

QUESTION NO. 1

INTRODUCTION:

The law of contract is the most important and vital role-playing law in the business arena. Its rules and principles provide guidelines for business transactions. Every day, almost all of the persons are entering into various types of agreements and contracts. This study shall provide a legal aspect forming contracts etc.

Dictionary Meaning Of Word Contract:

Black's law Dictionary Meaning:

A contract means "the writing which contains the agreement of parties, with terms and conditions and which serves as a proof of the Obligations".

According To Contract Act 1872 Section 2(h):

According to section 2(h) of Contract Act 1872, "an agreement, enforceable by law" is called contract.

1. KINDS OF CONTRACT ACCORDING TO FORMATION

Following are the ways by which contracts are formed:

(i) 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 verbally.

(ii) Implied Contracts:

If the contracts are made by implied offer and acceptance, these are called implied contracts. An implied offer and acceptance means that these are made by hints, gestures, conduct, behavior or attitude and not in writing or verbally.

(iii) Constructive or Quasi Contracts:

(Certain relations resembling those of contracts)

- The term Quasi is used in legal phraseology that one subject resembles an other. At one side marks a resemblance and supposes difference between two objects on the other hand. Quasi contracts are also referred to as contracts "implied in law"
- Function of "Quasi contracts" is to raise obligations where, in fact, parties made no promise. These contracts are not based on the apparent intention of the parties. There is no offer and acceptance between the parties but operation of law is there to prevent from injustice.
- These are contracts "implied in law" as contrasted to contracts "implied in facts" in which intention of parties is there to create legal relationship.
- Principle of equity lays down that "no one should be allowed to get benefit unjustly at the expense of another". Quasi contracts are also based on this principle. e.g., finder of lost goods.

2. KINDS OF CONTRACTS ACCORDING TO PERFORMANCE

Following are the contracts, which are classified according to their performance.

(i) **Executed Contracts:**

Contracts, which have been fully performed, are called executed contracts. It means when both of the parties have performed their duties and nothing remains to be done on either side. If the contract is performed in parts, it is partially executed or executory contract.

(ii) **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.

(iii) **Bi-lateral Contract (Bi = two, lateral = sides):**

A contract in which both the contracting parties are bound to fulfill obligations is called a bilateral contract. For example in contract of sale, where one becomes bound to deliver goods sold, and other to pay price. Gifts, donations etc are bilateral contracts.

(iv) **Unilateral Contract:**

A unilateral contract is one in which one party makes an engagement or undertakes a performance or when the party to whom an engagement is made, makes no express agreement on his part, the contract is called unilateral.

(v) **Contingent Contract:**

Word contingent means "doubtful or uncertain". It also means doubtful or uncertain, conditional upon the occurrence or non-occurrence of some future event, which in itself is uncertain.

So contingent contract means a contract, part of performance of which is at least dependent upon the happening or non-happening of some event.

3. KINDS OF CONTRACTS ACCORDING TO THEIR ENFORCEABILITY / VALIDITY

(i) **Valid Contract:**

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 and object

(v) Agreement should not be void

(ii) **Void Contract:**

Void means, "Null, ineffective, of no legal force, wholly ineffective and inoperative". A contract, which is of no legal effect or force, is called a void contract.

Factors, which make a contract void, are

- (i) Impossibility of performance
- (ii) Subsequent illegality
- (iii) Unenforceable

Contracts are void either expressly declared by law or due to absence of any one or all-essential elements of a valid contract.

(iii) Voidable Contracts:

Voidable contract means a contract, which can be avoided or declared void.

In other words, a contract that is valid otherwise, if not avoided at the option of the aggrieved party. Factors, which make a contract voidable, are

- (i) When consent of parties is not free
- (ii) Promisee himself prevents promisor from performing it.
- (iii) Promisor himself does not perform within specified time.

When a party enters into an agreement under coercion, undue influence, fraud, and misrepresentation or by mistake, its consent is not free and that party is aggrieved one. Now it is upto this party either to continue or to terminate the contract. The fate of this agreement is in the hands of aggrieved party who may opt either way. If it is accepted, it becomes valid contract and if rejected, it becomes a void contract.

