

Q. 1 Every business transaction is backed by a contract that specifies the mutual rights and liabilities of the parties. Briefly explain the essentials of a valid contract under the

Contract Act 1872.

Ans.

In simple terms, a contract means when two parties put into writing an agreement which contains certain obligations (promises) which are to be performed by such parties, and when such written agreement becomes enforceable by law, it becomes a Contract. Enforceable by law means when the agreement has acquired the force of law only for those who are a party to it and a violation of those obligations would attract legal action, including repudiation of the entire contract.

Essentials of a valid contract

Section 10 states conditions which are required for a contract to be valid.

Offer: Firstly, there must be an offer from either party, without an Offer a contract cannot arise. However, in some cases, this principle could not be applied. For instance, Mulla talks about a situation in which offer and acceptance could not be traced, for instance, a commercial agreement reached after multiple rounds of negotiations.

Acceptance of the offer: Secondly, the Offer must be accepted and accepted by the person to whom it was intended. So an offer by A to B has to be accepted by B only.

Acceptance in ad-idem: Thirdly, though acceptance is important, there must be "Consensus ad-idem".

Consensus ad-idem means meeting of minds. It means that parties to the contract should accept the terms of the contract in the "same sense". Thus parties to the contract must have the same understanding of the terms of the contract.

E.g. A contracted with B to purchase rice. Now A wanted a special type of rice, however, B thought of it to be normal rice. In this case, although there is a valid acceptance but there lacks meeting of minds between the parties; meeting of minds concerning the type or quality of rice.

Similarly, if A contracted with B to buy stocks. What A meant was stocks in a company, whereas B understood it to be his livestock (farm animals). In this case, the understanding was not in a similar sense.

Parties must be competent to contract, under the laws they are subjected to i.e. they must be legally

capable to contract

Consideration, for the performance of promises there must be a consideration. something given for performance of promise from both parties to the contract.

Further, the objective and consideration of the contract must be lawful.

Free consent, according to section 10 of contract act” agreements are contracts if they are made by free consent” It means that contract must be entered into out of parties own volition and without being forced, or deceived into.

There must be an intention to enter into a legal relationship.

Certainty, Contract must be certain and not ambiguous and vague. (Section 29)

A contract must not be expressly declared void. (Section 10 of Contract Act)

Offer and acceptance

Offer and Acceptance form the basis of a contract. There can be no contract unless there is an offer and such an offer must be accepted. An Offer once accepted becomes a Promise.

Offer and Proposal are used simultaneously. Offer is used in British law, whereas Proposal is used in Indian law.

Offer

An offer is the first thing for the formation of a contract. A person making an offer is called an “offeror”/“proposer” and a person to whom the offer is made called an “Offeree” / “proposee”.

Chitty on Contracts, defines an offer as an expression of willingness to contract made with an intention that is to become binding on the person making it as soon as it is accepted by the person to whom it is addressed.

According to section 2 (a) of the Contract act, an offer/proposal is:

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.”

An offer simply means willingness, to do something (a positive act) or to not do something (a negative act). It must be noted that if an offer is not made, to get the acceptance of the other party, then it cannot be construed as an offer under the Contract Act. An offer must be made with the object of getting a favourable response from the intended acceptor. Thus, there may be ‘positive’ or ‘negative’ acts which the proposer may be willing to do.

Pointers on Offer

Offer must be communicated to the offeree. Mode of communication could be any but should be

reasonable. An offer must be clear, specific and capable of being understood.

An offer should be lawful and not to do something illegal.

Offer can be express or implied. An express offer is one which is made in words, whereas an implied offer is inferred from the conduct of the offeror. In implied offer what matters is whether the offeror had any intention to make an offer or not.

An offer can be revoked at any time before it's acceptance by the intended acceptor.

An offer must be made with an intention to get acceptance thereto.

A promise consists of an offer and an acceptance of that offer. Once these two conditions are satisfied there is a promise and when both parties have to perform their respective promises, it becomes a situation of reciprocal promise.

Offer and Invitation to offer

There is a difference between an offer and an invitation for others to make an offer. An invitation for others to make an offer is not an offer within the meaning of "Offer" under the Contract Act.

