

BUSINESS LAWS – STAGE-1**SECTION – 'A'****Q.2 (a) Differences between Common Law and Equity:**

The points of distinction between common law and equity are:

S. No.	Common Law	Equity
1.	Common law is inflexible, rigid and is based on rules of bureaucracy.	Equity is flexible and based on fairness, conscience and moral code.
2.	Common law emerged first in time and was intended to be all encompassing.	Equity followed common law by adding 'gloss' to it by imposing fairness.
3.	Common law is a complete system.	Equity supplements the common law.
4.	Common law provides damages to injured party as the only remedy.	Equity has many different remedies each suitable to a given situation.
5.	Common law prescribes set time limits for bringing action.	Equity has no strict time limits for bringing action.
6.	Limitation Act lays down a general limit on commencement of proceedings.	Principle of "Delay Defeats Equity" applies to impose an overall burden of reasonableness on the plaintiff.

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(b) Precedent:

Precedent is a judgment or decision of a court of law cited as an authority for deciding an identical case (i.e. similar set of facts); a case which serves as an authority for the legal principle embodied in its decision.

Type of Precedents:

- (a) Original precedent
- (b) Declaratory precedent
- (c) Binding precedent
- (d) Persuasive precedent

SECTION – 'B'**Q.3 (a) Contingent Contract:**

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Rules regarding Contingent Contracts: (Any five)

The rules regarding contingent contracts as contained in section 32 to 36 are summarized below:

(i) Happening of Uncertain Future Event:

Contingent contracts dependent on the happening of uncertain future event cannot be enforced until such event has happened. If that event becomes impossible such contract becomes void.

(ii) Non-Happening of Uncertain Future Event:

Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible.

BUSINESS LAWS – STAGE-1**(iii) Action at Unspecified Time:**

Contract contingent upon how a person will act at an unspecified time, shall become void if the person does anything which renders the event impossible so that it becomes impossible for him to so act within definite time or under further contingencies.

(iv) Event Happening within Fixed Time:

Contract contingent on the happening of an event within a fixed time becomes void if, at the expiration of time, such event has not happened or if, before the time fixed, such event becomes impossible.

(v) Non-Happening of Event within Fixed Time:

Contract contingent upon non-happening of an event within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or before the expiry of such time, it has become certain that such event shall not happen.

(vi) Happening of Impossible Event:

Contingent agreement to do or not to do anything, if an impossible event happens, is void, whether or not this fact is known to the parties.

(b) Minor in a Partnership:

A minor can not become a partner in a firm since he does not possess the necessary capacity to contract. He may be admitted to the benefits of an already existing partnership firm with the express consent of all the existing partners. Such an agreement must be entered into by his guardian on his behalf with the other partners.

Rights of a Minor Admitted to the Benefits of Partnership:

1. A minor, admitted to the benefits of partnership has a right to share the property and profits of the firm in the proportion agreed upon by him with the partners.
2. He has a right to have access to and inspect and copy any of the accounts of the firm but not the books as the books may contain secrets which should be restricted to partners alone.
3. He has an option of becoming a partner in the firm on attaining the age of majority and will continue to enjoy the same share which he was getting as a minor.
4. He has got an option of not becoming a partner in the firm on attaining majority. He may decide to sever off his connections with the firm.
5. After severing his connections from the partnership firm, he can sue for accounts and his share in profits and property of the partnership firm.

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(c) (i) Case:

Amir may sue either Saleem or Zohaib or both, for the price of the calculator of different models. It is a case of undisclosed principal and the liability of the principal and agent is "joint and several" in such a case.

(ii) Case

No, Ali's offer comes to an end by the counter offer of Asghar, and there was no offer available for acceptance subsequently.

(iii) Case

Kashif is a partner with Rahim because to constitute a partnership neither contribution of capital nor active participation in management of the business is essential.

Q.4 (a) Price:

Price means the money consideration for a sale of goods. It forms an essential part of a contract of sale. Price is a consideration for the voluntary transfer or surrender of goods from the seller to the buyer whether the sale is in cash or on credit. Price must be expressed in legal tender money of Pakistan i.e. rupee, unless otherwise agreed. It is not necessary to fix the price at the time of sale and may be fixed at any future date.

Modes of Determination of Price:

According to section 9 of the Sales of Goods Act, 1930, the price of the goods may be determined in a number of ways;

1. Fixed by Contract:

The buyer and seller are at liberty to fix any price they like. A seller may sell his goods at a profit or at a price lower than cost or may require a retailer not to sell at less than a certain price. The price should be definite. If an alternative price is fixed, the agreement is void.