(iv) Unenforceable Contract:

A contract having no legal effect or force in a court of law is called unenforceable contract. It is a valid contract but cannot be enforced by courts of law due to certain defects i.e. writing, registration etc. But when these defects are removed, it becomes enforceable. In case of any breach in an unenforceable contract, the aggrieved party cannot take any legal remedy. For example, an arbitration agreement must be in writing, an oral arbitration agreement is unenforceable.

Term unenforceable also includes void, void able, and illegal contracts.

(v) Illegal Contracts:

A contract contrary to law is called as an illegal contract. A contract is illegal when it is,

- (i) Forbidden by law
- (ii) Defeats any provision of law
- (iii) Fraudulent
- (iv) Involves injury to person or property of other person.
- (v) Immoral
- (vi) Opposed to public policy
- (vii) Unlawful Consideration

4. KINDS OF CONTRACTS ACCORDING TO THEIR NATURE

Following are the kinds of contracts according to their nature.

(i) Contract of Bailment:

Bailment means to deliver goods for some purpose and when the purpose is accomplished these goods be returned or disposed off.

Contract of Pledge:

(ii) Pledge is a special kind of bailment. If the purpose in a bailment is security for the repayment of debt or performance of promise, then it is called pledge. If the purpose is other than security, then it is bailment.

Contract of Indemnity:

(iii) Indemnity means "reimbursement or compensate loss". In simple words, to save some one against any future loss or damage is called indemnity.

Contract of indemnity has been defined as "An undertaking whereby one party agrees to indemnify another upon the occurrence of an anticipated loss". A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called contract of indemnity. Fire insurance and Marine insurance are examples of contracts of indemnity.

Contract of Guarantee:

(iv) An agreement in which the guarantor agrees to satisfy the debt of another, if the debtor fails to repay. It is simply a contract to perform the promise, or discharge the liability of a third person in case of his default.

Contract of Agency:

(v) A relationship between two or more persons, by agreement or otherwise, where one (agent) may act on the behalf of the other (principal) and bind the principal by his words or acts.

Agency is a fiduciary relation, which results from the manifestation of consent by one person to another, that the other shall act on his behalf under his consent.

Wagering Contract:

(vi) 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.

QUESTION NO. 2

According to Section 10 free consent of all the parties to an agreement is one of the essential element of a valid contract. It is essential to the creation of contract that both the parties should agree to the same thing in the same sense otherwise contract would not be enforceable.

FREE CONSENT

According to Section 14 of the Contract Act 1872,

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

- (1) Coercion Sec. 15
- (2) Undue Influence Sec. 16(1)
- (3) Fraud Sec. 17
- (4) Misrepresentation Sec. 18
- (5) Mistake Sec. 20, 21, 22

(1) COERCION:

According to Section 15 of the Contract Act 1872,

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

Illustration:

‘A’ threatens to shoot ‘B’ if he does not let out his house to ‘C’. ‘B’ agrees to let out his house to ‘C’. B’s consent has been caused by coercion.

Effect of Coercion:

The effect of coercion is that the contract becomes voidable at the option of the person whose consent was so obtained by coercion.

Burden of Proof:

The burden of proof that coercion was used lies on the party who wants to set aside the contract on the ground of coercion.

(2) UNDUE INFLUENCE:

According to Section 16(1) of the Contract Act 1872,

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

Illustration:

‘A’ is a patient of Tuberculosis and ‘B’ is the doctor who is famous for curing the disease and ‘A’ is under the treatment of ‘B’. ‘B’ wants to purchase the new car of ‘A’ and very unreasonable price to which ‘A’ under the belief that ‘B’ is the only doctor who can cure him give his consent. This will be regarded a case of undue influence.

Undue influence is ordinarily presumed in relationship such as:

- | | |
|-----------------------------|-----------------------------|
| (a) Parents and Child | (b) Guardian and Ward |
| (c) Trustee and Beneficiary | (d) Solicitor and Client |
| (e) Doctor and Patient | (f) Landlord and Cultivator |

(3) FRAUD:

According to Section 17 of Contract Act 1872,

“Fraud means consisting of certain kinds of acts mentioned therein, committed by a party to a contract, or his agent or by his connivance with a view to deceive another party to a contract or to induce him to enter into the contract.”

Illustrations:

- (i) ‘X’ tells ‘Y’ knowing is to be false that his factory produce 1000 lbs. of butter a day. On this suggestion ‘Y’ agrees to buy the factory for Rs. 12,00,000. The contract is voidable at the option of ‘Y’ on account of fraud.