Sometimes a person may not make an offer to sell his goods, but makes a statement or conducts in such a way, to make other persons make an offer to him. This is an invitation to offer.

Acceptance

As stated earlier, the second step in the formation of a contract is the acceptance of the offer.

Acceptance means when the person to whom the offer was made, has given his assent to such offer— Section 2(b) of Contract Act.

Once the offer is accepted and such acceptance has been communicated, to the offeror, the parties are bound by their respective promises. Just like an offer, even an acceptance can be revoked before the communication of acceptance reaches the offeror.

Q. 2 The daily buying and selling of goods is governed by the Sales of goods Act 1930. You are required to elaborate the following points under the Sales of Goods Act 1930,

Rights of buyers and sellers

Provisions regarding delivery of goods

Let the buyer be aware.

Ans.

I. Rights of buyers and sellers

Rights of the Buyer:

1. To have delivery of the goods as per contract. (Sec. 31 & 32)
2. To reject the goods when they are not of the description, quality or quantity as specified in the contract (Sec 37).
3. To repudiate the contract when goods are delivered in installments without any agreement to that effects
4. To be informed by the seller, when the goods are to be sent by sea route, so that he may arrange for their insurance
5. To have a reasonable opportunity to examine the goods for ascertaining whether they are in conformity with the contract. (Sec. 41)
6. To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods.
7. To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57)
8. To sue the seller for specific performance
9. To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59)

10. To sue the seller the damages for anticipatory breach of contract (Sec 60)

11. To sue the seller for interest where there is a breach of contract on the part of the seller and price has to be refunded to the buyer (Sec 61)

Duties of the Buyer:

1. To accept the delivery of goods, when the seller is willing to make the delivery as per the contract (Sec. 31)

2. To pay the price in exchange for possession of the goods

3. To apply for delivery of the goods. (Sec. 35)

4. To demand delivery of the goods at a reasonable hour

5. To accept delivery of the goods in installments and pay for them, in accordance with the contract.

6. To bear the risk of deterioration in the course of transit, when the goods are to be delivered at a place other than where they are sold (Sec 40)

7. To inform the seller in case the buyer refuses to accept or rejects the goods (Sec 43)

8. To take the delivery of the goods within a reasonable time after the seller tenders the delivery (Sec. 44)

9. To pay the price, where the property in the goods are passed to the buyer, in accordance with the terms of the contract (Sec 55)

10. To pay damages for non-acceptance of goods (Sec 56)

Rights of the Seller:

1. To reserve the right of disposal of the goods until certain conditions are fulfilled. (Sec 25 (1))
2. To assume that the buyer has accepted the goods , where the buyer
3. To deliver the goods only when applied for by the buyer (Sec 35)
 - A) Conveys his acceptance;
 - B) Does an act adopting the sale; or
 - C) Retains the goods without giving a notice of rejection, beyond specified date (or reasonable time), in a sale on approval. (Sec 24)
4. To make delivery of the goods in installments, when so agreed (Sec 39 (1))
5. To exercise lien and retain possession of the goods, until payment of the price (Sec 47 (1))
6. To stop the goods in transit and resume possession of the goods, until payment of the price (Sec 49 (2) and 50]
7. To resell the goods under certain circumstances (Sec 54)
8. To withhold delivery of the goods when the property in the goods has not passed to the buyer (Sec 46 (2))
9. To sue the buyer for price when the property in the goods has passed to the buyer or when the price is payment on a certain day, in terms of the contract, and the buyer fails to make the payment (Sec 55)

Duties of the Seller:

1. To make the arrangement for transfer of property in the goods to the buyer.

2. To ascertain and appropriate the goods to the contract of sale
3. To pass an absolute and effective title to the goods, to the buyer.
4. To deliver the goods in accordance with the terms of the contract (Sec 31)
5. To ensure that the goods supplied conform to the implied / express conditions and warranties.
6. To put the goods in a deliverable state and to deliver the goods as and when applied for by the buyer (Sec 35)
7. To deliver the goods within the time specified in the contract or within a reasonable time and a reasonable hour.
8. To bear all expenses of and incidental to making a delivery (i.e. up to the stage of putting the goods into a deliverable state
9. To deliver the goods in the agreed quantity. (Sec. 37 (1)]
10. To deliver the goods in installments only when so desired by the buyer.
11. To arrange for insurance of the goods while they are in transmission or custody of the carrier.
12. To arrange for insurance of the goods while they are in transmission or custody of the carrier.

