

QUESTION NO. 1**(a) EXECUTORY CONTRACTS**

Contract, which is yet to be performed either by both parties or by one of the parties. If both the parties have to perform their obligations, it is called bilateral executory contract.

Example:

X offers to sell his car to y for Rs. 100,000. Y accepts X's offer. If X has not delivered the car and Y has not paid the price, it is an executed contract.

(b) VALID CONTRACTS

A contract is valid which is fully enforceable by law i.e. by courts or it is recognized by courts of law. A contract to be enforced by law has to fulfill all the essentials of section 10 of contract Act 1872. If a contract contains all the essentials U/S 10 of the contract Act, it becomes a valid contract. The courts fully recognize and enforce such contracts. For a contract to be valid, it must contain following elements,

- (i) Agreement
- (ii) Free consent of parties
- (iii) Parties competent to contract
- (iv) Lawful consideration & Object
- (v) Agreement should not be void.

(c) EXPRESSED CONTRACTS

If the contracts are made by expressed offer and acceptance, these are called expressed contracts. An expressed offer and acceptance means offer and acceptance that has been made either in writing or orally.

Example:

X says to Y "will you buy my car for Rs. 100,000"? Y says yes to X. "I am ready to buy your car for Rs. 100,000." It is an expressed contract made orally.

(d) WAGERING CONTRACTS

A contract in which the parties stipulate that they shall gain or lose, upon the happening of an uncertain event. The word wagering is practically synonymous with the word betting and gambling.

Example:

A agrees with B that if it rains today, A will pay B Rs. 10. If there is no rain B will pay A Rs. 10. This is agreement of wagering nature.

QUESTION NO. 2

See Paper 2015 Question No. 2

QUESTION NO. 3

See Paper 2014 Question No. 3

QUESTION NO. 4

BAILMENT

According to section 148 of contract Act 1872,

- Bailment is the delivery of goods;

- (ii) By one person to another
- (iii) For some purpose
- (iv) Upon a contract that they (goods) shall be returned or otherwise disposed off according to the directions of person delivering them
- (v) Goods shall be returned or disposed off when the purpose is accomplished

DUTIES OF BAILEE / RIGHTS OF BAILOR

Duties of Bailee	Rights of Bailor
<p>(1) Duty to Take Reasonable Care: Bailee is bound to take reasonable care of goods. Case Law: Coldman Vs. Hill (1919) 1 KB 443 Facts: Some goods were stolen from bailees custody without his fault, but he made no effort to inform the owner or the police to recover them. Held: Bailee was held liable to compensate the loss.</p>	<p>(1) Right to Recover Loss Due to Negligence: It is the right of bailor to recover loss due to negligence of bailee.</p>
<p>(2) Not to Make Unauthorized Use: It is the duty of bailee not to make unauthorized use of goods bailed Example: X leaves the car at Y's workshop for repair. Y is not authorized to take the car for some other purpose except the repair one but if he uses the car in an unauthorized way, he is duty bond to compensate.</p>	<p>(2) Right to Terminate Bailment Due to Use Unauthorized: The bailor has right to terminate bailment if the bailee makes unauthorized use of goods</p>
<p>(3) Duty to Compensate During Unauthorized Use: It is the duty of the bailee to compensate bailor for loss caused during unauthorised use of goods bailed.</p>	<p>(3) Right to be Compensated for Loss: The bailor has a right to be compensated for the loss caused during unauthorized use by bailee.</p>

<p>(4) Duty not to Mix the Goods with his Own: It is the duty of the bailee not to mix the goods bailed with his own.</p> <p><i>Example:</i> A bails a barrel of white flour worth Rs. 45 to B. B without A's consent mixes the flour with country flour of his own worth only Rs. 25 per barrel. B must compensate A for the loss of his flour.</p>	<p>(4) Right to Recover Loss Due to Mixing: The bailor has right to recover loss if bailee mixes the goods bailed with his own goods.</p>
<p>(5) Duty Return the Goods: It is the duty of the bailee to return back the goods bailed after the completion of purpose.</p> <p><i>Example:</i> X lent a horse to Y for 5 days On the expiry of 5 days, Y did not return the horse. The horse dies without any fault on part of Y. Y was responsible to compensate X for the loss.</p>	<p>(5) Right to Get Back the Goods: The bailor has a right to get back the goods bailed, when the purpose is accomplished.</p>
<p>(6) Duty to Compensate for Loss after Bailment: If the bailment is terminated, and is terminated in such away that loss is caused, then it is the duty of the bailee to compensate for such loss.</p>	<p>(6) Right to Recover Loss after Bailment: After termination of bailment, it is the right of the bailor to recover loss, if any, caused due to late return of the goods bailed.</p>
<p>(7) Duty to Return any other Increase: It is the duty of the bailee to return any increase or profit accured from goods bailed.</p>	<p>(7) Right to Recover any Increase: It is the right of the bailor to recover any increase or profit accured on the goods bailed.</p>

