

**COMMERCIAL LAWS AND PROFESSIONAL ETHICS – SEMESTER-2****Marks****Question No. 2****Composition of National Assembly and Senate:****06****National Assembly** is made up of 342 members as:

- (a) 272 Muslim members elected by direct and free vote.
- (b) 60 women members (reserved).
- (c) 10 minority members.

**Senate** consists of 104 members as:

- (a) 14 members shall be elected by the members of each provincial Assembly.
- (b) 8 members shall be elected by direct and free vote from the FATA in such manner as the President may, by order, prescribe.
- (c) 2 on general seats, and one woman and one technocrat including aalim shall be elected from the Federal Capital in such manner as the President may, by order, prescribe.
- (d) 4 women shall be elected by the members of each Provincial Assembly.
- (e) 4 technocrats including ulema shall be elected by the members of each Provincial Assembly.
- (f) One seat in the senate is reserved for minorities in each province.

**Question No. 3****(a) (i) Effect of refusal of party to perform promise wholly****02**

As per Contract Act, 1872, when a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promise may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

In the light of above, it is clear that Arif can rescind the contract as Ghayoor did not signify his consent by any way for continuance of contract.

**(ii) Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises****02**

According to Contract Act, 1872, when a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Therefore, Zaheer cannot claim the performance of contract as contract consists of reciprocal promises and first part of promise is not performed.

**(b) Expressly Declared Void Agreements:****04**

- (i) Agreement by Incompetent persons
- (ii) Agreement made under mutual mistake of facts
- (iii) Agreement of which consideration or object is unlawful
- (iv) Agreement of which consideration or object is unlawful in part
- (v) Agreement made without consideration

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- (vi) Agreement in restraint of marriage
- (vii) Agreement in restraint of trade
- (viii) Agreement in restraint of legal proceedings
- (ix) Agreement the meaning of which is uncertain
- (x) Agreement by way of wager
- (xi) Agreement contingent upon impossible events
- (xii) Agreement to do impossible acts
- (xiii) Reciprocal promises to do legal and illegal things

(Only four of the above were required to be briefly explained)

**(c) (i) Goods perishing before making of contract (Sec. 7) 02**

As per Sale of Goods Act, 1930, a contract for the sale of specific goods is void if at the time when the contract was made, the goods have, without the knowledge of the seller, perished. The same would be the case where the goods become so damaged as no longer to answer to their description in the contract. This rule is based on the ground of mutual mistake. Or impossibility of performance.

In this scenario, as the subject matter of the contract is destroyed so Zahid cannot claim for the sum.

**(ii) Sale and barter or exchange 02**

According to Sale of Goods Act, 1930, where the property in goods is transferred from the seller to the buyer for a price, it is called a sale. Where goods are exchanged for goods, the transaction is called a barter and not sale. Where money is exchanged for money, it is a transaction of exchange and not of sale. But if the consideration for transfer of property in goods consists partly of goods and partly of money, the contract is a sale.

So from above provision it is clear that in the given scenario there was a sale agreement between the parties.

**(d) Rights of Unpaid Seller Against the Buyer Personally: 06**

The unpaid seller has the following three rights of action against the buyer personally;

- **Suit for price** (Sec. 55). Where property in goods has passed to the buyer; or where the sale price is payable 'on a day certain', although the property in goods has not passed; and the buyer wrongfully neglects or refuses to pay the price according to the terms of the contract, the seller is entitled to sue buyer for price, irrespective of the delivery of goods. Where the goods have not been delivered, the seller would file a suit for price normally when the goods have been manufactured to some special order and thus are unsaleable otherwise.
- **Suit for damages for non-acceptance** (Sec. 56). Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The seller's remedy in this case is a suit for damages rather than an action for the full price of the goods.
- **Suit for special damages and interest** (Sec. 61). This section entitles the seller to sue the buyer for 'special damages' also for such loss 'which the parties knew when they made the contract, to be likely to result from the breach of it.' The section recognises unpaid seller's right to get interest at a reasonable rate on the total unpaid price of the goods sold, from the time it was due until it is actually paid.

**COMMERCIAL LAWS AND PROFESSIONAL ETHICS – SEMESTER-2****Marks****Question No. 4****(a) (i) Liability of the firm for wrongful acts of a partner****02**

As per the Partnership Act, 1932, where, by the wrongful act or omission of a partner acting in the ordinary course of the business of the firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Yes, from the above provision it is clear that the rival firm can claim the sum from Ahsan and also from the firm as well.

