

Q. 2 (a) Functions of High Court

A High Court has a supervising role over all subordinate courts within its jurisdiction.

A High Court may:

- (i) Issue writ of habeas corpus, i.e. an order for the release of a person wrongfully detained.
- (ii) Issue prerogative orders against inferior courts, tribunals and other bodies like local authorities as far as they have a duty to exercise discretion honestly and fairly.

Prerogative orders are of three types, namely:

1. **Mandamus** requires the court or other body to carry out a public duty.

Example: (a) A tribunal may be ordered to hear an appeal which has wrongfully been refused.

(b) A local authority may be ordered to produce accounts for inspection of ratepayer.

2. **Prohibition** prevents a court or tribunal from exceeding its jurisdiction but before it has been done.
3. **Certiorari** orders a court or tribunal which has taken action to submit the record of its proceedings to the High Court for review.

(b) Purpose of Act of Parliament

The purpose of Act of Parliament is to:

- (i) create new law when none exists before
- (ii) consolidate existing law
- (iii) amend existing law
- (iv) cancel existing law
- (v) authorize taxation
- (vi) codify and clarify existing law

Q. 3 (a) Nature of Quasi-Contract:

- (i) Strictly speaking quasi-contract is no contract at all. It is an obligation which though not contract technically gives rise to relations which resembles those created by contracts. No contractual relation whatever exists between the parties, but one person has done something for another or paid money on his behalf and the equity requires that the person receiving benefit must make compensation to the other.

The Contract Act deals with the following types of quasi-contracts:

1. Supply of necessities.
2. Payment by interested person.
3. Obligation to pay for non-gratuitous acts.
4. Obligation of finder of goods.
5. Payment by mistake or under coercion.

Supply of Necessaries:

If a person, incapable of entering into a contract, or any one to whom he is legally bound to support, is supplied by another person with necessaries 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.

Payment by Interested Parties:

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.

Obligation to Pay for Non-Gratuitous Acts:

Where a person lawfully does any thing for another person, or delivers anything to him, not intending to do so gratuitously and such other 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.

Responsibility of Finder of Goods:

An agreement is also implied by law where a person finds goods belonging to another and takes them in his custody. Although there is, in fact, no agreement between the owner and the finder of the goods, the latter is, for certain purposes, deemed in law to be bailee and must take as much care of the goods as a man of ordinary prudence would take of similar goods of his own.

Liability under Mistake or Coercion:

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

(ii) Modes of Revocation (Any three points):

Revocation of offer (or proposal) may be made in one or more of the following ways:

1. By communication of notice of revocation by the offeror to the other party before acceptance is complete.
2. By lapse of time prescribed in the offer for acceptance, or when no such time is prescribed, by lapse of reasonable time, without communication of acceptance.
3. By failure of offeree to fulfil condition precedent to acceptance.
4. By death or insanity of the offeror if this fact is known to offeree before acceptance.
5. If the offeror has agreed to keep the offer open for a certain period, he can revoke it before the expiry of that period only.
 - a) When the offer has not been accepted, or
 - b) When there is no consideration for keeping the offer open.

- (b) A person who is not the owner of an article and has not been authorised by the owner cannot transfer any title to the buyer. This rule is expressed by a Latin maxim 'nemo dat quod non habet' i.e. no one can give that which he does not have.

Exception (Any four points):

1. Title Acquired by Estoppel.

Where the owner of the goods by his conduct, leads the buyer to believe that the seller has the owner's authority to sell them, the buyer gets a good title. When the seller induces the buyer to buy the goods, he cannot afterwards deny that the seller had no authority.

2. Goods Sold by Mercantile Agent.

Where a mercantile agent is, with the consent of the owner, in possession of the goods, or of documents of title to the goods, the buyer acquires a good title. Any sale made by such agent, in the ordinary course of business, is binding on the owner provided the buyer acts in good faith and has not, at the time of contract of sale, notice that the seller has no authority to sell.

3. Sale made by One of Joint Owners.

If one of several joint owners, who is in sole possession of goods with the consent of other co-owners, sells the goods without their knowledge, the buyer gets a good title to the goods. Such buyer must act in good faith.

4. Sale made by Person in Possession under Voidable Contract.

When the seller of goods has obtained their possession under a voidable contract, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the good. The buyer must buy them in good faith and without notice of the seller's defect of title.

