

Section A

- Ans.1
- (i) (c) Minority.
 - (ii) (d) all of the above.
 - (iii) (c) a part of ratio decidendi.
 - (iv) (b) Value of work which can be recovered by the plaintiff.
 - (v) (c) To sue for the recovery of expenses incurred by him.
 - (vi) (c) For the dissolution of a firm.
 - (vii) (a) With the consent of majority of partners.
 - (viii) (d) All of the above.
 - (ix) (a) having a lien thereon, loses his lien if he obtains a decree for the price of the goods.
 - (x) (b) Actionable claims.
 - (xi) (d) Transferred before its maturity.
 - (xii) (a) A fact subsidiary to the contract.
 - (xiii) (c) It must be signed by the drawee.
 - (xiv) (d) All of the above.
 - (xv) (c) Insufficiency or inadequacy of marks.

Ans.2 **Statute:**

The Act of Parliament is also termed as 'Statute'. It is the primary source of law and is made by the Parliament itself. Act begins as a bill and after passing through the National Assembly and Senate becomes law on the granting of assent of the President. Act is binding on everyone.

Ordinance:

When the National Assembly is not in session and the President deems necessity of an immediate law, he can promulgate Ordinance. The Ordinance has the same force and effect as an Act of Parliament. The Ordinance, if not presented or passed by the National Assembly within 4 months, stands repealed.

Purposes of Act of Parliament:

Following are the purposes of the Act of Parliament:

- (i) Create new law when none exists before.
- (ii) Consolidate existing law.
- (iii) Amend existing law.
- (iv) Cancel existing law.
- (v) Authorize taxation.
- (vi) Codify and clarify existing law.

Ans.3 (a) (i) **Agreement without consideration void:**

In order to make it a binding contract, Raheel needs to make his promise in writing and sign it either by himself or by his agent generally or specially authorized in that behalf. In this case, Raheel must be the person against whom the liability might have been enforced by Sameer but for the law for the limitation of suits.

(ii) **Agreement without consideration void:**

To make it a binding contract, Shazia needs to express it in writing and get it registered under the law for the time being in force for the registration of documents. This agreement must be made on account of natural love and affection between the parties standing in near relation to each other.

- (b) **Reimbursement of person paying money due by another, in payment of which he is interested:**

Apparently Maya acted voluntarily and had no interest of her own in the payment, she cannot recover the amount from Wasi.

However, Maya can recover the payment if she can prove her interest in the payment which Wasi was bound by law to pay. Or

Wasi promises to compensate Maya wholly or in part for the payment she made which Wasi was legally compelled to do.

- Ans.4 (a) **The Property of the firm:**
Subject to contract between the partners, the property of the firm includes all property and rights and interests in property
- originally brought into the stock of the firm, or
 - acquired by purchase or otherwise by or for the firm, or
 - for the purposes and in the course of the business of the firm, and
- it also includes the goodwill of the business.
- (b) **Insolvency of a partner:**
No, Patel ceases to be a partner in the firm on the date on which the order of adjudication is made by the Court, whether or not the firm is thereby dissolved.
- Effects of adjudication on Patel:**
Subject to contract between the partners, if the firm is not dissolved by the adjudication of Patel as insolvent, the estate of Patel shall not be liable for any act of the firm and the firm will not be liable for any act of Patel, done after the date on which the order of adjudication was made.
- (c) **Restrictions imposed on the implied authority of a partner:**
In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:
- (i) submit a dispute relating to the business of the firm to arbitration,
 - (ii) open a banking account on behalf of the firm in his own name,
 - (iii) compromise or relinquish any claim or portion of a claim by the firm,
 - (iv) withdraw a suit or proceeding filed on behalf of the firm,
 - (v) admit any liability in a suit or proceeding against the firm,
 - (vi) acquire immovable property on behalf of the firm,
 - (vii) transfer immovable property belonging to the firm, or
 - (viii) enter into partnership on behalf of the firm.

- Ans.5 **Condition as to quality and fitness for purpose:**
The general rule with regard to contract of sale is that, a buyer is supposed to satisfy himself about the quality and suitability of goods for his purpose i.e. the Rule Caveat emptor applies. Thus, later on, if the goods purchased are found unsuitable or unfit for the purpose of the buyer, he will have no legal remedy against the seller.

MERCANTILE LAW
Suggested Answers
Foundation Examinations – Spring 2014

However, under the circumstances, the implied condition as to fitness for the purpose is applicable on Easy Electronics as the defect in the roti maker was not of the kind which would have been revealed on the apparent examination of the roti maker. Therefore, Easy Electronics were bound to supply the roti maker which was suitable for the purpose of Modi, as:

- (i) At the time of buying the roti maker, Modi expressly disclosed his purpose to the salesman that he wants to buy a roti maker which can cook 50 rotis per day.
- (ii) He also relied upon the skill and judgment of the salesman for supplying him the roti maker which was fit for his purpose; and
- (iii) The roti maker sold was of the description which Easy Electronics deals in the ordinary course of their business.

Therefore, under the given circumstances, since Modi has already accepted the roti maker he cannot return it to Easy Electronics. However, he is entitled to treat the breach of condition (i.e. implied condition as to quality or fitness) as breach of warranty and claim damages.

Ans.6 The liability of the carrier in each of the above situations is as under:

- (i) The carrier is responsible for loss or damage arising or resulting from the deviation from the agreed route. However, the carrier will not be responsible for loss or damage arising or resulting from such deviation if it deviated for saving or attempting to save life or property at sea.
- (ii) The carrier shall not be responsible for the loss or damage arising from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy.
- (iii) The carrier is not responsible for loss or damage to or in connection with goods if the value thereof has been knowingly mis-stated by the shipper in the bill of lading.

