



ASSIGNMENT

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Subject ...

Law of Contract-II

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ANSWER NO # 1

BAILMENT:-

The term bailment refers to a legal relationship between two parties in common law, where assets or property are transferred from a bailer to a bailee. In this relationship, the bailer transfers physical possession of a piece of personal property to the bailee for a certain period of time but retains ownership. There are three different types of bailment, which benefit the bailer, bailee, or both. Bailments are common in our everyday lives, including in the relationships we have with our banks. Bailments are also common in finance, where the owner of securities transfers them to another party for short selling. Since they are contractual agreements, failure to live up to the terms and conditions of a bailment can lead to legal disputes.

- A bailment involves the contractual transfer of assets or property from a bailer, who temporarily relinquishes possession but not ownership, to a bailee.
- The bailee must intend to and actually physically possess the bailable chattel or asset.
- There are three types of bailments—those that benefit both parties, those that benefit only the bailer, and those that only benefit the bailee.
- Although the burden depends on the type of bailment, the bailee must always treat the bailer's property with a reasonable amount of care.
- Damage or loss to property due to negligence of duty in a bailment can result in legal disputes.

The bailer is generally not entitled to use the property while the bailee holds it. Leaving your car with a valet is a common form of bailment, while parking in an unattended garage is a lease or the license of a parking space, as the garage cannot show intent to possess the car.

Bailments are legal courses of action independent of contract or tort. To create a bailment, the bailee must both intend to possess, and actually physically possess, the bailable chattel. The bailer typically receives a written contract, a receipt, or a chit, which is what you get when you drop your coat off at a coat check. By taking possession of the property, the bailee agrees to guard it using reasonable care. Legal disputes can arise if anything happens to the asset while in the bailee's possession.

Types of Bailment

There are three different types of bailments—those that benefit both parties, those that benefit only the bailer, and those that only benefit the bailee. We've outlined some of the most important details about each below.

Bailments That Benefit Both the Bailer and Bailee

This type of bailment is referred to as a service agreement bailment. For instance, parking your car in a paid parking lot benefits both parties because the bailer is able to park their car in a secure lot while the lot owner is paid for the service. In service bailments, a bailee is liable for any damage that results to the bailed items if they are negligent in their duties.

Bailments That Only Benefits the Bailer

This is referred to as a gratuitous (free) bailment. Free valet service would be an example of this because the valet service (in this case, the bailee) doesn't receive compensation for parking your car. A bailee can face liability for damaging the bailed items if they are grossly negligent or act in bad faith while safeguarding the asset.

Bailments That Only Benefits the Bailee

These bailments are called constructive bailments. Checking a book out of the library is a common example. When you check the book out, you become the bailee while the library is the bailer, who gets no benefit from the relationship. It does, however still expect that you return the book at the end of the rental period.

In this type of bailout, the bailee faces liability for basically any damage to the bailed item. This is the highest standard of care required out of the three categories.

A bailer is a person who temporarily gives the possession of goods or property but not the ownership under the bailment. The temporary possession of the goods or property is given by the bailer to another person who is known as bailee.

A bailer transfers possession, but not ownership, of a good to another party, known as the bailee, under an agreement known legally as bailment. While the good is in the bailee's possession, the bailer is still the rightful owner.

Duties of the bailer:-

1. Duty to disclose faults: – In the case of a gratuitous bailment, the bailer is expected to disclose all the defects to the bailee known by him and that can arise while using the bailed goods. A non-gratuity carries a major responsibility

on the part of the bailer as in this case bailer will also be liable even if he does not know about the defects.

2. Duty to repay bailee's expenses: – Bailer is bound to repay all the expenses which were incurred by him for the work done on the goods received in the bailment.
3. Duty to indemnify the bailee: – The bailer is obliged to make good for the losses suffered by the bailee, or that because of the bailer, where the goods were delivered without any reason or force the bailee to return the goods before the expiry period of the bailment.
4. Duty to claim back the goods: – In accordance with the terms of the bailment, bailer is obliged to accept the goods returned by the bailee. If bailer refuse to accept the returned goods without any reasonable ground then in such a case, bailer will be responsible for all the damage done to the goods and not the bailee.
5. Duty of the bailer to compensate for the breach of warranty: – In every contract of bailment warrants, bailer's title should be defect free. If bailee suffers any losses due the bailer's defective title then in such a case the bailer will be responsible for the damages done to the bailee for breach of warranty.

