
 BUSINESS LAWS – STAGE-1

SECTION-A

MARKS

Answer Yes. Money bill is passed by National assembly alone and after the assent **02**
Q 2 (a) (i) of President becomes Act of Parliament.

Answer Such bill would be considered in the joint sitting of Parliament and if **03**
Q 2 (a) (ii) passed with the majority of both the houses then President is bound to give his assent and then it would become Act/Law.

Answer**Q 2 (b)****Classification of Pakistan Law:**

Pakistan law may be divided into a number of categories which have not been laid down by any statute but have been devised as aid to understanding and exposition. Such categories are:

- | | |
|----------------|-----------------|
| a. Public law | c. Civil law |
| b. Private law | d. Criminal law |

a. Public Law:

Definition: "Public law governs the relationship between the individual and the State (Government).¹⁰ Public law is concerned with the public as a whole.

Examples of public law are:

- | | |
|-----------------------|-----------------------|
| a. International law | c. Constitutional law |
| b. Administrative law | d. Criminal law |

b. Private Law:

Definition: Private law governs the relationship of individuals between individuals.

Examples of private law are:

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|---------------------|----------------------------------|
| a. Company law | d. Law of tort |
| b. Law of contract | e. Law of agency |
| c. Law of guarantee | f. Law of negotiable instruments |

BUSINESS LAWS – STAGE-1

c. Civil Law:

Definition: Civil law identifies the circumstances in which individuals may seek remedies from the State (Government) or from one another against wrongful acts which do not necessarily constitute crime. So civil law governs the rights and duties of individuals. Civil law regulates the disputes in respect of rights and obligations between persons dealing with each other. It is for the parties involved to settle the dispute through the court if they are unable to settle the same mutually. The state does not have a direct role in a dispute. The court does not punish the wrongdoer but impose a settlement of the matter either by awarding damages or granting injunction or other orders.

Examples of civil law are:

- | | |
|--|-----------------------|
| a. Company law | d. Constitutional law |
| b. Revenue law | e. Family law |
| c. Commercial law | f. Employment law |
| g. Action for breach of contracts and torts (i.e., civil wrong). | |

Features of civil law are:

1. **Civil action** is brought by an individual (i.e., plaintiff) who is seeking to obtain compensation for the loss he has suffered or to establish his legal right.
2. **Damages** are generally assessed with a view to compensate the plaintiff and not with a view to punish the defendant.
3. **Exemplary damages**, in certain restricted circumstances may be awarded by the court over and above what is necessary to compensate the plaintiff for punishing the defendant.
4. **Damages to plaintiff:** All the damages awarded by the court as a result of successful civil action are payable to the plaintiff and are not retained by the Government.
5. **Withdrawal of action:** Plaintiff can withdraw the action at any time before judgment.

d. Criminal Law:

Definition: Criminal law is that branch of law which governs the functions of the State (Government) and which defines the relationship between individual and the State. Criminal proceedings are normally started by the State. The police take the initial decision to prosecute the criminal whether it is successful or not. Every crime has a victim whether he has been mugged or defrauded. The victim cannot decide whether or not prosecution be brought against the criminal. In criminal proceedings victim is not in any way benefitted. Fines imposed are retained by the State. Prosecution is brought in the name of the State it is the State who has to provide proof to convict the accused. So criminal law relates to such actions which can be regarded as crimes under the law.

BUSINESS LAWS – STAGE-1

Features of criminal law are:

- (a) Criminal cases are usually called prosecutions.
- (b) Such action is normally initiated by the State (Government).
- (c) When prosecution is successful the accused is liable to punishment in the form of imprisonment and or a fine.
- (d) Fines are retained by the State (Government) and so the victim of the crime does not get any direct benefit.
- (e) In certain circumstances the victim of the crime may not suffer any loss e.g., an attempted theft or blackmail.
- (f) Certain crimes may be committed without there being any victim e.g., an offence involving obscene publication.
- (g) Imprisonment of the accused does not compensate the victim of the crime.
- (h) Victim of an offence cannot prevent a prosecution initiated by the State (Government) not he can request its discontinuance.
- (i) In criminal trial the burden of proof to convict the accused rests with the State (Government) which must prove its case beyond reasonable doubt.