In case of fraud the contract is voidable of the option of defrauded party. The party has the following three options:

- (i) (a) Avoid from the contract (b) Act upon the contract
(c) Claim for damages

MISREPRESENTATION:

(4) According to Section 18, "misrepresentation means and includes:

- (i) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true though he believes it to be true or.
(ii) Any breach of duty which, without an intention to deceive, gain an advantages to the person committing it or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him; or
(iii) Causing, however, innocently, a party to an agreement to make a mistake as to substance of the thing which is the subject of the agreement.

Illustration:

'A' says 'B', who intend to purchase his land, "My land produce 40 mounds of wheat per acre." 'A' believes that the statement to be true, although lie did not have sufficient ground for the belief. Later, on it appears that the land produce only 10 mounds of wheat per acre. This is a misrepresentation.

MISTAKE:

According to Section 20 of the Contract Act 1872, for a valid contract the consent of the contracting parties must be free. If the consent of contracting parties is obtain by mistake the contract declare voidable. When the consent to an agreement given under a mistake. The consent so given is a mistaken consent. Mistake is fatal for the agreement and it renders the agreement void. Where both the parties to an agreement, are under a mistake as to a matter of fact essential to the agreement, it declared void. Mistake may operate upon contract in two ways. Firstly, it defeat the consent. Secondly mistake may lead the parties as to the purpose of the contract.

Illustration:

A lady purchased an automatic machine from B a dealer, on terms contained in a document, described as sales agreement. She signed this document without reading it. Held she was bound by the terms of agreement. **[Estrange V. Grancob (1934)]**

QUESTION NO. 3

INTRODUCTION:

When a party fails to perform its obligations in a contract, the breach of contract takes place. Break means the breaking of some material thing but Breach is of some immaterial thing i.e. promise or terms and conditions. When there is some breach of promise, there are some remedies for the person who has suffered loss due to this breach. However these remedies can be availed through a competent court of law and not by the aggrieved person himself.

REMEDIES FOR BREACH OF CONTRACT:

In case of any type of breach, following remedies are available to the aggrieved party against the guilty party.

- (1) Suit for recession of contract
- (2) Suit for damages
- (3) Suit upon quantum meruit.
- (4) Suit for specific performance
- (5) Suit for injunction

(1) Suit for Recession of Contract:

Recession means cancellation or termination of contract. If any party to contract fails to perform his obligations, then the other party is also released from the obligation under the contract. If the aggrieved party wants to take some legal action against the defaulting party then he should file a suit for the "recession of contract" before the court of law.

- When the court rescinds the contract then he is entitled for compensation.
- When the party treats the contract as rescind, he must restore any benefit received by him under the contract, to the party from whom such benefit was received.
- When suit for recession of contract is filed, damages are also claimed but sometimes only recession is claimed.

Example:

X agrees to supply 10 tons of wheat to Y on 20th October. Y promised to pay for the goods on its receipt. X does not supply the goods on the due date. Here Y is discharged from the liability of paying the price. Y is entitled to rescind the contract and to claim compensation for the damage, which he has sustained because of none. Supply of goods on the due date.

(2) Suit for Damages:

Another remedy for breach of contract available to an aggrieved person is in the form of "Suit for damages". When there is some breach in the performance of contract, damages can be claimed by the aggrieved party.

KINDS OF DAMAGES

(i) Ordinary or General Damages:

These are damages, which are awarded to compensate for loss due to breach of contract. No indirect or remote loss can be recovered.

Example 1:

A contracts to deliver 100 bags of rice at Rs. 1000 each on a future date on the due date herefuns to deliver. The price on that day is Rs. 1500 per bag. The measure of damage is the difference between market price on the date of breach and the contract price.

Example 2:

A contracts to buy B's ship for Rs. 50000 but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of contract price over the price, which B can obtain for the ship at the time of breach.

Example 3:

A railway passenger's wife caught cold and fell ill due to her being asked to get down at a place other than the railway station.

In a suit by plaintiff alone could be granted but not for the sickness of plaintiff wife because it was a very remote consequence.

(ii) Special Damages:

These are awarded under special circumstances. In other words, these are due to indirect losses. e.g. loss of good will, damage to reputation, loss of market prestige, defamation etc.