II. Provisions regarding delivery of goods

Payment and Delivery:

Concurrent Conditions: According to Section 32, unless otherwise agreed, delivery of the goods and the payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange of price, and the buyer shall be ready and willing to pay the price in exchange for the possession of the goods. Thus delivery of goods and the payment of the price must be according to the term of the contract.

Effect of Part Delivery:

According to Section 34, a delivery of the part of the goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of the part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

III. Let the buyer be aware.

Caveat emptor (/ˈɛmptɔːr/; from caveat, "may he beware", a subjunctive form of cavēre, "to beware" + emptor, "buyer") is Latin for "Let the buyer beware". It has become a proverb in English. Generally, caveat emptor is the contract law principle that controls the sale of real property after the date of closing, but may also apply to sales of other goods. The phrase caveat emptor and its use as a disclaimer of warranties arise from the fact that buyers typically have less information than the seller about the good or service they are purchasing. This quality of the situation is known as 'information asymmetry'. Defects in the good or service may be hidden from the buyer, and only known to the seller.

It is a short form of Caveat emptor, quia ignorare non debuit quod jus alienum emit ("Let a purchaser beware, for he ought not to be ignorant of the nature of the property which he is buying from another party.") I.e. the buyer should assure himself that the product is good and that the seller had the right to sell it, as opposed to receiving stolen property.

A common way that information asymmetry between seller and buyer has been addressed is through a legally binding warranty, such as a guarantee of satisfaction.

Q.3 As a student of business law, comment on following;

I. Rights of partners under the Partnership Act 1932

II. Essentials of Bills of Exchange under the Negotiable Instrument Act 1881

III. Rights of workers under the Workers Welfare Ordinance 1971

Ans.

i. Rights of partners under the Partnership Act 1932

Rights and Duties of Partners -

Rights and Duties of Partners in the Partnership firm are as follows -

Rights of Partners - Rights of Partners are as follows -

1. Right to take part in the conduct of the business -

According to Section 12(a) of the Indian Contract Act, 1932 Every partner has a right to take part in the conduct of the business.

2. Right to be consulted -

According to Section 12(c) of the said Act, any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners.

3. Right to Access and inspect the books -

According to Section 12(d) of the Indian Partnership Act, every partner has a right to have access to and to inspect and copy any of the books of the firm;

4. Right to Indemnify -

According to Section 13(e) of the Indian Partnership Act 1932, the firm shall indemnify a partner in respect of payments made and liabilities incurred by him.

ii. Essentials of Bills of Exchange under the Negotiable Instrument Act 1881

Bill Of Exchange :

According to section 5 of Negotiable Instruments Act, 1881- A 'bill of exchange' is an instrument in writing, containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of a certain person, or to the bearer of the instrument.

It is also called a Draft.

Characteristic Features of a bill of exchange:

1. It must be in writing.
2. It must contain an order to pay and not a promise or request.
3. The order must be unconditional.
4. There must be three parties, viz., drawer, drawee and payee.
5. The parties must be certain.
6. It must be signed by the drawer.
7. The sum payable must be certain or capable of being made certain.
8. The order must be to pay money and money alone.
9. It must be duly stamped as per the Indian Stamp Act.
10. Number, date and place are not essential.

Parties To A Bill Of Exchange:

Drawer: The maker of a bill of exchange is called the drawer.

Drawee: The person directed to pay the money by the drawer is called the drawee.

Payee: The person named in the instrument, to whom or to whose order the money are directed to be paid by the instruments are called the payee.

Cheque

According to section 6 of Negotiable Instruments Act, 1881- A cheque is defined as 'a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand'™.

