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Q1: Write short note on any FOUR of the following:

Answer of Question 01:

1. **Consideration:**

A common definition is in terms of the price of a promise, i.e. what one party must "pay" (not necessarily in financial terms) for promise of other party such that promise becomes legally binding (i.e. gives rise to valid contract). When two parties exchange promises, an agreement is called a bilateral contract, executory consideration has been created. Executed consideration occurs when one party makes a promise in exchange for the action or inaction of another party. When the latter condition occurs, the consideration has been executed. Executory consideration is not yet executed. To be valid, the party who agrees to do or not to do something as part of the contract terms must not have already been planning to voluntarily engage in that specific action or inaction. That's because he or she is not offering consideration. Anyone can provide the consideration provided it is done so on behalf of the contracted party. Consideration can be given before, at the time of, or after the contract is signed. Past consideration, for example, would be a promise to pay a debt that was already incurred. This type of consideration is often not valid because the person was already obligated to pay. However, one valid example would be if you work to plant crops for a farmer and he or she promises to pay you at harvest time. Your labor would be considered valid past consideration. Present consideration means that both items of value are provided at the same time, such as when you order food and pay for it upon delivery. Your agreement to purchase the meal constitutes a valid contract. Future consideration, also called executory consideration, is when consideration is provided at a later established date. Consideration must exist and have some legal value, though this value does not need to be equal to the consideration provided by the other party. However, if consideration is inadequate on one

side the court may consider whether the other party signed the contract of his or her free will. Forbearance to sue is considered valid consideration provided the actions described in the contract are not illegal. An existing legal duty or obligation is not valid consideration. Consideration that is illegal or against policy is not valid. For example, if someone offers a third party $500 to attack their enemy but does not pay up, the person who conducted the assault cannot seek legal recourse because the consideration was illegal, rendering the contract invalid. This is true even if only part of a single consideration is illegal.

2. Lawful objects:

For a contract to be a valid contract two things are absolutely essential – lawful object and lawful consideration. So the Contract Act gives us the parameters that make up such lawful consideration and objects of a contract. Let us take a look at the legality of object and consideration of a contract. When the object of a contract or the consideration of a contract is prohibited by law, then they are not lawful consideration or object anymore. They then become unlawful in nature. And so such a contract cannot be valid anymore. Unlawful consideration of object includes acts that are specifically punishable by the law. This also includes those that the appropriate authorities prohibit via rules and regulations. But if the rules made by such authorities are not in tandem with the law than these will not apply. This means if the contract is trying to defeat the intention of the law. If the courts find that the real intention of the parties to the agreement is to defeat the provisions of the law, it will put aside the said contract. Say for example A and B enter into an agreement, where A is the debtor, that B will not plead limitation. This, however, is done to defeat the intention of the Limitation Act, and so the courts can rule the contract as void due to unlawful object. Lawful consideration or object can never be fraudulent. Agreements entered into containing unlawful fraudulent consideration or object are void by nature. Say for example A decides to sell goods to B and smuggle them outside the country. This is a fraudulent transaction as so it is void.

Now B cannot recover the money under the law if A does not deliver on his promise. If the consideration or the object is against any rules in effect in the country for the time being, then they will not be lawful consideration or objects. And so the contract thus formed will not be valid.In legal terms, an injury means to a criminal and harmful wrong done to another person. So if the object or the consideration of the contract does harm to another person or property, this will amount to unlawful consideration. Say for example a contract to publish a book that is a violation of another person's copyright would be void. This is because the consideration here is unlawful and injures another person's property, i.e. his copyright. If the object or the consideration are regarded by the court as immoral, then such object and consideration are immoral. Say for example A lent money to B to obtain a divorce from her husband C. It was agreed once B obtains the divorce A would marry her. But the court passed the judgment that A cannot recover money from B since the contract is void on account of unlawful consideration. For the good of the community, we restrict certain contracts in the name of public policy. But we do not use public policy in a wide sense in this matter. If that was the case it would curtail individual freedom of people to enter into contracts. So for the purpose of lawful consideration and object public policy is used in a limited scope. We only focus on public policy under the law.

