquire any immovable property on behalf of the firm
- (iv) To transfer any property belonging to the firm
- (v) To compromise any claim or portion of a claim by the firm
- (vi) To admit any liability in a suit or proceeding against the firm
- (vii) To enter into partnership on behalf of the firm

Section 20 provides that a partner can undertake even the above mentioned acts if:

1. He has specific or express authority as to above and
2. There is usage or custom of trade

If an act is within the scope of a partner's authority, firm is bound unless it could be shown that:

1. The person contracting with the parties has knowledge of the restriction, or
3. That he did not know or believe the parties to be partner.

Authority in emergency: Section 21 provides for the authority of a partner in an emergency he can act in an emergency and bind the other partner provided:

- (1) There is an emergency
- (2) He tries to protect the firm from loss
- (3) Act is reasonable i.e. he acts as a prudent person

Mode of doing act to bind firm (sec.21) In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Q. No.63 CAN A MINOR BE ADMITTED TO PARTNERSHIP?. IF SO, WHAT WILL BE HIS RIGHTS AND LIABILITIES DURING HIS MINORITY AND AFTER HE HAS ATTAINED MAJORITY?

OR



Q No.64 WRITE SHORT NOTE ON MINOR'S RIGHTS UNDER THE INDIAN PARTNERSHIP ACT.

OR

Q No.65 STATE THE RIGHTS LIABILITIES AND DISABILITIES OF A MINOR IN FIRM?

Answer: Minor admitted to the benefits of partnership. Sec.29 (i) states the relationship of partnership arises from contract..... A minor is incompetent to contract and therefore a contract of partnership can't be entered into with a minor. There can be no partnership of minors with one adult member. The only provision that sec.30 makes is that a minor can be admitted into the benefits of an existing firm with the consent of all other members. Thus there should be at least two major partners before a minor is admitted for the benefits.

When a minor has been admitted to the benefits of a firm the questions arise: what are his rights and liabilities?

Position of minor: Before attaining majority.

- (1) He can inspect and copy books of accounts but not books of the firm.
- (2) He has the right to such share of profits and property as may have been agreed upon.
- (3) When his due share is not given to him he has a right to file a suit for the share of profits. But he can do so only when he wants to sever his connection with the firm.
- (4) He can't be declared insolvent, but on insolvency of the firm his share ___with the official assignee.
- (5) His share in the profits or property is liable. He is not personally liable nor is his estate liable.

Position on attaining majority: Within six months of the attainment of majority he has to decide whether he shall remain the firm or leave it. For this purpose he has to give a public notice declaring whether he has chosen to become or not to become a partner. if he fails to give notice, he is deemed to have become a partner on the expiry of six months. These six months run from the date of his majority or firm the date when he first come to know that he has been admitted into the firm.

If he elects to become a partner, his position is as follows:

- (1) His rights and liabilities will e similar to those of a full-fledged partner.



- (2) He will be personally liable for all the acts of the firm, since he was first admitted to the benefits of partnership.
- (3) His share of profits and property remains the same as was before unless altered by agreement.

If he elects not to become a partner then,

- (1) His rights and liabilities shall continue to be those of a minor up to the date of public notice.
- (2) His share shall not be liable for any acts of the firm done after the date of the notice.
- (3) He can sue the partners for his share of property and profits.

Disabilities of Minor

1. A minor is not entitled to sue the partners for an account or payment of his share of profit or property of the firm except on serving his connection with the firm.
2. Though a minor partner has an access to inspect and copy the accounts of the firm; he is not entitled to inspect or copy other books.

Q No.66 IS THE REGISTRATION OF FIRM COMPULSORY? WHAT ARE THE CONSEQUENCES OF NON-REGISTRATION? STATE BRIEFLY THE PROCEDURE OF GETTING A FIRM REGISTERED.

OR

Q No.67 DISCUSS THE LAW IN INDIA REGARDING REGISTRATION OF PARTNERSHIP CONSEQUENCES OF NON-REGISTRATION.

OR

Q No.68 WRITE A NOTE ON 'CONSEQUENCES OF NON-REGISTRATION OF A FIRM'.

Answer: Registration of the partnership firm is not compulsory. It is optional and there is no penalty for non-registration. Yet registration becomes necessary at one or the other time because sec.69 imposes serious limitations on the capacity of an unregistered firm. These disabilities compel a firm to get itself registered sooner or later.



Registration does not create partnership rather it is the evidence of the existence of partnership.

Time of Registration The act does not mention anything about the time of registration. It simply states that no suit can be enforced by or on behalf of an unregistered firm against any third party unless the firm is shown to be registered. The defect can't be cured by subsequent registration while suit is pending. The right course is to withdraw the suit, get itself registered and then file a fresh suit.

Let us now state the effect of Non-Registration

(1) Suits between partner and firm.

A partner of an unregistered firm can't sue the firm or any of his present or past co-partners for the enforcement of any right arising from a contract or conferred by the partnership act.