**(ii) Introduction of a partner****02**

Subject to section 30 of the Partnership Act, 1932, (which deals with the position of a minor partner), a person may be admitted as a new partner either:

- with the consent of all the existing partners, or
- in accordance with a contract already entered into between the existing partners for the admission of a new partner.

So, Adeel cannot refuse to admit the Rehan as it was clearly agreed between Naveed and Adeel to admit as a partner to the son of Naveed after attaining the age of majority.

**(b) No Implied Authority:****06**

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.

**(c) Transfer by Negotiation:****06**

According to Negotiable Instruments Act, 1881, there are two methods of transfer by negotiation, namely:

**(i) Negotiation by delivery:**

An instrument payable to bearer is negotiable by delivery thereof.

**(ii) Negotiation by endorsement and delivery:**

An instrument payable to order is negotiable by the holder by endorsement and delivery thereof.

**(d) Dishonour by Non-acceptance:****06**

A bill of exchange is dishonoured by non-acceptance in any one of the following ways:

- (i) If the drawee does not accept the bill within forty-eight hours from the time of presentment though it is duly presented for acceptance;

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- (ii) If there are several drawees (who are not partners) and all of them do not accept;
- (iii) When presentment for acceptance is excused, and the bill is not accepted;
- (iv) When the drawee is incompetent to contract;
- (v) When the drawee gives a qualified acceptance;
- (vi) When the drawee is a fictitious person or after reasonable search cannot be found.

**Question No. 5****(a) Amount and Payment of Contribution:****02**

Subject to the other provisions of Social Security Ordinance, the employer, shall in respect of every employee, whether employed by him directly or through any other person pay to the Institution a contribution at such times, at such rate (not more than six per cent) and subject to such conditions as may be prescribed.

**(b) Classification of Workmen as per Industrial and Commercial Employment:****03**

Workmen shall be classified as:

- Permanent,
- Probationers,
- Badlis,
- Temporary,
- Apprentices,
- Contract worker.

**(c) (i) “Year”** with respect to insurable employment means a total of three hundred and sixty-five days for which contributions are payable or, in the case of insured persons who are not paid for weekly holidays, a minimum of three hundred and twelve days. **02**

**(ii) “Employee”** means any person employed, whether directly or through any other person for wages or otherwise to do any skilled or unskilled, supervisory, clerical, manual or other work in, or in connection with the affairs of an industry or establishment, under a contract of service or apprenticeship, whether written or oral, expressed or implied. **02**

**(d) Maintenance of Accounts by PPRA:****02**

The Authority shall cause proper accounts to be kept and shall after the end of each financial year cause to be prepared for that financial year a statement of accounts of the Authority which shall include:

- (i) A balance sheet and
- (ii) An account of receipt and expenditure.

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- (a) Safeguards created by profession, legislation or regulation include:** **05**
- (i) Educational, training and experience requirements for entry into profession.
  - (ii) Continuing professional development requirements.
  - (iii) Corporate governance regulations
  - (iv) Professional standards
  - (v) Professional or regulatory monitoring and disciplinary procedures.
  - (vi) External review by legally empowered third party of the reports, returns, communications or information produced by a professional accountant.
- (b) The following are the circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:** **05**
- (a) Disclosure is permitted by law and is authorised by the client or the employer
  - (b) Disclosure is required by the law, for example:
    - (i) Production of documents or other production of evidence in the course of legal proceedings; or
    - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
  - (c) There is a professional duty or right to disclose, when not prohibited by law:
    - (i) To comply with the quality review of a member body or professional body;
    - (ii) To respond an inquiry or investigation by a member body or regulatory body;
    - (iii) To protect the professional interest of a professional accountant in legal proceedings; or
    - (iv) To comply with technical standards and ethics requirements.
- (c) Justice View of Moral Reasoning:** **03**
- Justice view elaborates fair treatment and due reward in accordance with ethical or legal standards, including the disposition to deal with perceived injustices of others. The justice view is based on the perceived rights of individuals and on the intentions of the people involved in a business interaction. In other words, justice view relates to the issue of what individuals feel they are due based on their rights and performance in the workplace. For this reason, justice view is more likely to be based on deontological moral philosophies than on teleological or utilitarian philosophies.

**THE END**