

- **REGISTRATION NO: BA.LLB/3-19/M004**
- **NAME: SUMAIMA ADNAN**
- **TITLE OF COURSE: LAW OF CONTRACT2**
- **TITLE OF ASSIGNMENT: QUESTION ASNWERS**
- **NAME OF FACULTY MEMBER: SIR FAHAD**
MUSHAFFEY
- **DATE OF SUBMISSION: 12-SEPT-2021**

Q1) EXPLAIN FULLY THE TERM OF BAILMENT AND DUTIES OF BAILOR AND BAILEE:

○ **BAILMENT:**

The term bailment refers to a legal relationship between two parties in common law, where assets or property are transferred from a bailor to a bailee. In this relationship, the bailor 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 bailor, bailee, or both.

○ **KEY TAKEAWAYS**

- A bailment involves the contractual transfer of assets or property from a bailor, 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 bailor, and those that only benefit the bailee.

○ **DUTIES OF BAILOR:**

DUTIES OF BAILOR ARE AS FOLLOWS:

- It is the duty of a bailor to disclose all faults. If bailor fails to disclose such faults then he will be responsible for the damage caused to goods or loss suffered by the bailee.
- Also, the bailor is under the duty to pay the extraordinary expenses incurred by the bailee for such bailment.
- It is the duty of the bailor to accept the goods after the purpose for which such goods were bailed is accomplished.
- It is the duty of the bailor to indemnify the bailee for the cost incurred due to the defective title of goods bailed to the bailee.

○ **DUTIES OF BAILEE:**

- It is the duty of a bailee to take care of goods bailed to him. Bailee should take care of these goods as an ordinary man will take care of his goods of the same value, quality, and quantity.
- The Bailee shall not make any unauthorized use of goods bailed. In case he makes any unauthorized use, then bailor can terminate the bailment.
- The bailee needs to keep the goods separately from his own goods. He should not mix the goods under bailment with his own goods.
- A bailee must not set an adverse title to the goods bailed.

**Q2) WHAT ARE THE CONSEQUENCES OF BREACH OF CONTRACT?
WHAT REMEDIES ARE AVAILABLE FOR AGGRIEVED PARTY?**

○ **CONSEQUENCES OF BREACH OF CONTRACT:**

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.

○ **REMEDIES AVAILABLE FOR AGGRIEVED PARTY:**

1. Suit for rescission.
2. Suit for Damages.
3. Suit for Specific Performance.

4. Suit for Injunction.
5. Suit for Quantum Meruit.

- **Suit for rescission:**

The term rescission may be defined as the cancellation of the contract. In other words, putting an end to the contract. When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance.

- **Suit for Damages:**

Damages are the monetary compensation for the loss sustained by the injured party for the non-performance of the obligation by the other. The party who is injured by breach of a contract may bring an action for damages.

- **Suit for Specific Performance of the contract:**

When damages are not an adequate remedy, the court may direct the party in breach to carry out his promise according to the terms of the contract. This is called specific performance of the contract

- **Suit for Injunction:**

'Injunction' is a negative order of the court directing the party to refrain from doing something. This is given in cases where a party is guilty of breach of a negative term of the contract. This remedy may be used as a means of enforcing an express negative stipulation in a contract,

- **Suit for Quantum Meruit:**

Quantum meruit means reasonable value of the work done. Where a party has in the performance of his contract done some work or rendered some service and further performance has been made useless by the other party,

Q3) WHAT ARE THE INGREDIENTS OF THE CONTRACT? WHAT DO YOU UNDERSTAND BY CONTINGENT CONTRACT?

• **The 5 main ingredients of a legally valid contract are:**

- **An intention to enter into legal relations** – e.g. I want to sell my car to someone
- **An offer** – e.g. my car is for sale for \$1000
- **Acceptance of the offer** – e.g. I agree to buy your car for \$1000
- **Certainty.** This means that the terms of the agreement are clear enough so the parties each know what their obligations are – e.g. I will deliver the car to you at 1pm on Tuesday the 4th of August at your address. You will pay me \$1000 in cash.
- **Consideration.** This is the value you are getting for providing your goods or services. It could be money, forgiveness of debt or an exchange of services – e.g. in return for selling you my car you will give me \$1000.

- ✓ What the parties to the contract call their relationship, or what they consider it to be, is not conclusive as to whether a contract actually exists. It is the reality of the relationship that matters. The intention of the parties does need to be taken into account and can be decisive where the relationship is ambiguous, or where other factors are neutral.

❖ **CONTINGENT CONTRACT**

○ **CONTINGENT CONTRACT:**

An absolute contract is one where the promisor performs the contract without any condition. Contingent contracts, on the other hand, are the ones where the promisor performs his obligation only when certain conditions are met.

If you look at the contracts of insurance, indemnity or guarantee, they have one thing in common – they create an obligation on the promisor if an event which is collateral to the contract does or does not happen.