• Special damages cannot be claimed as a matter of right but under special circumstances:

- (i) Special circumstances must be known to parties.
- (ii) Subsequent knowledge of special circumstances does not allow such damages.
- (iii) Damages must be result of breach of contract.
- (iv) Parties to contract must have knowledge about the loss.

Example:

A, a builder, contracts to create and furnish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of contract between B and C. A builds the house so badly that before 1st January, it falls down and has to be rebuilt by B, who in consequence, loses the rent, which he was to receive from C and is obliged to make compensation to C for the breach of contract. A must make compensation to B for the cost of rebuilding the house, for the rent loss and for compensation make to C.

(iii) Exemplary Damages:

These are damages, which are awarded to punish the guilty party for breach, and to compensate for the loss suffered.

• Usually these are awarded in the following cases,

- (i) Breach of contract to marry.
- (ii) Dishonour of cheques when there are sufficient funds to the credit of customer.

CASE LAW

Westersen Vs. Olathe State Bank:

Facts:

Olathe state bank agreed to loan to western may for a trip to California by crediting in a court with such Sums as required at destination. Westerner reached destination but bank refused to credit the amount. The court allowed damages for the stall supporting.

Held:

C was entitled to normal damage.

(iv) Nominal Damages:

These damages are awarded when there is no loss or damage due to breach of contract. Nominal damages are meant neither to compensate the aggrieved party nor to punish guilty. However, court may also refuse to award these damages.

CASE LAW**Charter Vs. Sullivan:****Facts:**

Contract to buy a car from C who was Car dealer. Later on S refused to buy the same car. S sold the car to another person and there was no loss to dealer. C filed a suit for loss of profit.

(v) Liquidated Damages:

When, at the formation of the contract, the contracting parties fix the amount of damages, it is called liquidated damages. A liquidated damage is determined before the breach of contract.

(3) SUIT UPON QUANTUM MERUIT:

Quantum means quantity

Meruit means work done

So Quantum Meruit means "amount of work done" or "as much as is earned" where any party has performed part of one's obligations under a contract, and due to some reasons, further performance of contract is impossible, the party who has given part performance can claim for the work done.

CASE LAW**Planch Vs. Celbum (1831) Bombay 14:****Facts:**

C an owner of magazine engaged to write a book to be published by installments in his magazine. After a few installments were published, the publication of magazine was stopped.

Held:

It was held that P could claim payment for the part already published,

(4) SUIT FOR SPECIFIC PERFORMANCE:

Suit for specific performance means demanding the court's order to defaulting party to perform the promise as required by the contract,

Example 1:

X agreed to sell an old painting to Y for Rs. 50000. Subsequently X refused to sell the painting. Here Y may file a suit against X for the specific performance of the contract.

Example 2:

A agreed to sell his house to B for certain price. Later on A refused to handover the house. B filed a suit in court of Law. The court orders to carry out contract.

Cases When Specific Performance is Allowed:

- (i) Money compensation is not sufficient to compensate the loss.
- (ii) Where compensation cannot be obtained.
- (iii) Where there is no standard for ascertaining the actual damage.

Cases Where Specific Performance not Granted:

- (i) Monetary compensation is sufficient to compensate loss.
- (ii) Court cannot supervise the performance.
- (iii) Where one of the party is minor.
- (iv) Contract is of personal nature.
- (v) Contract is divisible.
- (vi) Contract is discovered to be void.

(5) SUIT FOR INJUNCTIONS:

Injunction means "Judicial order", issued usually to prohibit a person from doing a particular act. It is preventive relief. The court, by issuing injunctions restrains the guilty party from doing what he promised not to do. It is usually called "stay order". It is also called prohibitory injunctions. Sometimes, court passes order to do some act, this is called mandatory order.

Both may be either temporary or permanent.

CASE LAW

Metropolitan Electric Supply Co. Vs. Ginder (1901) 2 Ch. 799:

Facts:

G agreed to buy the whole of the electric energy required for his house from a certain company. He was therefore restrained by an injunction from buying electricity from any other person.

Held:

It was held that P could claim payment for the part already published.

CASE LAW

Warner Bros Vs. Nalson (1937) 1 K.B 209:

Facts:

N, a film actress, agreed to act exclusively for W for two years and for no one else. But during this period, she contracted to act for Z also.