The difficulty may be overcome by registering the firm before a suit is instituted.

(2) Suit between firm and third parties

An unregistered firm can't sue a third party for the enforcement of any right arising from a contract unless.

1. The firm is shown to be registered
2. The person suing are shown in the register of firm as partner of the firm

A suit by unregistered firm will be dismissed and it can't be rectified by subsequent registration. A fresh suit will have to be filed after registration.

- (3) An unregistered firm or partners can't claim a right of set off in proceedings instituted against third party. The right however extends to claim of set off of the value of Rs.100 or less.

Exceptions. *Non registration does not affect the following.*

- (1) Unregistered firm and its partners can sue for the dissolution of the firm or accounts of the dissolved firm, they can enforce right to realize the property of the firm.
- (2) The right to claim set off not exceeding Rs.100 in value
- (3) Third party can always sue the firm whether registered or not



- (4) Official assignee/receiver or a court acting for an insolvent partner may bring a suit for the realization of insolvent's share
- (5) The rights of undersigned firm to enforce rights arising other than out of contract.
- (6) The rights of partner having no place of business in India.

Procedure for the Registration: (Sec.58 and 59)

Registrars are appointed in all states for the purpose of registering partnership firm. Registration may be effected by filing an application with the registrar, the application should be on a prescribed form accompanied by prescribed fee, the application must state the following particulars.

- (1) The name of the firm
- (2) Place of business
- (3) Name of other places where firm carries on business
- (4) Name and permanent addresses of partners
- (5) Date when each partner joined the firm
- (6) Duration of the firm

Application form should be signed and verified by each partner. If registrar is satisfied with the application, he registers the firm and enters its name in the registrar of firms. He then issues a certificate of registration.

It may be noted that the registration of a partnership firm is optional and one partner cannot compel another partner to join in the registration of a firm.

Registration is complete when a statement is delivered to the registrar. The act of the registrar in accordance is only clerical.

**Q No.69 WHAT IS MEANT BY "DISSOLUTION OF A FIRM?"
WHAT ARE THE RIGHTS AND OBLIGATIONS OF
PARTNERS AFTER THE DISSOLUTION OF
PARTNERSHIP.**

OR

**Q No. 70 WHAT ARE THE GROUNDS OF DISSOLUTION OF
PARTNERSHIP FIRM?**

OR

Q No.71 WRITE A NOTE ON "DISSOLUTION OF A FIRM BY COURT"



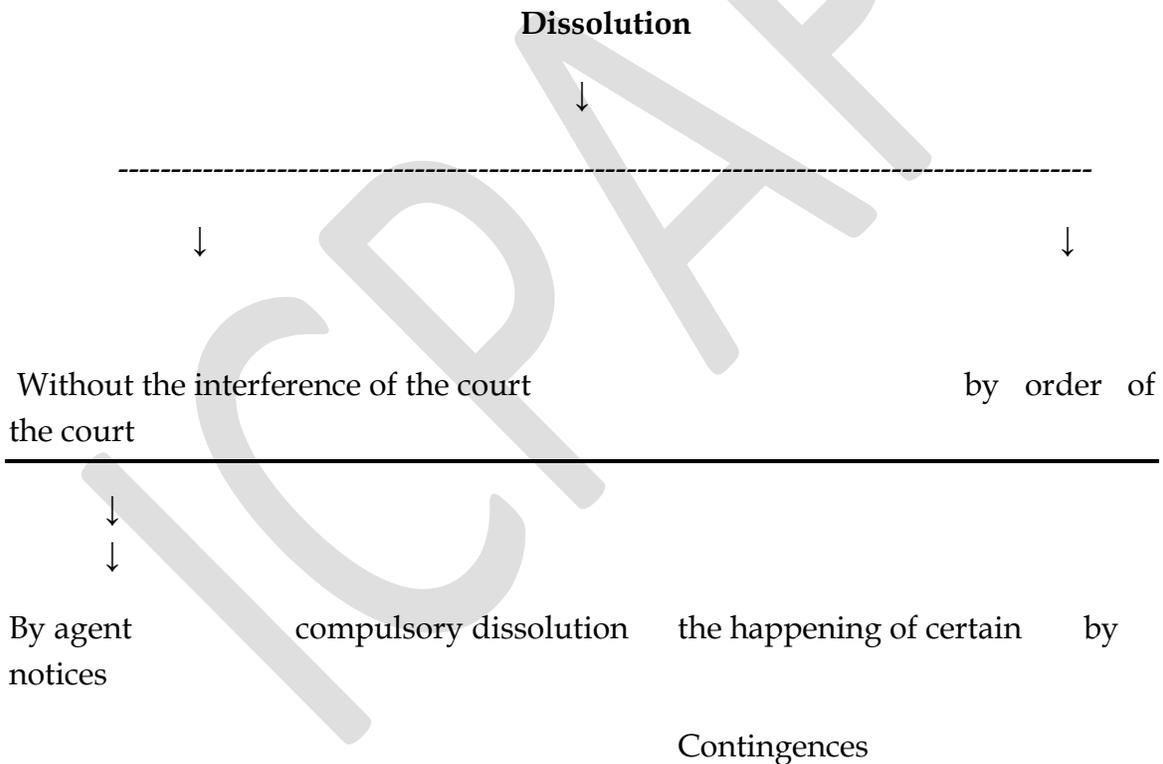
Answer: Dissolution. The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm (Sec.39)

Dissolution of the firm means an end of the firm

A dissolution does not necessarily follow because the partnership has ceased to do business, for the partnership may continue for the purpose of realizing the assets.

