

**Reg No:**

**Name: Zain Ali**

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**Faculty Member: Sir Fahad Mushaffy**

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**Bailment:**

The word "bailment" is derived from bailler a french word which means to deliver. 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 one who bails out a boat, filling a bucket and emptying it overboard, is a water-bearer. The one who bails someone out of jail takes on the burden of ensuring that the one sprung appears in court to stand trial; he also takes on the risk of loss of bond money if the jailed party does not appear in court. The one who is a bailee takes on the burden of being responsible to return the goods to their owner.

**Duties of Bailor and Bailee:**

**Bailor:**

A person with whom the ownership of the goods generally lies. However, it is not the compulsory for him/her to be the owner. He/ She for a specific purpose temporarily delivers the goods

**Bailee:**

A person who has the temporary possession of the goods of others for a specific purpose.

**Duties of a Bailor:**

**(i) Disclosure of faults:**

The Bailor is bound by the law to disclose the defects of the goods bailed, to the bailee. If, in case, any future damage arises, because of the non -disclosure, it becomes the liability of the Bailor to bear the expenses. Even if the good in transit is for hire, it is the Bailor who is responsible for the damages. His awareness or non -awareness of the fault in the good is no excuse.

**Illustration 01:**

A lent his car to B. A knew that the brakes of the car are a bit loose. A did not disclose this fact to B. B rode the car and met with an accident. A is liable for the damages of B.

**Illustration 02:**

A gives his carriage to B for hire. A is unaware of the fact that the carriage is unsafe. B rides the carriage. B meets with an accident. A is liable for the injury.

**(ii) Bearing the Extra Ordinary Expenses:**

The usual and the ordinary expenses of the good are to be borne by the Bailee. But, if the need arises, to meet with some expenses which are 'Extra-ordinary' then, it is the duty of the Bailor to pay for it.

**Illustration:**

A lends his car to B. B pays for petrol and tyre punctures et al. but if there is a major problem like Brake failure arise, then A will bear the repair charges.

**(iii) Indemnification:**

The Bailee will not suffer, under any circumstances, because of the dispute of title of the Bailor's good. If the bailee suffers, then it is the duty of the Bailor to indemnify or compensate the Bailee.

**Illustration:**

A found an antique piece of jewellery and bailed it to B for safe-keeping. C, the real owner, found out that B has the jewellery and filed a suit against B for recovery and compensation. Here, it is the duty of A, the Bailor to indemnify B, the Bailee.

**(iv) To claim the bailed goods back:**

The Bailor has the duty to take back his goods after the expiry of the time or the fulfilment of the purpose for which the good was bailed. In case the Bailor fails to claim back the good, it is his responsibility to compensate the Bailee for the expenses incurred because of the Bailor's delay.

**Illustration:**

A gave his car to B for servicing. B told A to collect the car after a week. A did not come for a month. B has the right to claim for the compensation of the car's safekeeping from A.

**Duties of Bailee:****(i) Reasonable Care:**

The Bailee is supposed to take care of the goods as they were to be his own. He must take reasonable care of the goods as an ordinary and prudent man of sound mind.

**Illustration:**

A delivers his car to B for servicing after bumping it in a tree. B cannot bump the car in a tree because A did the same. He ought to take care of the car.

**(ii) Unauthorized Use of Goods:**

If there be any unauthorized usage of the bailed good and there be any damage arising out of the unauthorized usage then the Bailee is liable to compensate the Bailor for the same.

**Illustration:**

A lends his car to B for driving. B gives it to his son C for joy riding. C crashes the car. B is liable to compensate A for the damage as A had bailed the car to B, and not C.

**(iii) Duty of not Mixing the Goods:**

The Bailee has the responsibility keep his own goods and the Bailor's good separate. He should not mix the two without any prior permission of the Bailor. But if any act of ignorance regarding the separation be done and the result of which be the in-separation of the Bailor's good, then the Bailee must compensate the Bailor for the loss incurred.