3. Free consent of parties:

According to Section 13, " two or more persons are said to be consented when they agree upon the same thing in the same sense (Consensus-ad-idem). A consent is said to be free when it not caused by coercion or undue influence or fraud or misrepresentation or mistake. As a rule, an agreement without "consideration" is void. The Act contract defines "consideration" as follows: "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or

abstains from doing, something, such act, abstinence, or promise is called a consideration for the promise." A mere promise to give a donation, either orally or in writing is not enforceable. Settlement of bona fide but doubtful claims involves a bargain between the contracting parties and is, therefore, based on consideration. Money is not the only form of consideration. A consideration may consist sometimes in the doing of a requested act, and sometimes in the making of a promise by the offeree. Forbearance to sue at the promisor's desire constitutes good consideration. Consideration is not required for a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do. It is also not required for a written and signed promise by the debtor (or his duly authorised agent) to pay a time-barred debt to the creditor. When consent of a party to a transaction is procured by coercion, undue influence, fraud or misrepresentation, the agreement is voidable at the option of the party whose consent was so procured. Cases of undue influence arise where the transaction is ex facie unconscionable and one party was in a position to dominate the will of the other. Where parties are bound by a fiduciary relationship, (as in the case of father and son, doctor and patient, master and servant, 7 advocate and client), the law protects the weaker party, throwing on the other party the burden of proving that no undue influence was exercised. Mutual mistake in respect of material facts in the formation of a contract renders the agreement void. A unilateral mistake, however, does not render an agreement void. Nor does a mistake of law affect its validity. Elements of free consent must not included.

> **Coercion (Section 15):** "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.

Undue influence (Section 16): "Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."

Fraud (Section 17): "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract.

Misrepresentation (Section 18): "causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

Mistake of fact (Section 20): "Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void"

4. Bailments:

A bailment is the relationship established when someone entrusts his property temporarily to someone else without intending to give up title. Although bailment has often been said to arise only through a contract, the modern definition does not require that there be an agreement. One widely quoted definition holds that a bailment is "the rightful possession of goods by one who is not the owner. It is the element of lawful possession, however created, and the duty to account for the thing as the property of another, that creates the bailment, regardless of whether such possession is based upon contract in the ordinary sense or not. The law of bailments is important to virtually everyone in modern society: anyone who has ever delivered a car to a parking lot attendant, checked a coat in a restaurant, deposited property in a safe-deposit box, rented tools, or taken items clothes or appliance in to a shop for repair. In commercial transactions, bailment law governs the responsibilities of warehousers and the carriers, such as UPS and FedEx, that are critical links in the movement of goods from

manufacturer to the consumer. Bailment law is an admixture of common law (property and tort). Bailment is defined as "the rightful possession of goods by one who is not the owner." For the most part, this definition is clear (and note that it does not dictate that a bailment be created by contract). Bailment law applies to the delivery of goods—that is, to the delivery personal property. Personal property is usually defined as anything that can be owned other than real estate. As we have just seen in comparing bailments to sales, the definition implies a duty to return the identical goods when the bailment ends.

Q2: Discuss the definition and bring out clearly the essential requirements of a valid contract.

Answer of Question No. 02:

Definition of Contract:

An agreement between parties creating mutual obligations enforceable by law. The basic elements required for the agreement to be a legally enforceable contract. Contract is an official agreement. It could be written or even be in oral. Contracts can be written by using formal or informal terms, or entirely verbal or spoken. It is a promise made between two or more parties that which allow the courts to make judgement. A contract has six important elements so that it will be valid which is offer, acceptance, consideration, intention to create legal relation, certainty and capacity. If the main elements are not in contract, it would be an invalid contract

Valid Contract:

A valid contract is a written or expressed agreement between two parties to provide a product or service. There are essentially six elements of a contract that make it a legal and binding document. Which are discussed below:

Essentials of Valid Contract:

i. **Offer:** Offer and acceptance analysis is a traditional approach in contract law. Developed in the 19th century, the offer and acceptance formula identifies a moment of formation when the parties are of one mind i.e. a meeting of minds. An offer is a specific proposal by one party to enter into an agreement with another party, which is essential to the formation of an enforceable contract.

ii. **Acceptance**: Acceptance is an agreement to the terms of an offer. Offers can be accepted by conduct. If someone purports to accept an offer but does so on different terms, that will be a counter-offer rather than an acceptance. The

acceptance must normally be communicated to the offeror. Generally, silence cannot be treated as an acceptance.