Dissolution of firm may not necessarily mean dissolution of partnership as in the case of dissolution of partnership, the firm may continue with some of the remaining partners

Reason for dissolution. A firm may be dissolved in any of the following grounds:



(1) By Agreement. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

As partnership is creation of an agreement between the partners, it can be dissolved by a subsequent agreement between the partners.



- (2) Compulsory dissolution. A firm is dissolved
- (a) By the adjudication of all the partners or of all the partners but one as insolvent, or
 - (b) By the happening of any event which makes it unlawful of the business of the firm to be carried on or for the partners to carry it on in partnership.
But where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of the firm is respect of its lawful adventures and undertaking
- (3) **On the happening of certain contingences.** Subject to contract between the partners a firm is dissolved.
- (a) If constituted for a fixed term, by the expiry of that term
 - (b) If constituted to carry out one or more adventures or undertaking by the completion thereof,
 - (c) By the death of a partner; and
 - (d) By the adjudication of a partners as an insolvent
- (4) **By Notice**
- (a) Where the partnership is at will, the firm may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the firm.
 - (b) The firm is dissolved as from the date of dissolution or, if no date is mentioned, as from the date of the communication of the notice.
- (5) **By Court:** At a suit of a partner, the court may dissolve the firm on any of the following grounds namely.
- (a) Unsoundness of mind. If a partner has become of unsound mind the court may dissolve the firm. In such a case the suit may be brought as well by the next friend of the partner who has become of unsound mind by any other partner.
 - (b) Permanent Incapability. If a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as a partner.
 - (c) Misconduct. If a partner, other than the partner suing as guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business.



In Carmichael A partner of a firm of solicitors was convicted of travelling on the railway without a ticket and with intent to defraud. The act was held to be detrimental to the partnership and dissolution was granted.

A and B were partners in a firm. A had adulterous relations with B's wife, held, this was a sufficient ground for the compulsory dissolution of the firm.

- (d) Breach of agreement. If a partner commits (willfully and persistently) breach of agreements relating to the management of the affairs of the firm or the conduct of its business; or otherwise so conducts himself in matter relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him, the court may order dissolution of the firm.
- (e) Transfer of interest. If a partner has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of civil procedure code, 1908, or has allowed to it be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land-revenue due by the partner.
- (f) Loss. If the business of a firm cannot be carried on save at a loss, the court may order dissolution of the firm. The court may also dissolve a firm which was created for a fixed terms even though the term had not expired, if the business thereof cannot be carried on except at loss.
- (g) Just and equitable cause. If on any other ground which renders it just and equitable that the firm should be dissolved, the court may order dissolution of the firm. For example, deadlock in the management of business or partner not being on speaking terms have been termed as the just and equitable cause

1. **Right to have the business wound up (sec.46)**
2. **Right to return of the premium (sec. 47)**
3. **Right to restrain form use of the firm name or property (sec.53)**

Liability for acts of partners done after dissolution: The partners of the dissolved firm continue to be liable to third parties for all acts done in connection with the affairs of the firm, until public notice is given of the dissolution.

But the estate of the partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with



the firm to be a partner, retires from the firm, is not liable under this section(45) after the date on which he ceases to be partner.

- (i) In paying the debts of the firm to the third parties:
- (ii) In paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;
- (iii) In paying to each partner ratably what is due to him on account of capital; and
- (vi) The residue, if any shall e divided among the partners in the proportions in which they were entitled to share profit.

In the case of also, the rules similar to above were laid down, these rules were:

- (i) That the loss on realization shall be shared by all the partners in their profit sharing ratio; and
- (ii) That the loss on account of deficiency of capital of the insolvent partner shall be shared by the solvent partner in the ratio of their capitals standing just before dissolution.

Sale of Goodwill after dissolution (sec.55) In settling the account of a firm after dissolution, the good shall, subject to contract between the partner be included in the assets, and it may be sold either separately or along with other party of the firm.

Rights of buyer and seller of Goodwill where the goodwill of a firm is sold after dissolution, a partner may carry on the business competing with that of the buyer and he may advertise such business but subject to agreement between him and the buyer he may not-

1. Use of the firm name
2. Represent himself as carrying on the business of the firm
3. Solicit custom of person who was dealing with the firm before its dissolution.