2. Fixed in an Agreed Manner:

The price may be agreed to be fixed in the manner provided by the agreement. The agreement may provide that the buyer shall pay for the goods as much price as others pay. However, an agreement cannot provide (a) whatever sum is offered to the seller or (b) fixed by one of the contracting parties.

3. Determined by Course of Dealings:

Where no price is mentioned in the contract nor any procedure is agreed for its determination, price may be determined by the course of dealing between the parties e.g. deduction of discount in determining price may be implied from the course of dealings.

4. Reasonable Price:

In the absence of any express mode of determining price, the law implies that the buyer must pay a reasonable price and where there is a market price for the goods that may be a reasonable price.

BUSINESS LAWS – STAGE-1**5. Valuation of Third Party:**

The buyer and seller may agree that the price is to be fixed by the valuation of third party provided he accepts the duty and performs it. But

- (I) If the third party does not make such valuation, the agreement becomes void.
- (II) If the buyer accepts goods or part thereof, he must pay reasonable price.
- (III) If the third party is prevented from making valuation by the fault of either seller or buyer, the innocent party may sue for damages.

(b) Rules regarding Presentment for Payment: (Any five)**1. Hours of Payment:**

Presentment of instrument payable must be made during the usual hour of business and if at banker within banking hours.

2. Presentment of Instrument Payable after Date or Sight:

A promissory note or bill of exchange payable at a specified period after date or sight thereof, must be presented for payment at maturity. Bill or note must be presented for payment on the day it falls due, and when days of grace are allowed, it must be presented on the last day of grace. An earlier presentment is premature and ineffective.

3. Presentment of Promissory Note Payable by Instalment.

A promissory note payable by instalments must be presented for payment on the third day after the date fixed for the payment of each instalment and the note will be deemed to be dishonoured if any instalment is not paid.

4. Place of Presentment:

Presentment for payment must be made:

- (a) At the place of payment specified in the instrument.
- (b) If no place is specified, at the place of business, or at the usual residence,
- (c) In any other case, where the maker, acceptor or drawee can be found.

5. Presentment of Cheque:

A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of drawer. To charge any person except the drawer, the cheque must be presented within a reasonable time after its delivery by such person.

6. Presentment of Instrument Payable on Demand:

A negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

7. Presentment by Agent:

Presentment for payment may be made by duly authorized agent.

8. Delay in Presentment:

Delay in presentment for payment is excused if it is caused by circumstances beyond the control of the holder.

BUSINESS LAWS – STAGE-1**Presentment for Payment Unnecessary: (Any five)**

No presentment for payment is necessary where:

1. maker, drawee or acceptor intentionally prevents presentment of instrument.
2. instrument is to be presented at the place of business but such place is closed down on due date during usual business hours.
3. instrument is payable at a specified place and neither maker, drawee, acceptor nor any person authorised to pay is present, during usual business hours.
4. no place of payment is specified and the payer cannot after due search be found.
5. promise is to pay notwithstanding non-presentment.
6. presentment for payment is waived either expressly or impliedly, before or after maturity, by the party entitled to presentment.
7. drawer does not suffer damage for want of presentment.
8. bill has been dishonoured for non-acceptance.
9. drawer is a fictitious person.
10. drawer and drawee is the same person.
11. presentment is impossible.

(c) Essential Element of Contract of Sale: (Any three)

- (a) Existence of two distinct persons.
- (b) Subject matter of contract must be goods.
- (c) Price must be money.
- (d) Transfer must be of general property.
- (e) Elements of valid contract must be present.

SECTION – C**Q.5 (a) (i) Go-Slow:**

Go-slow means an organised, deliberate and purposeful slowing down of normal output of work by a body of workers in a concerted manner and which is not due to any mechanical defect, break-down of machinery, failure or defect in power supply, or in the supply of normal materials and spare parts of machinery.

(ii) Tickets:

- (a) Every workman employed in an industrial establishment shall be given a permanent ticket unless his is a probationer, a badli, a temporary workman or an apprentice.
- (b) Every permanent workman shall be provided with a departmental ticket, showing his number, and shall on being required to do so, show it to any person authorised by the employer to inspect it.
- (c) Every badli shall be provided with a badli card, on which shall be entered the days on which he has worked in the establishment, and which shall be surrendered if he obtains permanent employment.