SECTION-B

Answer Q 3 (a) (i) Delivery is defined as "voluntary transfer of possession from one person to another". **02**

Answer Q 3 (a) (ii) Actual Delivery: It takes place through physical delivery by the buyer or his agent. **06**

Symbolic Delivery: It takes place by indicating a sign or by giving a symbol or by providing means of obtaining possession, for example key of a warehouse or bill of lading. It is used in case of bulky goods.

Constructive Delivery: It takes place when the person possessing the goods of the seller at the time of sale acknowledges to the buyer that he holds such goods now on behalf of the buyer. The possession of the goods may be with third party, the seller or buyer himself. For example, a carrier holding goods as bailee for seller agrees to hold the same on behalf of buyer or buyer himself in possession and seller agrees to buyer's holding of the same as owner of goods or seller in possession of the goods agrees to hold the same on behalf of buyer.

 BUSINESS LAWS – STAGE-1

Answer The acceptance in law is something more than mere receipt of goods. It means an absolute assent of the buyer indicating that he has received the goods in performance of the contract of sale. Such acceptance takes place when the buyer: **04**

Q 3 (a) (iii)

- (i) Intimates to the seller about his acceptance of the goods.
- (ii) Retains the goods after lapse of a reasonable time without intimating his rejection to the seller.
- (iii) Does an act inconsistent with the ownership of the seller like uses, alters, re-sells or pledges the same.

MARKS

Answer According to Section 13 of Contract Act 1872, two or more persons are said to consent when they agree upon the same thing in the same sense i.e. they must be clear about the nature of transaction, identities of the parties, subject matter of the contract. It can be express or implied. Consent has to be free to be valid for contracting. **08**

Q 3 (b)

Section 14 of Contract Act specifies 5 factors – (1) Coercion (2) Undue Influence (3) Fraud (4) Misrepresentation (5) Mistake.

Answer
Q 4 (a) (i)

It is:

- (i) Purpose is lawful business.
- (ii) Formed by two or more than two persons.
- (iii) Contractual relationship.
- (iv) Managed by all or any of the partners acting for all.
- (v) Profit shared in the agreed ratio.

04

Answer
Q 4 (a) (ii)

The grounds are :

1. When a partner of the firm: (a) has become of unsound mind or (b) permanently incapable of performing his duties as a partner or (c) is guilty of conduct likely to adversely affect the business of the firm or (d) willfully and persistently commits breach of agreement relating to management of the affairs of the firm or (e) transfers whole of his interest to a third party without the consent of other partners.
2. When the business of the firm cannot be carried on except at a loss.
3. On any other ground which the court considers just and equitable for the dissolution.

05

[Section 44]

 BUSINESS LAWS – STAGE-1

Answer**Q 4 (b) (i)**

A negotiable instrument is a document which entitles a certain person to a certain sum of money and which is transferable from one person to another by mere delivery or by endorsement and delivery.

Negotiable instrument defined:

(a) Section 13(a) Definition: "Negotiable Instrument means a promissory note, bill of exchange or cheque payable either to order or bearer, whether the words 'order' or 'bearer' appear on the instrument or not."^u

(b) Thomas definition: "Negotiable Instrument is one which is by a legally recognized customs of trade or by law:

- (i) transferable by delivery or by endorsement and delivery.
- (ii) without notice to the party liable in such a way that the holder of it for the time being sue upon it in his own name. and
- (iii) the property in it passes to a bone fide transferee for value free from equities and free from any defect in the title of the person from whom he/she obtained it."^u

A negotiable instrument in view of the above definitions, is an instrument which entitles the holder thereof to a sum of money and which is transferable from person to person by mere delivery like cash. When transferred, the transferee becomes entitles to receive the money or acquires the right to further transfer it.

Exception to general rule: The law relating to negotiable instrument is an exception to the general principle of law *homo dat quod non habet* i.e., the transferee cannot transfer a better title than he himself has. So, a person who takes a negotiable instrument in good faith and for value acquires a good title to it even though he takes it from a person who had no title to it.