Held:

She could be restrained by injunction from doing do.

SURETY:

The person who gives guarantee is called surety.

DISCHARGE OF SURETY FROM HIS LIABILITY

Under following circumstances, the surety is discharged;

(1) BY NOTICE OF REVOCATION:

Giving a notice of revocation of surety can discharge the surety.

(a) Ordinary Guarantee:

An ordinary Guarantee i.e., relating to one transaction cannot be revoked when once it is acted upon. However, if no liability has arisen, giving notice of revocation can revoke it.

(b) Continuing Guarantee:

A continuing guarantee can be terminated at any time for future transaction, by giving a notice to the creditor. However, surety remains liable for transactions entered into prior to the notice.

(2) BY DEATH OF SURETY:

The death of surety operates as a notice of revocation whether creditor knows it or not, in case of continuing guarantee. The deceased surety's estate will not be liable for future transactions entered into after the death of the surety even if the creditor has no notice of it.

(3) VARIANCE IN TERMS OF CONTRACT:

If there is any change in terms and condition of the contract between the principal debtor and creditor without the consent of the surety, the surety is discharged from his liability as to subsequent transactions.

Example 1:

A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent that B's salary shall be raised and that he shall become liable for one fourth of the losses on overdrafts. B allows a customer to overdraw and the bank loses a sum of money. A is discharged from his surety-ship by the variance made without his consent and is not liable to make good this loss.

Example 2:

C agrees to appoint B as his clerk to sell goods at a yearly salary upon A's becoming surety to C for B's duly accounting for money received by him as such clerk. Afterwards without A's consent C and B agrees that a commission on the goods should pay B sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(4) DISCHARGE BY RELEASE OR DISCHARGE OF PRINCIPAL DEBTOR:

If the principal debtor is released or discharged by the creditor, the surety is also discharged from his liability.

Example 1:

A contracts with B for a fixed price to build a house for A within a stipulated times B supplying the necessary timber. C guarantees A's performance of the contract, B omits to supply timber. C is discharged from his surety-ship.

Example 2:

A contracts with B to grow a crop of wheat on A's Land and to deliver it to B at a fixed rate and C guarantees A's performance of the contract B diverts a stream of water, which is necessary for irrigation of A's Land and thereby prevents him from raising the wheat. C is no longer liable for his guarantee.

(5) ARRANGEMENT BY CREDITOR WITH PRINCIPAL DEBTOR WITHOUT SURETY'S CONSENT:

If the creditor, without the consent of the surety, makes an arrangement with the principal debtor for composition or promises to give him time or not to sue him, the surety will be discharged.

• However in the following cases, the surety is not discharged.

(a) Arrangement with 3rd Person:

When the contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged.

Example:

C the holder of an overdue bill of exchange drawn by A as surety for B and accepted by B, contracts with M to give more time to B. A is not discharged.

(b) Mere forbearance to sue principal debtor or to enforce any other remedy against him, does not discharge the surety.

Example:

B owes to C a debt guaranteed by A. The debt becomes payable. C does not use B for a year after the debt has become payable. A is not discharged from his surety-ship.

(6) BY IMPAIRING SURETY'S REMEDY:

If the creditor does any act, which is inconsistent with the rights of the surety or omits to do any act, which his duty requires doing and eventual remedy of surety is damaged, the surety gets discharged.

In simple words, if creditor's act or omission deprives the surety from the benefit of his remedy, the surety is discharged.

Example 1:

B contracts to build a ship for C for a given sum to be paid by installments as the work reaches certain stage. A becomes surety to C for B's due performance of the contract. C, without knowledge of A, pre-pays to B the last two installments. A is discharged by this payment.

Example 2:

C lends money to B on the security of a joint and several promissory note, made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture and apply the proceeds in discharge of the note. Subsequently C sells the furniture, but owing to his misconduct and willful negligence, only a small price is realised. A is discharged from liability on the note.

Example 3:

A puts M as apprentice to B and gives a guarantee to B for M's fidelity. B promises on his part that he will at least once a month, see M make up the cash. B omits to see this done as promised and M embezzles. A is not liable to B on his guarantee.

(7) BY LOSS OF SECURITY:

If the creditor loses any security due to his own negligence then the surety is discharged to the extent of that security. But if the security is lost due to act of God or enemies of state or through reasons beyond the control, then the surety is not discharged.