iii. **Intention to Create Legal Relations:** An agreement does not need to be worked out in meticulous detail to become a contract. However, an agreement may be incomplete where the parties have agreed on essential matters of detail but have not agreed on other important points. The question of whether the parties have reached an agreement is normally tested by asking whether a party has made an offer which the other has accepted. Agreements may not give rise to a binding contract if they are incomplete or not sufficiently certain. There will usually be no contract if the parties agree 'subject to contract' but never quite agree on the terms of the contract.

iv. **Consideration:** Consideration can be something of benefit to the person who has the obligation or who makes a promise to do something (the promisor). It can also be something detrimental to the person who wants to enforce the obligation, or who has the benefit of the promise (the promisee). There is no need for an 'adequate' value: as long as some value is given for the promise it would be sufficient consideration.

v. **Legality and Capacity:** contract will be illegal if the agreement relates to an illegal purpose. For instance, a contract for murder or a contract to defraud the Inland Revenue Department is both illegal and unenforceable. he law presumes that a party to a contract has the capacity to contract.

vi. **Certainty:** A valid contract requires reasonable certainty for the essential terms. If the parties fail to reach an agreement on the essential terms with reasonable certainty, then the agreement might be void even if all other essential elements are present.

Q3: What is a contingent contract? Differentiate it from coercion and undue influence.

Answer of Question No. 3:

Definition:

A contingent contract contains a condition which makes the parties liable to perform the obligations only if the event, collateral to the contract, happens.

Contingent Contract:

A contract which is contingent or dependent upon the occurrence or nonoccurrence of some event is called a contingent contract. Insurance contracts are good examples of contingent contracts where the insurance company is required to compensate the policy holder only if a specified future event happens. Although a contingent contract is based upon an absolute promise to do something in the case of a specific future event, the promise is conditional in the sense that the party is liable to perform only if the said event happens (or does not happen). The parties to a contingent contract must perform their duties if the imposed condition is met. The contract becomes void if the condition is not met. Thus, contingent contracts are meant to be performed only under specific circumstances. All types of insurance, indemnity, and guarantee contracts are considered as contingent contracts.

Types Contingent Contract:

- Contracts contingent upon the occurrence of an uncertain event, These contracts become valid only if the uncertain event mentioned in the contract occurs.
- Contracts contingent upon the non-occurrence of an uncertain event, Sometimes, a contingent contract may depend upon the nonoccurrence of an uncertain event.
- Contracts contingent upon the occurrence of an uncertain event within a specified timeframe, In these contracts, the event must occur within the period specified in the contract.

- Contracts contingent upon the nonoccurrence of an uncertain event within a specified timeframe.
- Contracts contingent upon an impossible event, If the performance of a contract is dependent upon an impossible event, such a contract is ab initio void, i.e., void right from the beginning.

Features of a Contingent Contract:

- The performance of a contingent contract depends upon whether or not a future event takes place.
- A contingent contract cannot be enforced unless the specified event takes place.
- If the event on which the contract is based becomes impossible, then the contract becomes void.
- A contract based upon the non-happening of an event becomes enforceable only when the event becomes impossible.
- A contingent contract based upon how a person acts in the future is considered impossible to perform if such person acts in way that renders him impossible to act in the manner required by the contract within any definite period of time.

COERCION	UNDUE INFLUENCE
Coercion is an act of threatening which involves the use of physical force.	Undue Influence is an act of influencing the will of the other party.
It is governed by Section 15 of the Contract Act, 1872.	It is governed by Section 16 of the Contract Act, 1872.
Psychological pressure or Physical force	Mental pressure or Moral force
To compel a person in such a way that he enters into a contract with the other party.	To take unfair advantage of his position.
Yes	No
The relationship between parties is not necessary.	The act of undue influence is done only when the parties to the contract are in relationship. Like teacher - student, doctor - patient etc.

Part "B"
(Sales of Goods Act)

Q4: Explain the rights of unpaid Seller against Goods sold.