5. Sale by Seller in Possession after Sale.

Where a seller, having sold the goods, continues to be in possession of the goods (or of the documents of title to the goods) and sells them, the buyer gets a good title. It makes no difference whether such person sells the goods either himself or through a mercantile agent to a person who buys them in good faith and without notice of the previous sale.

6. Sale by Buyer in Possession after Contract of Sale.

Where a person who having bought, or agreed to buy the goods, obtains, with the consent of the seller possession of the goods (or documents of title to the same), sells or pledges them, the buyer gets a good title. It is immaterial whether such person sell those goods either himself or through a mercantile agent. The buyer should act in good faith and without notice of lien or other right of the original owner of the goods.

7. Sale under Void Contract.

If the seller obtains possession of goods under a void contract, the buyer, even if innocent, of such goods from such seller does not acquire any title to the goods.

(c) **Conditions and Warranties**

Conditions:

A condition as a stipulation which is essential to the main purpose of the contract, the breach of which gives the aggrieved party a right to treat the contract as repudiated.

Warranty:

Warranty as a stipulation which is collateral to the main purpose of the contract, the breach of which gives the aggrieved party a right to sue for damages but not a right to reject the goods and treat the contract as repudiated.

Condition Treated as Warranty

1. **Voluntary Waiver of Condition:** When a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may (a) waive the condition or (b) elect to treat the breach of the condition as a breach of warranty.
2. **Acceptance of Goods:** Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, unless is a term in the contract, express or implied, to that effect.

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Q. 4 (a) Situations where sharing in the Profit of a Business does not Constitute Partnership:

Section 6 of the Partnership Act provides that mere sharing in the profits of a business does not constitute partnership, namely in the following cases there is no partnership:

- (i) Lender of money instead of charging interest may share in the profits of a business.
- (ii) Servant who receives share of profits as remuneration for his services.
- (iii) Widow or child of a deceased partner who receives annuity instead of interest on deceased investment.
- (iv) Previous owner of a business receives share of profit as consideration for sale of goodwill.
- (v) Joint owners of a property who share in the rental income.

(b) General Crossing and Special Crossing:

General Crossing:

Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between the two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Where a cheque is crossed generally, the bank on whom it is drawn shall not pay it otherwise than to the bank.

Special Crossing:

Where a cheque bears across its face an addition of the name of a bank, either with or without the words "not negotiable" that an addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially and to be crossed that bank. Thus, where a cheque is crossed specially the bank on whom it is drawn shall not pay it otherwise than to the bank to whom it is crossed or his agent for collection.

Purpose:

The purpose of the crossing is to give a direction to the bank not to pay the cheque across the counter but to pay it only to a bank.

Who May Cross a Cheque?

The following may cross a cheque:

1. Where a cheque is uncrossed, the holder may cross it generally or specially.
2. Where a cheque is crossed generally, the holder may cross it specially.
3. Where a cheque is crossed generally, or specially, the holder may add the words "not negotiable".
4. Where a cheque is crossed specially, the bank to which it is crossed may again cross it especially, to another bank or his agent for collection.
5. When an uncrossed cheque or a cheque crossed generally is sent to a bank for collection, the bank may cross it especially to itself.

(c) (i) Case:

No, it is not a promissory note.

Because the promise to pay contained in a note must be definite and unconditional as an uncertain or conditional undertaking destroys the negotiable character.

(ii) Case:

No, this is not a contingent contract.

Because the uncertain event (i.e., Noor's completing the work) is not collateral to contract but is the very thing contracted for, and is thus an integral part of the contract.

(iii) Case:

Asif and Zaheer are advised to make a petition to the court for the dissolution of the firm on the ground that the firm cannot be carried on except at a loss. Since the firm was constituted for a fixed term of five years it cannot be dissolved without the consent of all the partners and as such Asif and Zaheer cannot not compel to Sharif to dissolve the firm.

Q. 5 (a) Power to require from Employers Statements Regarding Fatal Accidents:

1. Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.
2. If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within ten days of the service of the notice.
3. If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.
4. Where the employer has so disclaimed liability the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependant to prefer a claim for compensation, and may give them such other further information as he may think fit.