Example:

A gave a loan to B on the guarantee of C as well as on the mortgage of B's furniture, parts with security given to him, the surety is discharged from liability to the extent of value of security.

(8) INVALIDATION OF CONTRACT:

Surety is also discharged from his liability if the contract of guarantee is invalidated. Following are the cases, which render a contract of guarantee invalid.

- (a) Where the guarantee has been obtained by means of misrepresentation.
- (b) Where the guarantee has been obtained by keeping silence to the material circumstances.
- (c) Where a surety joins on the condition that Co-sureties will join and later on no Co-Surety joins.
- (d) Where it lacks one or more elements of a valid contract.

Example:

X employs Y as a clerk to collect money for him. Y fails to account for some of his receipts and X, in consequence calls upon Z to furnish security for his duly accounting. Z gives guarantee for Y's duly account. X does not inform Z about Y's previous conduct. Y afterwards, makes default. Z is not liable because the guarantee was obtained by concealments of facts.

QUESTION NO. 5**CONTRACT OF SALE:**

According to sec. 4(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.

PARTIES TO A CONTRACT OF SALE:

There are two parties in a contract of sale.

- (i) **Seller:**
A person who transfers or agrees to transfer his ownership in goods for price, to some other person is called seller.
- (ii) **Buyer:**
Buyer is a person to whom ownership in goods is transferred in consideration for price.

RIGHTS OF UNPAID SELLER

DEFINITION OF AN UNPAID SELLER U/S 45(1):

The seller of goods is deemed to be an unpaid;

- (a) When whole of the price has not been paid or tendered or
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment and the same has been dis-honoured.

Term Seller Also Includes U/S 45(2):

The term seller includes any person who is in the position of a seller as for instance.

- (i) An agent of the seller, to whom bill of lading has been endorsed.
- (ii) A consignee
- (iii) Agent who has himself paid or is directly responsible for the price.

(A) RIGHTS OF UNPAID SELLER AGAINST GOODS:

Following are the rights of available to an unpaid seller against the goods; when the goods are still in the possession of seller.

(1) RIGHT OF LIEN:

Lien means to retain the goods until the payment of the price is made. An unpaid seller has a right to continue to hold the possession of goods sold, until the price of the goods is paid. This is called right of lien.

Cases in which Right can be Exercised:

The unpaid seller can exercise the right of lien in the following cases.

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

Rules Regarding Lien:

Following rules are observed for a valid lien.

(i) Holds Good Personally:

Seller can use right of lien when he holds goods personally.

(ii) **Have Possession and not** www.paksights.com

Seller must have transferred the title and must be having only possession of the goods sold.

(iii) **May have Possession as a Bailee or Agent:**

Seller can also use this right even as a bailee or agent.

(iv) **Right Restricted to Price:**

The right of lien is only restricted to price.

(v) **Decree of Price:**

Right of lien is not lost even the seller obtains the decree for price of goods.

(vi) **Part Delivery:**

In case of part delivery, he can use his right on remaining goods.

(vii) **Part Delivery to Waive:**

If the part delivery is made to waive the lien, the seller cannot retain the remaining goods.

• **Termination of Lien:**

The unpaid seller loses his right of lien in the following circumstances;

(i) **Transmission to Buyer:**

When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, lien is terminated.

(ii) **Lawful Possession by Buyer:**

When buyer or his agent lawfully obtains possession of goods, lien is terminated.

(iii) **Waives his Right of Lien:**

When the unpaid seller waives his right of lien, he cannot exercise this right.

(2) **RIGHT OF STOPPAGE OF GOODS IN TRANSIT:**

An unpaid seller can exercise right of stoppage of goods in transit. Goods in transit mean the goods in journey from seller to buyer. In simple words, an unpaid seller can exercise his right of stoppage of goods in transit at any time before their arrival to buyer and can retain them until has paid the price.

• **Cases In Which Right Can Be Exercised**

He can exercise this right only;

(i) When the buyer becomes insolvent.

(ii) When the goods are in transit.

(iii) When the seller has a right of stoppage of goods in transit.

(iv) The property in goods has been transferred to the buyer.

RIGHT OF RESALE OF GOODS:

(3) Another right available to an unpaid seller is resale of unpaid goods. An unpaid seller does not acquire any right of re-sale of goods which have already been transferred to the buyer, except where contract of sale specifically provides that the seller has a right to resale of goods if the buyer has committed any default for payment of price.