For example, in a life insurance contract, the insurer pays a certain amount if the insured dies under certain conditions. The insurer is not called into action until the event of the death of the insured happens. This is a contingent contract.

- **ESSENTIAL OF CONTINGENT CONTRACT:**

- 1] Depends on happening or non-happening of a certain event
- 2] The event is collateral to the contract
- 3] The event should not be a mere will of the promisor
- 4] The event should be uncertain

Q4) WHAT ARE THE REMEDIES AVAILABLE FOR BREACH OF WARRANTY:

- **REMEDIES AVAILABLE FOR BREACH OF WARRANTY:**

Breach of warranty remedies could entail solving a warranty breach problem via arbitration or settling the matter in court.

1. Breach of Warranty Remedies
2. Breach Types
3. Implied Warranties
4. Uniform Commercial Code

- **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.

- **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.

- **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.

- **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.

Q5)WHAT DO YOU MEAN BY QUASI CONTRACT ? DISCUSS THE CIRCUMTANCES AS LAID DOWN IN THE CONTRACT ACT 1872. WHEN A QUASI CONTRACT IS CREATED?

- **QUASI CONTRACT:**

A quasi contract is also known as an implied contract. It would be handed down ordering the defendant to pay restitution to the plaintiff. The restitution, known in Latin as quantum meruit, or the amount earned, is calculated according to the amount or extent to which the defendant was unjustly enriched.

- **Example of a Quasi Contract**

A classic quasi contract circumstance may be created by the delivery of a pizza to the wrong address—that is, not to the person who paid for it. If the

individual at the incorrect address fails to fess to the error and instead keeps the pizza, they could be seen as having accepted the food, and thus be obliged to pay for it. A court could then rule to issue a quasi-contract that requires the pizza recipient to pay back the cost of the food to the party who purchased it or to the pizzeria if it subsequently delivered a second pie to the purchaser. The restitution mandated under the quasi contract aims for a fair resolution of the situation.

○ **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.
- **DISCUSS THE CIRCUMTANCES AS LAID DOWN IN THE CONTRACT ACT 1872:**
 - **CONTRACT ACT 1872:**

The Contract Act 1872 was enacted on 1st September 1872 for the purpose to regulate all the agreements and contracts to save the rights of parties of any such agreement or contract, taking place in Sub-Continent ruled by the British. The Contract Act, 1872 was passed by the British India, based on the principles of English Common Law. After partition the Government of Pakistan adopted it with certain amendments for the same purpose for which it was enacted. Under the Contract Act, 1872 a contract is form of an agreement in which a party (promisor) proposes performance of certain acts and other party (promise) accepts the same against a lawful consideration.

CIRCUMTANCES:

1. Section 68 of Contract Act: CLAIM FOR NECESSARIES SUPPLIED TO PERSON INCAPABLE OF CONTRACTING, OR ON HIS ACCOUNT

Where one person supplies necessaries suited to the condition in life of a person who is incompetent to contract (minor or lunatic) or to anyone whom such incompetent person is legally bound to support.

For Example, to a lunatic's wife or children.

2. Section 69 of Contract Act: INTERESTED PERSON

For the application of this section following two essentials are there:-

I. One person is interested in the payment of money, which is why he pays for it.

II. Another person is bound by law to pay the same, but he fails to pay.

3. Section 70 of Contract Act: OBLIGATION OF PERSON ENJOYING BENEFITS OF NON-GRATUITOUS ACT

For the application of this section following conditions are to be satisfied:-

I. A person should lawfully do something for another person or should deliver something to him.

II. If the person making the payment or delivering the thing must not do so gratuitously, which means he should expect payment for the same.

III. The other person should enjoy the benefits of this payment or the delivery of the thing.

4. Section 71 of Contract Act: RESPONSIBILITY OF FINDER OF GOODS

Section 71 is another situation of Quasi Contract when a person is the finder of goods.

Finder of goods is a person who finds goods belonging to another and takes the goods into his custody. Although, as between the finder and the owner of the goods, there is no contract, yet the following responsibility has been fixed by section 71, on the finder of goods.

5. Section 72 of Contract Act: LIABILITY OF PERSON TO WHOM MONEY IS PAID, OR THING DELIVERED, BY MISTAKE OR UNDER COERCION

Section 72 covers a situation where money has been paid or anything delivered by one person to another, either by mistake or under coercion. According to this section, the person to whom the money has been paid or anything delivered by mistake or under coercion must repay or return it.

• **WHEN A QUASI CONTRACT IS 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.

- A quasi contract is a contract that is created by a court order, not by an agreement made by the parties to the contract. For example, quasi contracts are created by the court when no official agreement exists between the parties, in disputes over payments for goods or services. The goal in the court's creation of these contracts is to prevent unjust enrichment to any party. To explore this concept, consider the following quasi contract definition.

A contract created by the court in the absence of an official agreement between the parties.