Rights of Unpaid Seller against Buyer:

In a contract, there is always a reciprocal promise. Even in a contract of sale, both the buyer and the seller must perform their duties. And if the buyer does not pay the seller his due, the seller becomes an unpaid seller. This means such unpaid seller has some rights against the buyer. When the buyer of goods does not pay his dues to the seller, the seller becomes an unpaid seller. And now the seller has certain rights against the buyer. Such rights are the seller remedies against the breach of contract by the buyer. Such rights of the unpaid seller are additional to the rights against the goods he sold.

1. **Suit for Price:** Under the contract of sale if the property of the goods is already passed but he refuses to pay for the goods the seller becomes an unpaid seller. In such a case. the seller can sue the buyer for wrongfully refusing to pay him his due. But say the sales contract says that the price will be paid at a later date irrespective of the delivery of goods, and on such a day the if the buyer refuses to pay, the unpaid seller may sue for the price of these goods. The actual delivery of the goods is not of importance according to the law.
2. **Suit for Damages for Non-Acceptance:** If the buyer wrongfully refuses or neglects to accept and pay the unpaid seller, the seller can sue the buyer for damages caused due to his non-acceptance of goods. Since the buyer refused to buy the goods without any just cause, the seller may face certain damages. The measure of such damages is decided by the Section 73 of the Contract Act 1872, which deals with damages and penalties.

3. **Repudiation of Contract before Due Date:** If the buyer repudiates the contract before the delivery date of the goods the seller can still sue for damages. Such a contract is considered as a rescinded contract, and so the seller can sue for breach of contract. This is covered in the Contract Act and is known as Anticipatory Breach of Contract.
4. **Suit for Interest:** If there is a specific agreement between the parties the seller can sue for the interest amount due to him from the buyer. This is when both parties have specifically agreed on the interest rate to be paid to seller from the date on which the payment becomes due. But if the parties do not have such specific terms, still the court may award the seller with the interest amount due to him at a rate which it sees fit.

Q5: What are the duties of seller and purchaser in the performance of the contract for sales of goods?

There are some specific duties of sellers and buyers of goods that need to perform. Both buyers and sellers are responsible for any mistake. This mistake can terminate the business relationship between buyers and sellers.

Duties of sellers of goods

The sellers have to perform 4 specific duties. These are as under:

1. **Delivery:** It is the duty of sellers to deliver the goods to the buyer. Then the buyers accept or reject it. If the buyers accept it then he must pay for goods. It is the law of contract of sale. Besides, payment and delivery may occur at the same time. In that case, the seller shall be ready and willing to give the possession of goods to the buyer. However, the buyer also ready to make payment in exchange for possession of goods. Moreover, the sellers are bound to giving delivery according to the terms of the contract and rules of the sale of goods.
2. **Risk of deterioration in the goods:** The seller of goods agrees to deliver the goods at his own risk at a place. Besides, he takes all the risk of deterioration in the goods when they are in transit.
3. **Damages of non-delivery:** If the sellers are not able to deliver the goods, he is responsible for damages of buyers. However, if the seller wrongfully neglects or refuses to deliver goods to the buyer, the buyer can sue the seller for damages for non-delivery.
4. **Specific performance:** Under some certain circumstances, the seller can breach the contract of delivery specific goods. Otherwise, the contract needs to perform specifically.

Duties of buyers of goods:

The buyers of the goods have to perform 5 specific duties. These are –

1. **Payment of price:** After the delivery of goods from the seller, the buyer may accept it or reject it. If the buyer accepts it then of he must need to pay the price of goods. However, It is the terms of the contract.
2. **Compensation:** If the buyer wrongfully refuses to accept the delivery of goods, he must pay the compensation to the seller.
3. **Delivery:** The seller delivers the goods to the buyer at his request or application for delivery. Otherwise, the seller is not bound to deliver the goods at all.
4. **Liability of buyer:** When the seller is ready for delivery his goods, the buyer needs to ready for taking delivery. If an accident occurs due to the negligence of the buyer, he is responsible for compensating it. At the time of making application, the buyer should mention the time of delivery. Otherwise, the seller will not responsible for the delivery of goods within a stipulated time.
5. **Interest and special damages:** The seller and buyer may recover interest and damages by the contract law. If the contract law is recoverable only then it is possible. The buyer can recover the paid money if the consideration of purchasing has failed.