**Illustration:**

A gives B a sack of Basmati rice. B mixes it with general rice. B is liable to compensate A for his loss as the cost of Basmati rice is more than the cost of normal rice.

**(iv) Return the Goods:**

The Bailee must return or deliver the good upon the fulfilment of the purpose. If the Bailee retains the goods even after the lapse of the slated time period then the Bailee is liable for any damages done.

**Illustration:**

A gives his documents to B for safe-keeping for a month. A does not take it back even after 3 months and neither does B return it to A. The documents are burnt in a fire. B is responsible for the loss as it was his duty too.

**(v) Dispute as to 'Who is the owner?'**

If the Bailee has received the good from the Bailor then he must return the good to the Bailor only. It does not matter if there a third person who claims the good to be his. The Bailee has accepted the good to be Bailor's during bailment. The Bailee has no right to not re-deliver the good to the Bailor on grounds that the Bailor is not the real owner.

**Illustration:**

A gives his car to B. C comes to B and claims the car to be his. But B is responsible towards A, and A only as for this particular bailment A is the Bailor and not C.

**Q2:**

**Consequences of Breach of Contract:**

The consequences of a breach of contract will depend on the severity of the breach in question and the scale of damage caused to the other party as a result of the breach of contract. If an individual or company has breached the terms of a legally binding contract held with you, the first thing you should do is to contact a solicitor. A solicitor will be able to determine if it is in your interests to pursue a claim for breach of contract and will work with you to seek the best outcome possible for you.

When the defaulting party does not comply with a contract, the innocent party can terminate for:

- (1)** Breach of a condition of the contract, which automatically qualifies as a repudiatory breach
- (2)** Repudiatory breach: breach of an innominate term where the consequences are so serious that it justifies ending the contract for the bad conduct
- (3)** Anticipatory repudiatory breach: that is, where the defaulting party makes it clear to the innocent party that it:
  - (i)** will not perform the contract at all
  - (ii)** will commit a breach of a condition in the future, or
  - (iii)** will comment a breach of an innominate term in the future,

and the consequences will be so serious that it will justify termination.

(You can also have an anticipatory breach of warranty. You just can't terminate for it.)

Anticipatory breaches are also called "renunciatory breaches" of contract. It's different lingo for the same thing.

When a repudiatory or anticipatory breach takes place, it is said to be a "repudiation of the contract".

**Different consequences can follow from a breach of contract:**

(i) A breach of warranty limits the innocent party to claim damages, that is a legal obligation to pay money for the loss caused by the breach.

(ii) The contract itself may set out the potential consequences for any breach, or a particular type or class of breach.

(iii) The remedies available to the innocent party may be limited or extended by the term of the contract itself.

### **Remedies for Aggrieved Party:**

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 loss 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**

##### **i) General damages:**

General or Ordinary damages are those which naturally arise as a result of breach of contract

For example in a contract of sale of goods the difference between the contract price and market price are the damages that can be claimed

##### **ii) Specific damages:**

These are the direct losses which arise due to the breach of contract. These damages arise under some special cases

##### **iii) Exemplary damages:**

These damages are awarded not to punish the guilty party and not compensate the injured (aggrieved) party for the loss suffered.

##### **iv) Liquidated damages:**

When the parties to a contract fix the amount of damages at the time of formation of contract such damages are called liquidated or nominal 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.**

**Example:**

Zain agrees to sale his plot of land to Ali who agrees to purchase it to erect his mill there. Later, Zain commits breach. It was held by court to carryout contract.

**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:**

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

**Q3:**

**Ingredients of Contract:**

**1. Offer:**

One of the parties made a promise to do or refrain from doing some specified action in the future.

**2. Consideration:**

Something of value was promised in exchange for the specified action or nonaction. This can take the form of a significant expenditure of money or effort, a promise to perform some service, an agreement not to do something, or reliance on the promise. Consideration is the value that induces the parties to enter into the contract. The existence of consideration distinguishes a contract from a gift. A gift is a voluntary and gratuitous transfer of property from one person to another, without something of value promised in return. Failure to follow through on a promise to make a gift is not enforceable as a breach of contract because there is no consideration for the promise.