A bailee is the person who temporarily gets the possession of the goods and property but not the ownership. The bailee is also known as the custodian, and he gets the possession of the goods or property by another person who is known as the bailer.

Duties of bailee:-

1. Duty to take reasonable care: –
It is the duty of the bailee to take reasonable care of the bailed goods and he is bound to take as much care of the goods as an ordinary prudent person of sound mind takes.
2. Duty to unauthorized use of goods: –
The bailee has to keep in mind or fulfil all the conditions mention in the bailment agreement while using the bailed goods. If he illegally use the goods, the bailment agreement will become voidable at the option of the Bailer.
3. Duty to not to mix the bailed goods with his personal goods: –
The bailee must keep the bailed goods separated from his own personal goods. He cannot mix the goods without the prior permission of the bailer.
4. Duty of not to setup an adverse title: –
Bailee only have temporary possession of the goods and not ownership as he holds the goods on behalf of the bailer, so he has to return the goods.
5. Duty to return goods: –
It is the duty of the bailee to return the goods to the bailer in safe and good condition after the expiry of the time period of bailment or achievement of purpose for the goods were bailed. The goods must be returned according to the

directions given by the bailer. If he failed to do so, he will be responsible for the losses done to bailer even without his negligence.

ANSWER NO # 2

When one of the parties fails to perform its contractual obligations, such party is in breach of contract and the other party has a right to demand the fulfillment of the agreement and to demand performance of those obligations with the help of the authorities. However, it is not always possible or even viable from the point of view of the damaged party to demand that the other party perform the original contract. It may be better to demand other consequences.

The consequences of a breach of contract vary and are dependent on which party is in breach of its obligations. Naturally, the seriousness of the breach also affects the consequences. The common consequence is reduction of the contract price, remedy of the defect, compensation for damage and interest for delay. It is only possible to rescind the contract when the breach is fundamental.

Breach of contract

Breach of contract means when one party fails or refuses to perform his obligation

Remedies for breach of contract

Following remedies are available to aggrieved party for breach of contract against the guilty party

1. Suit for rescission
2. Suit for damages
3. Suit upon quantum meruit
4. Suit for specific performance
5. Suit for injunction

1) Suit for rescission

Rescission means cancellation of contract. When one party breaches the contract the other party may rescind contract and refuse to perform his part of obligation.

The aggrieved party may sue the guilty for damages

Example

A agrees to sell his car to B for 6 lac Rs. But on due date A refuses to hand over his car. B is discharged from contract and can claim damages

2) Suit for damages

Damages are the monetary compensation allowed to aggrieved party for the losses suffered by him as a result of breach of contract. The aggrieved party can claim the following damages

- i) General damages
- ii) Specific damages
- iii) Exemplary damages
- iv) Liquidated damages

3) Suit for quantum meruit

Quantum meruit means payment in proportion of work done. Sometimes one of the parties has done a part of his obligation but the other party commits the breach of contract. In such case the party who has performed some work has right to claim for the value of work done and damages for the remaining work.

Example

A agrees to construct a three story house for B. when only one story was constructed, B prevented A from doing more work. So here A is entitled to get the reasonable compensation for the work done and the damages for remaining work.

4) Suit for specific performance

When only damages are not enough to compensate then the court may order guilty to perform specific performance

Specific performance is granted in the following ways

- a) When compensation in money is not enough
- b) When compensation cannot be obtained
- c) Where one of the parties is a minor
- d) Where the contract involves personal skills, taste and qualification

5) Suit for injunction

Injunction is an order from the court of law prohibiting a person from doing a specific act. It is granted where the damages are not the adequate relief

Example

Farrah a lady singer enter into an agreement with Salman to sing at salman's theater and nowhere else. Afterwards Farrah made a contract with Sheraz to sing at his theater and refused to perform her contract with Salman. It was held that, Farrah could not be compelled to sing at salman's theater she was prohibited by the court form singing for Sheraz.