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- (d) Every temporary workman shall be provided with a temporary ticket which shall surrender on his discharge.
- (e) Every apprentice shall be provided with an apprentice card, which shall be surrendered if he obtains permanent employment.

(iii) Group Incentive Scheme:

- (i) In every industrial establishment which is a factory and in which fifty or more workmen are employed there shall be introduced from such date as may be specified by the Provincial Government, by notification in the official Gazette, a group incentive scheme to provide incentive for greater production to groups of workmen employed in the factory. The scheme shall provide the manner in which the performance of different groups of workmen, whether in the same section, shops, department or shift or in different sections, shops, departments or shifts, shall be evaluated.
- (ii) The incentive shall be in the form of additional wages or additional leave with wages or in both such forms to the members of the group of workmen whose production exceeds that of the other groups or the average of all the groups. The incentive shall be according to such scales as may be prescribed and shall be related to the extent of the excess production achieved by the group with the best performance.

(b) Restrictions on the Working Hours of a Child:

- (i) No child (or adolescent) should be allowed to work in a factory for more than five hours in any day.
- (ii) The hours of work of a child shall be so arranged that they shall not spread over more than seven and a-half hours in any day.
- (iii) No child (or adolescent) shall be allowed to work in a factory except between 6 a.m. and 7 p.m.

Provided that the (Provincial Government) may, by notification in the (official Gazette) in respect of any class or classes of factories and for the whole year or any part of it, vary those limits to any span of thirteen hours between 5.a.m. and 7:30 p.m.

- (iv) The provisions of section 35 shall apply also to child workers, but no exemption from the provisions of that section may be granted in respect of any child.
- (v) No child shall be allowed to work in any factory on any day on which he has already been working in another factory.

Notice of Periods for Work for Children:

- (i) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section(2) of section 76, a Notice of periods for work for Children, showing clearly the periods within which children may be required to work.
- (ii) The periods shown in the Notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult in Section 39 and shall be such that children working for those periods would not be working in contravention of section 54.
- (iii) The provisions of section 40 shall apply also to the Notice of Periods for Work for Children.
- (iv) The Provincial Government may make rules prescribing forms for the Notice of Periods for Work for Children and the manner in which it shall be maintained.

BUSINESS LAWS – STAGE-1**Register of Child Workers:**

- (i) The manager of every factory in which children are employed shall maintain a register of child workers showing :
 - (a) the name and age of each child worker in the factory.
 - (b) the nature of his work
 - (c) the group, if any, in which he is included.
 - (d) where his group works on shifts, the relay to which he is allotted.
 - (e) the number of his certificate of fitness granted under section 52, and
 - (f) such other particulars as may be prescribed.
- (ii) The Provincial Government may make rules prescribing the form of the Register of Child Workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Q.6 (a) (i) Seaman:

Seaman means any person forming part of the crew of any ship, but does not include the master of the ship.

(ii) Dependent:

Dependent means any of the following relative of a deceased workman, namely:

- (i) a widow, minor legitimate son and unmarried legitimate daughter, or a widowed mother; and
- (ii) if wholly or in part dependant on the earnings of the workman at the time of his death, a widower, a parent other than a widowed mother, a minor illegitimate son and unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother an unmarried or widowed sister, a widowed daughter in law, a minor child of deceased son, (a minor child of a deceased daughter where no parent of the child is alive, or where no parent of the workman is alive a paternal grandparent;)

(b) (i) Maternity Benefit:

A secured workman shall, subject to regulations, be entitled to receive maternity benefit at such rate as may be fixed by Government by notification, in consultation with the Institution, if contribution in respect of her were paid or payable for not less than one hundred and eighty days during twelve calendar months immediately preceding the expected date of her confinement as certified by a medical practitioner authorised by the Institution in the manner provided in the regulations to give such a certificate and such benefit shall be paid for all days on which she does not work for remuneration during a period of twelve weeks, of which not more than six weeks shall precede the expected date of confinement.

(ii) Medical Care of Dependents:

When a secured person dies other than due to any employment injury, his dependents shall, subject to regulation, be entitled to medical care for one year from the date of death of secured person:

Provided that the deceased secured person had been in continuous employment of an establishment for not less than twelve months immediately preceding his death;

Provided further that where the deceased secured person was a seasonal employee, his dependents shall be entitled to medical care for six months from the date of death of such secured person:

Provided also that the deceased has been in employment of an establishment for not less than six months during two continuous seasons immediately preceding his death.

THE END