**3. Acceptance:**

The offer was accepted unambiguously. Acceptance may be expressed through words, deeds or performance as called for in the contract. Generally, the acceptance must mirror the terms of the offer. If not, the acceptance is viewed as a rejection and counteroffer. If the contract involves a sale

of goods (i.e. items that are movable) between merchants, then the acceptance does not have to mirror the terms of the offer for a valid contract to exist, unless:

- (a) the terms of the acceptance significantly alter the original contract or
- (b) the offeror objects within a reasonable time.

#### **4. Mutuality:**

The contracting parties had “a meeting of the minds” regarding the agreement. This means the parties understood and agreed to the basic substance and terms of the contract. When the complaining party provides proof that all of these elements occurred, that party meets its burden of making a prima facie case that a contract existed. For a defending party to challenge the existence of the contract, that party must provide evidence undermining one or more elements.

#### **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 (accident, hospitalization, etc.) 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).

#### **Features of a Contingent Contract:**

- (i) The performance of a contingent contract depends upon whether or not a future event takes place.
- (ii) A contingent contract cannot be enforced unless the specified event takes place.
- (iii) If the event on which the contract is based becomes impossible, then the contract becomes void.
- (iv) A contract based upon the non-happening of an event becomes enforceable only when the event becomes impossible.
- (v) 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.

**Q4:**

#### **Remedies for Breach of Warranty:**

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.

### **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.

### **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.

**Q5:**

**Quasi Contract:**

The term “quasi contract” refers to an agreement that exists between two parties who have not previously had obligations to each other. This agreement is created by the court system, specifically imposed by a judge, in order to correct a situation in which one party owes something to the other party because they are in possession of that person's property. People who are involved in a quasi-contract do not create the agreement themselves. Since it is imposed by the court, the individuals do not need to agree to the contract for it to be legally enforceable. Quasi-contracts enforce fairness when one party benefits unjustly through a loss to another. Quasi-contracts are also called implied contracts. When they are imposed, the defendant must pay an amount of restitution to the wronged party, or the plaintiff. This repayment is known as quantum meruit and is based on the amount of the money or value of the item that the defendant acquired unfairly. Another name for a quasi-contract is a constructive contract. It may be created when there is no existing true contract. However, if a real contract exists, which may be implied or in writing, a quasi-contract may not be imposed.

**Requirements for a Quasi Contract:**

Certain aspects must be in place for a judge to issue a quasi contract:

One party, the plaintiff, must have furnished a tangible item or service to another party, or the defendant, with the expectation or implication that payment would be given. The defendant must have accepted—or acknowledged receipt of—the item of value, but made no effort or offer to pay for it. The plaintiff must then express why it is unjust for the defendant to receive the good or service without paying for it. In other words, the plaintiff must establish that the defendant received unjust enrichment.

**Circumstances as laid down in 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. The Act defines "contract" as an agreement enforceable by law. The essentials of a (valid) contract are:

**(a)** Intention to create a contract;

**(b)** Offer and acceptance;

**(c)** Consideration;

**(d)** Capacity to enter into a contract;

**(e)** Free consent of the parties;

**(f)** Lawful object of the agreement;

Writing is not essential for the validity of a contract, except where a specific statutory provision requires writing. An arbitration clause must be in writing.

**Definition:**

Section 2(h) of the Act defines the term contract as "any agreement enforceable by law". There are two essentials of this act, agreement and enforceability. Section 2(e) defines agreement as "every promise and every set of promises, forming the consideration for each other." Again Section 2(b) defines promise in these words: "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a promise."

**When Quasi Contract created?**

Under common-law jurisdictions, quasi contracts originated in the Middle Ages under a form of action known in Latin as *indebitatus assumpsit*, which translates to being indebted or to have undertaken a debt. This legal principle was the courts' way of making one party pay the other as if a contract or agreement already existed between them. So the defendant's obligation to be bound by the contract is seen as implied by law. From its earliest uses, the quasi contract was typically imposed to enforce restitution obligations.