ANSWER NO # 3

ELEMENTS OF A CONTRACT

To be valid, a contract must generally contain all of the following elements:

- Offer
- Acceptance
- Consideration
- Legality

OFFER:

Contracts always start with an offer. An offer is an expression of a willingness to enter into a contract on certain terms. It is important to establish what is and is not an offer. Offers must be firm, not ambiguous, or vague. A person who is making the offer is called the offeror.

ACCEPTANCE:

Acceptance by the offeree (the person accepting an offer) is the unconditional agreement to all the terms of the offer. There must be what is called a "meeting of the minds" between the parties of the contract. This means both parties to the contract understand what offer is being accepted. The acceptance must be absolute without any deviation, in other words, an acceptance in the "mirror image" of the offer. The acceptance must be communicated to the person making the offer. Silence does not equal acceptance.

CONSIDERATION:

Consideration is the act of each party exchanging something of value to their detriment. A sells A's automobile to B. A is exchanging and giving up A's automobile while B is exchanging and giving up B's cash. Both parties must provide consideration.

LEGALITY:

The fourth required element of a valid contract is legality. The basic rule is that courts will not enforce an illegal bargain. Contracts are only enforceable when they are made with the intention that they legal, and that the parties intend to legally bind themselves to their agreement. The contract is characterized as "contingent" because the terms are not final and are based on certain events or conditions occurring. A contingent contract can also be viewed as protection against a future change of plans. Contingent contracts can also lead to effective agreement when each party has different time preferences.

For example, one party may desire immediate payoffs, while the other party may be interested in more long-term payoffs. Further, contingency contracts can foster an agreement in negotiations involving resolute differences of expectations about the future.

Contingent contracts can be used in many types of settings such as work, school, home, etc. In regards to work, a common example of contingent contracts comes in the form of job negotiations. It usually involves the opportunity to discuss salary, position, promotion, etc. However, contingent contracts can often include negotiations regarding flextime, job sharing, responsibilities, etc.

ANSWER NO # 4

Breach of Warranty Remedies

Breach of warranty remedies could entail solving a warranty breach problem via arbitration or settling the matter in court. If you sign an agreement to buy a product and it ends up defective, you may have to sue the seller for being in breach of a warranty or agreement. An agreement and warranty sound the same, but they come with different legal meanings.

Any time a company offers a service or product to the public, it comes with automatic promises in the form of a warranty pertaining to the quality of such services and goods. Sellers and manufacturers usually provide warranties with products, otherwise known as express warranties. Whether the service or product comes with an express warranty, the law also gives consumers the option of implied warranties to protect them against deceptive sales techniques and defective merchandise. If a merchant is in violation of a warranty, consumers may invoke their rights via federal and state law, including statutory claims and common law.

Breach Types

Breaches can come in immaterial or material form. Immaterial breaches occur when a court decides that damage does not have an effect on warranty terms, such as a mark on the side of a new flat-screen TV. Since the scratch does not prevent the TV from working, it would be considered immaterial. On the other hand, a flat-screen TV that does not operate would constitute a material breach.

Merchants create an express warranty by making a certain guarantee regarding the quality of its services and goods.

Example: An appliance manufacturer should guarantee that a refrigerator model is free from defects for a certain time of one year from the purchase date. If a refrigerator does not work during a one-year period because of a manufacturing or design flaw, instead of the damage being done by the consumer, the manufacturer must provide any remedy stated in the warranty to replace the unit.

Other express warranties of a refrigerator may include guarantees by a seller or distributor that the unit would be delivered to a consumer that's free of damage, or a guarantee from an appliance repair company that assures you that the repairs will last for a certain time period. Also, merchants are not always required to issue express warranties, but it is a good business practice to do so.