Thus, a cheque is a bill of exchange with two added features, viz.:

- # it is always drawn on a specified banker; and
- # It is always payable on demand and not otherwise.

Essentials Of Cheque:

1. In Writing: The cheque must be in writing. It cannot be oral.
2. Unconditional: The language used in a cheque should be such as to convey an unconditional order.
3. Signature of the Drawer: It must be signed by the maker.
4. Certain Sum of Money: The amount in the cheque must be certain.
5. Payees Must be certain: It must be payable to specified person.
6. Only Money: The payment should be of money only.
7. Payable on Demand: It must be payable on demand.
8. Upon a Bank: It is an order of a depositor on a bank.

iii. Rights of workers under the Workers Welfare Ordinance 1971

What are the laws relating to worker welfare in Pakistan?

The laws relating to workers welfare include:

Employees' Old Age Benefit Act, 1976

Provincial Employees Social Security Ordinance, 1965

Workers Welfare Fund Ordinance, 1971

The Sindh Workers Welfare Act, 2014

West Pakistan Maternity Benefits Ordinance, 1958

Workers Children (Education) Ordinance, 1972

Companies Profit (Worker's Participation) Act, 1968

Workers Compensation Act, 1923

However, this article focuses primarily on Workers Welfare Fund Ordinance promulgated in 1971.

What is the Workers Welfare Fund?

“Workers Welfare Fund” is a federally-managed fund, under the administrative control of Ministry of Human Resource Development. It is an autonomous organization, run by a governing body with representation from all tripartite partners i.e., government, employers and workers.

Workers Welfare Fund was established under the Workers Welfare Fund Ordinance, 1971 to start various initiatives for workers' welfare like provision of low cost residential accommodation and other amenities including education and health facilities.

Besides, it is responsible for managing the “fund” placed at its disposal under the Ordinance (collected through contributions from various establishments); investment of this fund and using of income, accrued through fund resources for various workers' welfare initiatives.

What are the Workers Welfare Boards?

Workers Welfare Boards operate in the provinces and these are established under the above-mentioned Ordinance for expanding the ambit of worker welfare activities under the Fund. The main functions of the Provincial Workers Welfare Boards are:

Construction of residential colonies for the industrial labor

Construction of schools for the children of industrial labor

Construction of Dispensaries for industrial labor

Construction of Drinking water supply schemes

Provision of educational scholarships to workers' children

Provision of Marriage Grant (Jahez Fund) for the workers' daughters (and female workers themselves)

Provision of Death/Funeral Grant to the family of a deceased industrial labor

What is the applicability of this law?

In the wake of amendments made through Finance Acts of 2006 and 2008, this law is applicable to every industrial establishment and all other establishments to which Shops and Establishments

Ordinance 1968 is applicable, whose total annual income exceeds Rs. 500,000 in a year.

Many firms in the private sector had challenged these amendments in the Court and last year both the Punjab and Sindh High Courts have struck down these as unconstitutional.

What is the rate of contribution under this Ordinance?

Every establishment whose total income in a year is not less than Rs. 500,000 (earlier Rs. 100,000) must pay to the Workers Welfare Fund a sum of two percent (2%) of its total income as is assessable under the Ordinance. The assessment of income is made in accordance with income tax returns deposited under the Income Tax Ordinance 2001. The Sindh Act, 2014 has maintained above conditions.

The Finance Act 2015 excludes mutual funds and Collective Investment Schemes including National Investment (Unit) Trust or a REIT Scheme from the definition of the term 'Industrial Establishment' as defined in the Workers' Welfare Fund Ordinance, 1971. Thus, contribution to the Workers' Welfare Fund is no more payable by these entities.

Can this contribution be enhanced or reduced?

The federal government can enhance this contribution if it receives such recommendations from the provincial governments.

Similarly, it can also cancel or reduce the contribution due from an establishment after considering its case.

Who is eligible for benefits under the Ordinance?

Every industrial labor is eligible for benefits under the Ordinance. This holds true even when your organizations is not paying contribution to the Fund (in the event that it is making losses).

However, eligibility conditions vary for different types of benefits.