DUTIES OF BAILOR / RIGHT OF BAILEE

Duties of Bailor	Rights of Bailee
<p>(1) Duty to Disclose the Defects: Bailor is bound to disclose the defects in the goods bailed. If he does not disclose the defects, he is liable to make loss good.</p> <p><i>Example:</i> A lends a horse, which he knows to be vicious; to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.</p>	<p>(1) Right to Recover Loss Due to Non-disclosure of Defects: It is the right of the bailee to recover loss caused due to non-disclosure of defects in the bailed goods.</p>

<p>(2) Duty to Repay Necessary Expenses: It is the duty of the bailor to repay to bailee the necessary expenses incurred to him for the purpose of bailment.</p>	<p>(2) Right to Recover Necessary Expenses: The bailee has right to recover necessary expenses incurred for the purpose of bailment.</p>
<p>(3) Duty to Indemnify Loss: A gratuitous bailment can be terminated even before the expiry of specified time, but if any loss is caused to bailee due to early termination of bailment, the bailor is bound to indemnify the loss of bailee.</p>	<p>(3) Right to Recover Loss Due to Untimely Termination: Bailee has right to recover the loss due to untimely termination of bailment.</p>
<p>(4) To Indemnify Loss Due to Unauthorized Bailment: Bailor is duty bound to pay for any loss which the bailee may sustain by the reason that bail was not entitled to make the bailment</p> <p><i>Example:</i> Y asks X, his friend to give him horse for one hour. X instead of his own horse delivers Z's horse to Y. While Y was riding, Z catches Y and hands him over the police custody. Y is entitled to recover from X all costs, which he had to incur in getting out of this situation.</p>	<p>(4) Right to Recover Loss Due to Unauthorized Bailment: Bailee can recover the loss caused due to bailor as he was not authorized to make bailment</p>
<p>(5) Duty to Pay Remuneration: It is the duty of the bailor to pay remuneration to bailee to which he is entitled</p>	<p>(5) Right to Recover Remuneration: Bailee has a right to recover remuneration to which he is entitled</p>

QUESTION NO. 5

DIFFERENCE BETWEEN PRO-NOTE, BILL AND CHEQUE

Promissory note	Bill of exchange	Cheque
1. Parties		
Here are two parties i.e. maker and payee	Here are three parties i.e. drawer, drawee, payee	Here are three parties drawer, drawee, payee
2. Promise or Order		
It contains unconditional promise to pay.	It contains unconditional order to pay.	It contains unconditional order to pay.
3. Acceptance		
It needs no acceptance	It needs acceptance.	It needs no acceptance.

4. Liability

Liability of maker is of primary.	Liability of drawer is of secondary nature.	Liability of drawer of Cheque is primary.
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5. Payable on Demand

It may be made payable on demand or at fixed date.	It may be made payable on demand or at fixed date.	It is always made payable on demand.
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6. In sets/ Copies

A promissory note cannot be drawn in sets.	A foreign bill of exchange must be drawn in sets.	A Cheque cannot be drawn in sets.
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7. Grace Days

Three days are allowed as a grace.	Three days are allowed as a grace.	No grace days are allowed.
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8. Stamps

Revenue stamps is required.	Revenue stamp is required	No revenue stamp is required.
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9. Cancellation

Maker of pro-note cannot stop payment after its issuance.	The drawer of bill cannot stop payment after its issuance.	Cheque can be cancelled after its issuance.
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10. Crossing

It cannot be crossed.	It cannot be crossed.	It can be crossed.
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11. Printed Form

No particular form in printing is needed.	No printed form is needed.	A printed form by a particular bank is needed.
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QUESTION NO. 6**CONTRACT OF SALE**

According to sec4 (1) of sale of goods Act 1930 "A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price is called Contract of Sale".

Explanation:

Contract of sale, from the above definition, discloses that it consists of;

- (i) Transfer of ownership i.e. Sale
- (ii) Agreement to transfer ownership i.e. "Agreement to sell"

In simple words, a contract of sale is either sale or agreement to sell. Contract of sale of goods may be oral or in writing.

Sale:

When under a contract of sale, the property (ownership) in goods is transferred from one party to another; it is called "Sale".

Agreement to Sell:

When under the contract of sale, the transfer of property in goods is to take place at a future time or is subject to some condition thereafter to be fulfilled, the contract is called "agreement to sell".