Implied Warranties

Various implied warranties apply regardless of whether express warranties exist. The implied warranty regarding merchantability also applies to the selling of goods. It ensures that goods match the description stated within an agreement and either match or exceed the stated quality.

If a consumer requests goods for a certain purpose and tells the seller of the purpose, the implied warranty regarding its fitness yields additional assurances on the consumer's end. Such an implied warranty ensures that, in addition to the general notion of merchantability, the goods will be suited for its intended purpose.

The implied warranty pertaining to habitability also protects tenants where residential leases are concerned. While state laws mostly mandate that landlords keep leased properties in safe conditions, such as commencing regular repairs and general upkeep in accordance with housing codes, an implied warranty yields additional protections.

Uniform Commercial Code

Article Two of the UCC establishes the obligations and rights of sellers and buyers in regards to implied and express warranties in the selling of goods. Sellers must note that it has the authorization to transfer the goods to a buyer and that such goods are free of unmentioned liens. The UCC defines implied warranties of

fitness and merchantability, and it establishes parameters in the creation of express warranties.

Moreover, it creates limits on the ability of a seller to exclude an implied warranty from the sales agreement for the buyer to discard such warranties. Consumers may invoke warranties via civil claims for the breach of the agreement. All 49 states, including Puerto Rico, District of Columbia, and additional U.S. territories, have adopted Article Two.

However, Louisiana has a different legal system rooted in European civil law instead of English common law when it comes to the governance of selling goods. Civil codes in Louisiana allow for warranties that are the same in UCC, including a warranty that goods are free of defects and fit for an intended purpose.

ANSWER NO # 5

Quasi-Contract

A quasi contract is a contract that is created by the court when no such official contract exists between the parties, and there is a dispute with regard to payment for goods or services provided. Courts create quasi contracts to prevent a party from being unjustly enriched, or from benefitting from the situation when he does not deserve to do so.

Contract Act, 1872

The general law of contract in Pakistan is contained in the Contract Act 1872 which is the main source of law regulating contracts in Pakistan. English decision's (where relevant) are also cited in the courts. It determines the circumstances in which promise made by the parties to a contract shall be legally binding on them. All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some right and duties upon the contracting parties. Contract Act deals with the enforcement of these rights and duties upon the parties.

Contract Act, 1872 speaks about "Quasi-Contract or Certain relations resembling those created by contracts. These relations resembling contract are known as contract implied in law or a quasi-contract. It is not real contract or as it is called, a consensual contract based on the agreement of the parties. These obligations come into existence by a fiction of law.

Definition of Quasi-Contract -

Quasi Contract is based on the principle of equity. that "A person shall not be allowed to enrich himself unjustly at the expense of another. It means one should not accept or receive any benefit unjustly.

In the absence of Contract but on the principle of equity, imposes obligation on the party/person such obligation is called Quasi Contractual Obligation. It is same to a real contract between the Parties.

The term Quasi Contract is derived from the Roman Law "Obligatio quasi ex contractu". Quasi Contract is not real Contract entered into by parties intentionally. It resembles a contract in which law imposes an obligation on a person to perform an obligation on the ground of equity.

According to Salmond, "There are certain obligations which are not in truth contractual in the sense of resting on agreement, but which the law treats as if they were."

Example -

XYZ leaves his wristwatch at ABC's house by mistake. here ABC has Quasi-contractual obligation to return it to XYZ.

Note - Generally, In a contract, obligations are created on the parties out of an agreement but In these type of contracts (quasi-contracts) obligations are created on the parties without any agreement.

Kinds of Quasi Contracts: -

Section 68 to Section 72 of the Indian Contract Act, 1872 deals with Five Kinds of Quasi-Contract which are as follows –

Claim for necessities supplied to person incapable of contracting, or on his account (Section 68) -

" If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

2) Reimbursement of person paying money due by another, in payment of which he is interested (Section 69) -

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

3) Obligation of person enjoying benefit of non-gratuitous act (Section 70). -

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such another person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

4) Responsibility of finder of goods (Section 71) -

A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

5) Liability of person to whom money is paid, or thing delivered, by mistake or under coercion (Section 72) -

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

THE END