Circumstances, When Unpaid Seller can Re-Sell the Goods:

Following are the circumstances;

- (i) Where goods are of perishable nature.
- (ii) Where there is an express provision of right of resale.
- (iii) Where the seller has given a notice of re-sale to buyer and buyer has not paid or tendered the price.

Notice of Re-Sale, its Effects:

There are two cases.

(i) When Sale with Notice:

If the unpaid seller sells the goods by giving notice to the buyer, the position of the unpaid seller is as under;

(a) If Profit:

If there is profit on resale, the unpaid seller has a right over profit.

(b) If Loss:

If there is loss on resale, the unpaid seller can recover that loss from the buyer.

(ii) When Sale without Notice:

If the unpaid seller sells the goods without giving notice to buyer, the position of unpaid seller is as follow;

(a) If Profit:

If there is profit on resale, he cannot retain it. The buyer has right over this profit.

(b) If Loss:

He has no right to recover the loss from buyer loss is for the seller.

(4) Right of Withholding Goods:

If the property in goods has not passed to the buyer, the unpaid seller has a right of withholding the delivery of the goods.

(B) RIGHT OF UNPAID SELLER AGAINST THE BUYER PERSONALLY:

If the goods are delivered to the buyer then the rights against goods cannot be availed, but rights against buyer himself are created. Following are the rights available to the unpaid seller against buyer himself;

(i) Suit for Price:

When the ownership (property) in goods has passed to the buyer and the buyer refuses to pay the price according the terms of contract, the seller is entitled to sue the buyer for price.

(ii) Suit for Damages for Non-acceptance:

An unpaid seller can file a suit for damages against the buyer where the buyer refuses to accept and pay for the goods. The buyer is liable to pay damages for non-acceptance of goods.

(iii) Suit for Interest:

The court may award interest on the amount of price.

- (i) To seller, in a suit for price
- (ii) To buyer, in a suit for refund of price

(iv) Suit for Special Damages:

The unpaid seller is also entitled to sue the buyer for special damages for the loss, which the parties are aware at the time of formation of contract.

QUESTION NO. 6**DIFFERENCE BETWEEN COMMON CARRIER AND PRIVATE CARRIER****Common Carrier:**

A person, firm or company, other than Government, engaged in the business of transporting goods for hire from place to place by land or inland navigation for all persons indiscriminately, is called common carrier. Carriers Act 1865 applies to common carrier.

Private Carrier:

A private carrier is one who does not carry the goods for all persons indiscriminately, but where he has special contracts. He also includes a person who does not carry the goods as regular business but does so occasionally.

Carriers Act 1865 does not apply to private carriers. Private carriers is treated as bailee of goods and Contract Act 1872 applies to him.

COMMON CARRIER	PRIVATE CARRIER
1. Treated Under	
It is treated under "The carriers Act 1865.	It is treated under "Contract Act 1872".
2. Nature of Business	
It carries business on regular basis.	It carries business on occasional basis and not on regular basis.
3. Acceptance of Goods	
Common carrier accepts the goods for transportation for all persons and without any discrimination.	Private carrier accepts the goods of only those persons with whom he has contracted.
4. Refusal to Accept	
He cannot reject the goods without any exceptional case.	Private carrier reserves the right to reject the goods.
5. Damages	
In case of refusal to accept the goods without any sufficient reason, it can be sued for damages.	As he reserves the right to refuse, so he cannot be sued for damages.

6. Consideration

Common carrier carries goods for hire. No carriage without consideration.	Private carrier may carry good with or without consideration.
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7. Terms of Carriage

Standard terms and conditions are followed.	Here Special terms are followed.
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8. Schedule of Services

It declares schedule of services.	No declaration of schedule of services.
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DIFFERENCE BETWEEN CHARTER PARTY AND BILL OF LADING

Charter Party:

Charter party is a term used to denote a contract whereby the owner a ship, in exchange of a consideration, agrees to place entire ship or some portion of the ship at the disposal of the other party to contract for the purpose of transporting goods.

Under charter party the owner of the ship dos not take charge of the goods to be transported but the consignor / shipper takes charge of the ship of part of it.