(b) (i) Precautions in Case of Fire:

1. Every factory shall be provided with such means of escape in case of fire as may be prescribed.
2. If it appears to the Inspector that any factory is not provided with the means of escape prescribed under sub-section (1) he may serve on the manager of the factory an order in writing specifying the measure which should be adopted before a date specified in the order.
3. In every factory the doors affording exit from any room shall not be locked or fastened so that they can be easily and immediately opened from inside while any person is within the room, and all such doors, unless they are of the sliding type, shall be constructed to open outwards or where the door is between two rooms, in the direction of the nearest exit from the building and such door shall not be locked or obstructed while work is being carried on in the room and shall at all times be kept free from any obstruction.
4. In every factory every window, door or other exit affording means of escape in case of fire, other than means of exit in ordinary use, shall be distinctively marked in a language understood by the majority of the workers and in red letters of adequate size or by some other effective and clearly understood sign.
5. In every factory there shall be provided effective and clearly audible means of giving warning in case of fire to every person employed therein.

6. A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in every room of the factory.
7. In every factory wherein more than ten workers are ordinarily employed in any place above the ground floor, or explosive or highly inflammable materials are used or stored, effective measures shall be taken to ensure that all the workers are familiar with the means of escape in the case of fire and have been adequately trained in the routine to be followed in such case.
8. The Provincial Government may make rules prescribing in respect of any factory, or class or description of factories, the means of escape to be provided in case of fire and the nature and amount of fire-fighting apparatus to be provided and maintained.

(ii) Wages:

Wages means remuneration for service paid or payable in cash or in kind to a secured person, not being less than remuneration based on the minimum rates of wages declared under the Minimum Wages Ordinance, 1961 (XXXIX of 1961), without taking account or deductions for any purpose, under a contract of service or apprenticeship, expressed or implied, and shall be deemed to include any dearness allowance or other addition in respect of the cost of living and any payment by the employer to a secured person in respect of any period of authorised leave, illegal lock-out or legal strike; but does not include:

- (1) Any payment for overtime; or
- (2) Any sum paid to the person employed to defray special expenses entailed by the nature of his employment, or
- (3) Any gratuity payable on discharge : or
- (4) Any sum paid as bonus by the employer.

(c) Consideration of Factors while Engaging in Pre-qualification of Suppliers and Contractors:

A procuring agency while engaging in pre-qualification may take into consideration the following factors, namely:

- (i) Relevant experience and past performance;
- (ii) Capabilities with respect to personnel, equipment, and plant;
- (iii) Financial position;
- (iv) Appropriate managerial capability; and
- (v) Any other factor that a procuring agency may deem relevant, not inconsistent with these rules.

Q. 6 (a) (i) Receiving Accountant:

A professional accountant in public practice to whom the existing accountant or client of the existing accountant has referred audit, accounting, taxation, consulting or similar appointments, or who is consulted in order to meet the needs of the client.

(ii) Professional Accountant in Public Practice:

Each partner or person occupying a position similar to that of a partner, and each employee in a practice providing professional services to a client irrespective of their functional classification (e.g., audit, tax or consulting) and professional accountants in a practice having managerial responsibilities. This term is also used to refer to a firm of professional accountants in public practice.

(b) Fundamental Principles:

(i) Integrity

A professional accountant should be straightforward and honest in all professional and business relationships.

(ii) Objectivity

A professional accountant should not allow prejudice or bias, conflict of interest or undue influence of others to override professional or business judgments.

(iii) Professional Competence and Due Care

A professional accountant has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives the advantage of competent professional service based on current developments in practice, legislation and techniques. A professional accountant should act diligently and in accordance with applicable technical and professional standards in all professional and business relationships. A professional accountant should comply with the IASs and ISAs as adopted by the respective Member Body of SAFA; standards and guidelines issued by the respective Member Body of SAFA; and also related laws of the respective country.

(iv) Confidentiality

A professional accountant should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the professional accountant or third parties.

(v) Professional Behaviour

A professional accountant should comply with relevant laws and regulations and should avoid any action that discredits the profession.

(c) Consideration of Factors while Resolving Ethical Conflicts:

When initiating either a formal or informal conflict resolution process, professional accountant should consider the following, either individually or together with others, as part of the resolution process:

- (i)** Relevant facts;
- (ii)** Ethical issues involved;
- (iii)** Fundamental principles related to the matter in question;
- (iv)** Established internal procedures; and
- (v)** Alternative courses of action.

THE END