Ans.7 **Dissolution by the Court:**

Uzair may file a petition for the dissolution of the firm and the Court may dissolve the firm on any of the following grounds, namely:

- (a) That either Aslam or Imran or both has become of unsound mind;
- (b) That either Aslam or Imran or both of them have become in any way permanently incapable of performing his/ their duties as partner;
- (c) That either Aslam or Imran or both of them, is/are guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;
- (d) That either Aslam or Imran or both of them, willfully or persistently commit breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself/themselves in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him/them;
- (e) That either Aslam or Imran or both of them, had in any way transferred the whole of his/their interest in the firm to a third party, or has allowed his/their share to be charged under the provisions of rule 49 of Order XXI of the first Schedule to the Code of Civil Procedure, 1908, or has allowed it to 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) That the business of firm cannot be carried on otherwise than at a loss; or
- (g) On any other ground which renders it just and equitable that the firm should be dissolved.

Ans.8 **Ratification and Agency by Ratification:**

Ratification means the subsequent adoption and acceptance of an act originally done without instruction or authority.

Agency by ratification comes into existence retrospectively, when a principal subsequently affirms or adopts the unauthorized act of his agent.

OR (Alternatively)

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Essentials of a valid ratification:

A valid ratification must fulfill the following conditions:

- (i) The agent must purport to act as agent for a principal who is in contemplation and is identifiable at the time of contract.
- (ii) The principal must be in existence at the time of contract.
- (iii) The principal must be competent to contract both at the time of the contract and at the time of ratification.
- (iv) The act to be ratified must not be void, or illegal.
- (v) Ratification must be with full knowledge of all material facts.
- (vi) The principal must signify his unconditional acceptance of the act.
- (vii) Ratification must be made within a reasonable time.
- (viii) Ratification must be of whole transaction.
- (ix) Ratification must be communicated to the other party.
- (x) Ratification must not injure a third person.

Ans.9 (a) **When presentment is unnecessary:**

Under the following circumstances presentment of the negotiable instrument for payment is not necessary and the instrument is deemed to be dishonored at the date for presentment:

- (i) **Presentment intentionally prevented:** If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
 - **Business place closed:** If the instrument is payable at his place of business and he closes such place on a business day during the usual business hours, or
 - **No person at the specified place of payment:** If the instrument is payable at some other specified place and neither he nor any person authorized to pay it attends at such place during the usual business hours, or
 - **Payer cannot be found:** if the instrument is not payable at any specified place, he cannot after due search be found;
- (ii) **Waiver either express or implied:** presentment of a note or bill at maturity is not necessary if the party entitled to require presentment promises to pay it regardless of non-presentment.
- (iii) **Waiver after maturity (implied waiver):** Such implied waiver may be assumed, with knowledge that the instrument has not been presented, when after maturity of the instrument any party:
 - Makes a part payment on account of the amount due thereon; or
 - Promises to pay the amount due thereon in whole or in part; or
 - Waives his right to take advantage of any default in presentment for payment.
- (iv) **When drawer could not suffer damage:** if want of presentment is not likely to cause the drawer any injury or loss, presentment for payment by the holder is excused.

- (v) Where the drawee is a fictitious person.
- (vi) As regards an indorser, where the negotiable instrument was made, drawn or accepted for the accommodation of that indorser and he had reason to expect that the instrument would not be paid if presented; and
- (vii) Where after the exercise of reasonable diligence, presentment cannot be effected.

(b) **Advise whether Habib may further negotiate the instrument:**

Zubair has not restricted or excluded the negotiability of the instrument, mere absence of words implying right to negotiate does not make the indorsement restrictive. Therefore, Habib may further negotiate the instrument.

Ans.10 (a) **Contingent Contract:**

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Contingent agreement considered void ab-initio:

Contingent agreement to do or not to do anything becomes void ab-initio, if an impossible event happens, whether the impossibility of the event is known or not known to the parties to the agreement at the time when it is made.

Illustration:

Bilal agrees to pay Rs. 100,000 to Yasin if he will marry Zahid's daughter Razia. She was dead at the time of the agreement. The contract is void ab-initio.

- (b) (i) Discharge of Baqir and Qurban from their liability.
No, they are not discharged as Saleem and Atif are joint promisees and jointly have the right to receive payment. Thus payment to anyone of them does not operate as a complete discharge of debt.
- (ii) Will Saleem succeed in his case?
No, Saleem will not succeed in his case. He must be joined by Atif as the right to claim performance rests with all the promisees jointly and a single promisee cannot claim performance.

Ans.11 **Contract of Sale and Agreement to Sell:**

- (i) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
- (ii) A contract of sale may be absolute or conditional.
- (iii) **Agreement to Sell:** Where under a contract of sale the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

Contract of sale how made:

- (i) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by installments, or that the delivery or payment or both shall be postponed.

- (ii) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Ans.12 (a) **Care required from Trustee:**

A trustee is bound to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own and in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust property.

Therefore, under the circumstances, Furqan is entitled to recover the loss from Nomi as he failed to perform the due diligence before selling the property to Wahid.

(b) **Right to proper trustees:**

- (i) The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Afaq cannot himself appoint the new trustees. However, he may institute a suit for the appointment of proper persons to act as trustees under the above circumstances.

- (ii) No, under the given circumstances, a single trustee cannot be appointed in place of the deceased trustees. Since the administration of the trust involves the receipt and custody of money, the number of trustees should be at least two.

- (iii) The following are not proper persons for appointment as trustees:

- A person domiciled abroad;
- an alien enemy;
- a person having interest inconsistent with that of the beneficiary;
- a person in insolvent circumstances; and
- unless the personal law of the beneficiary allows otherwise,
 - a married woman; and
 - a minor.

(THE END)