Bill of Lading:

A bill of lading is a written document issued by a shipping company to the shipper in pursuance of rule of Article III of the carriage of goods by Sea Act 1925 as an evidence of the receipt of goods by the carrier on board a ship and as a evidence of the contract of carriage, and containing an express statement, in accordance with Sec. 4 the carriage of Goods by Sea Act 1925, that the contract of carriage is subject to the provision of the said act.

CHARTER PARTY	BILL OF LADING
1. Nature	
A charter party is a contract to hire the entire ship or a part of it for the purpose of carriage of goods.	It is an acknowledgement of the receipt of goods mentioned therein and a contract to carry and delivered the goods according to the specific terms at the agreed port.
2. Legislation	
There is no specific legislation governing charter parties.	The Bill of Lading Act 1856 and the Carriage of Goods by Sea Act 1925 apply to bill of lading.
3. Document of Title	
A charter party is not a document of title to any goods.	A bill of lading is a document of title to goods mentioned in it.
4. Negotiability	
A charter party is not negotiable.	A bill of lading is negotiable by endorsement and delivery.

5. Specified Destination

A charter party may be for a specified destination or it may be for a specified period of time.

A bill of lading is always for a specified destination.

6. Lease of the Ship

A charter putting may amount to a lease of the strip.

A bill of lading does not amount to a lease of the ship.

QUESTION NO. 7

MEANING:

The word negotiable means "Transferable by delivery" and the word-Instrument means "a written document" creating some rights in favour of some persons. Thus negotiable instrument means a written document which is freely transferable and which creates right in favour of some persons to receive money.

DEFINITION:

"A Negotiable instrument means a promissory note, bill of exchange or Cheque payable either to order or to bearer".

CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS

Negotiable Instruments must contain following essentials;

(i) Must be in Writing:

Negotiable instruments must be in written form, duly signed by maker.

(ii) Must be Made Unconditional:

These must be made on unconditional promises.

(iii) Must be about Fixed Amount:

These must contain a certain and fixed amount of money.

(iv) Payable on Demand or at Fixed Date:

It must be payable on demand or at a fixed date.

(v) Easily Transferable:

It must be transferable easily from one person to another.

(vi) Transferee can Sue in his Own Name:

The holder or transferee has a right to sue in his own name for recovery of specific amount.

(vii) Better Title to Holder in Due Course:

The holder in due course is not affected by defects in title of his transferee or of previous holder.

UNFAIR LABOUR PRACTICE ON PART OF EMPLOYERS:

No employer or trade union of employers and person acting on behalf of either shall .

- (1) Impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union.
- (2) Refuse to employ or refuse to continue to employ and person on the ground that such person is or is not a member or officer of a trade union.
- (3) Discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is or is not a member or officer of a trade union.
- (4) Dismiss, discharge, remove from employment or transfer or threaten to dismiss, discharge or remove from employment or transfer a workman or injure or threaten to injure him in respect of his employment by reason that the workman.
- (5) Is or proposes to become, or seeks to persuade any other person to become a member or officer of a trade union; or
- (6) Participate in the promotion, formation or activities of a trade union.
- (7) Induce any person to refrain from becoming, or to cease to be a member or officer of a trade union, by conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person.
- (8) Interfere with or in any way influence the balloting provided for in Sec. 24.
- (9) Close down the whole of the establishment in contravention of industrial and Commercial Employment (Standing Orders) Ordinance 1968.
- (10) Commence, continue, instigate or incite others to take part in, or expend or supply money or otherwise act in furtherance or support of, an illegal lockout.

UNFAIR LABOUR PRACTICE ON PART OF WORKMEN:

No workmen or other person or trade union of workmen shall:

- (1) Persuade a workman to join or refrain from joining a trade union during working hours.
- (2) Intimidate any person to become, or refrain from becoming, or to continue to be, or to cease to be a member or officer of a trade union.
- (3) Induce any person to refrain from becoming, or cease to be a member or officer of a trade union, by intimidating or conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person.
- (4) Compel or attempt to compel the employer to accept any demand by using intimidation, coercion, pressure, threat, confinement to, or ouster from, a place, dispossession, assault, physical injury, disconnection of telephone, water or power facilities or such other methods.
- (5) Commence, continue, instigate or incite others to take part in, or expend or supply money or otherwise act in furtherance or support of, an illegal strike or a go-slow.