DIFFERENCE BETWEEN SALE & AGREEMENT TO SELL

Sale	Agreement to Sell
1. Nature of Contract	
It is executed contract.	It is executory contract.
2. Transfer of Property	
Property in goods gets transferred while at the time of formation of contract.	Here, a promise to transfer the property in goods is made.
3. Obligations	
As, in sale property in goods is transferred, so all the rights of goods are also transferred to buyer. Seller has no rights at all, after sale.	In, agreement to sell, no rights except to specifically perform the contract is transferred to buyer. Seller has all the rights.
4. Risk of Loss	
It is principle that risk of loss transfers with the transfer of property. So, in sale, risk of loss transfers to buyer.	In agreement to sell, as there is no transfer of ownership, so risk of loss does not transfer to buyer.
5. Insolvency of Seller	
In contract of sale, if seller becomes insolvent and the goods are in the possession of seller buyer can claim it from official receiver because the ownership of goods is with buyer.	In case of agreement to sell, if the buyer has already paid the price and has not taken possession of goods and the seller is declared insolvent, the buyer can claim only a ratable dividend. In case, the goods are in possession of the buyer and the seller is declared as insolvent, the buyer is bound to deliver the goods to the official receiver.
6. Insolvency of Buyer	
In case of sale, if the buyer is declared as an insolvent before he pays for the goods, the seller must deliver the goods to official receiver and is entitled only to ratable dividend for the price of the goods.	In agreement to sell, if the buyer is declared as an insolvent before he pays for goods, the seller may refuse to deliver the goods to the official receiver.

7. Breach of Contract by Seller

In sale, if the seller commits any breach, the buyer has all the rights i.e. to recover the goods, price, damages, interest etc.

In an agreement to sell, in case of breach by seller, the buyer can specifically perform the contract.

8. Breach by Buyer

If buyer commits breach, the seller may claim for price, or specific enforcement of contract.

In agreement to sell, the seller has only remedy in case of breach by the buyer. Seller can sue the buyer for damages.

QUESTION NO. 7

ESTABLISHMENT OF N.I.R.C U/S 49 OF I.R.O:

The Federal Govt. is the controlling authority of the commission. The Federal Govt. shall constitute a N.I.R.C, consisting of not more than 8 members including its chairman.

However, the Federal Government may increase or decrease the number of its members depending upon the case and nature of industry.

APPOINTMENT OF MEMBERS AND CHAIRMAN:

The Federal Government shall appoint the members and chairman.

QUALIFICATIONS OF CHAIRMAN & MEMBERS:

The qualification of chairman and members of the commission shall be such as the Federal Govt. may determine the qualification and conditions of service for appointment.

FUNCTIONS OF COMMISSION

(1) Determination of an Industrial Dispute:

The commission shall determine an industrial dispute and then adjudicate upon this dispute. The dispute may relate to any trade union or may be of any national importance.

(2) Powers to Register Trade Unions:

The commission shall register industry-wise trade unions, federation of such trade unions and federations at the national level.

(3) Determination of C.B.A:

The commission determines the C.B.A amongst industry-wise trade unions, federation of such trade unions, and federations at national level.

(4) To Try Offences:

The commission also tries the offenses punishable under this ordinance.

(5) To Try Unfair Labour Practices:

The commission also tries offences on the part of Federation, employers, workmen, trade unions or collective bargaining agents in the said industries or establishment.

(6) To Advice Govt. etc.

Commission advises the Govt. industry-wise trade unions, Federation, or employers.

To Promote Positive Activities:

(7) Commission promotes positive activities within such trade unions or within federations.

With Drawl of Cases:

(8) Commission can withdraw a case of unfair labour practice either on the application of any party or on its own motion.

To Take Action:

(9) Commission can take any action either on application or on its own motion.

POWERS OF COMMISSION U/S 50**(1) General Superintendence:**

The chairman of commission exercises general superintendence over commission's affairs.

(2) Benches:

For proper functioning of the commission, the chairman of the commission can constitute, either:

- (a) A full bench, not less than three members of commission or
- (b) As many other benches of commission consisting of one or more members of commission.

These benches perform such functions and exercise such powers as are performed and exercised by labour court.

(3) Absence of Any Member:

If any member of the commission is absent from or is otherwise unable to attend any sitting of commission or of a bench, the proceedings of the commission or bench, may continue and the decision or award may be given or judgment or sentence may be passed in the absence of such member. The judgment or decision etc shall be valid.

(4) Decision:

- (a) If members differ in opinion, then the decision is made on the basis of majority.
- (b) If the members are equally divided, the case shall be referred to chairman and he shall refer to other members and then be decided according to the predecided and a decided by the later members forming the majority. Even if the members are again equally divided, the decision shall be expressed in terms of the view of chairman.

(5) Additional Powers of Commission:

Commission can also exercise the following powers in addition to other powers conferred as,

- (a) Can punish any person who obstructs or abuses its process, or disobeys any of its order or directions.
- (b) Can enter into any premises for the purpose of investigation inquiry, or adjudication to be made by commission.

(6) Appeal Against Orders of Commission:

If a bench other than a full bench passes the order, decision or award, its appeal shall lie to full bench of commission within 30 days of such award, decision etc.

(7) Orders of Commission:

The decision award, order or judgment made by the commission is final and cannot be called into question in any court of law or authority.

QUESTION NO. 8

The employer is not liable for compensation in the following cases:

- (a) When the injury does not result in the total or partial disablement for a period exceeding 4 days.
- (b) When the injury, not resulting in death caused by an accident which is directly attributable to.
- (c) The workman have been at the time of accident, under the influence drinks or drug.
- (d) The willful disobedience of the workman to an express order or rules framed for securing safety.
- (e) The willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for securing safety.