ELEMENTS OF NEGOTIABLE INSTRUMENT:

For a negotiable instrument the following essential elements are required:

- a. **Written:** Negotiable instrument must be in writing.
- b. **Signed:** Instrument must be signed by the maker (or drawer).
- c. **Unconditional:** It must contain unconditional promises or order to pay.
- d. **Certain sum:** Instrument must require payment of a certain sum of money only and nothing else.
- e. **Certain time:** Instrument must be payable at a time which is certain to arrive.
- f. **Certain payee:** Drawee of a bill or cheque must with reasonable certainty be named or described.
- g. **Mere delivery:** Instrument must be transferable by simple delivery like cash.

 BUSINESS LAWS – STAGE-1

Answer**Q 4 (b) (ii)****INDEMNITY AND GUARANTEE:****A: CONTRACT OF INDEMNITY:****Definition of Contract of Indemnity-Section 124**

A contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself or by the conduct of any other person.

A contract of indemnity is a class of general contract and is subject to all the rules of contract e.g., consent, lawful object, etc.

Examples:

- (a) A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of Rs.200. This is a contract of indemnity.
- (b) A, a shareholder of Alpha Ltd., claims duplicates of share certificates lost by him by agreeing to compensate the company against any claim by any other party. There is a contract of indemnity between the shareholder A and the company.

B: CONTRACT OF GUARANTEE:**Definition of Contract of Guarantee -- Section 126**

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default.

Example (a): A requests B to lend Rs.1,000 to C and guarantees that if C does not pay the amount he will pay. This is a contract of guarantee.

Parties Section 126:

There are three parties in a contract of guarantee:

1. Surety The person who gives the guarantee.
2. Creditor The person to whom guarantee is given.
3. Principal Debtor The person in respect of whose default the guarantee is given.

Contract of Guarantee comprises three agreements:

In a contract of guarantee there are three collateral contracts as follows:

- a. **First**, between creditor and principal debtor, there is a contract out of which the guaranteed debt arises.
- b. **Second**, between surety and creditor, there is a contract by which surety guarantees to pay to creditor principal debtor's debt in case of default.
- c. **Third**, between surety and principal debtor, there is a contract that principal debtor shall indemnify surety in case surety pays in the event of default by principal debtor.

BUSINESS LAWS – STAGE-1

SECTION-C

		MARKS
Answer Q 5 (a)	<p><u>Permanent Workmen:</u></p> <ol style="list-style-type: none"> 1. Who has been engaged on work of permanent nature likely to last for more than 9 months and satisfactorily completed 3 months probationary in any occupation in the establishment, or 2. A Badli who has been employed for a continuous period of 3 months or 183 days during any period of 12 consecutive months. <p><u>Probationer:</u></p> <p>Who has been provisionally employed to fill a permanent vacancy in a post and has not completed 3 months service therein.</p> <p><u>Badli:</u></p> <p>Who is appointed in the post of permanent workman or probationer, who is temporarily absent.</p> <p><u>Temporary:</u></p> <p>Who has been engaged for work, which is of an essentially temporary nature likely to be finished within a period not exceeding 9 months.</p>	05
Answer Q 5 (b) (i)	Workmen in employment of the establishment for a continuous period of 90 days in the relevant year.	02
Answer Q 5 (b) (ii)	Three months from the close of financial year.	02
Answer Q 5 (c)	<p>Disablement can be defined as "A loss or reduction of earning power or "incapacity for work" and includes inability to get work if that be the result of the accidental injury."ⁱⁱ</p> <p>Partial Disablement means, when the disablement is of a temporary nature such disablement as reduce the earning of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time.</p> <p>Partial disablement may be temporary or permanent. When the loss or diminution of earning capacity is caused in relation to the employment in which he was engaged at the time of the accident, there is partial temporary disablement. Where such loss or reduction in earning capacity is caused in relation to every kind of employment which he was capable of doing at the time of the accident there is partial permanent disablement.</p> <p>Total Disablement means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. In order to constitute total disablement, it must be of such a character that the person concerned is unable to do any work and not merely which he was performing at the time of the accident.</p>	

BUSINESS LAWS – STAGE-1

MARKS

Answer Q 6 (a) (i) Section 2(j) of the Factories Act 1934 defines it as "Factory means any premises, including the precincts thereof, where **ten** or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a **manufacturing process** is being carried on or is ordinarily carried on with or without the aid of power, but does not include a mine, subject to the operation of Mines Act, 1923 (IV of 1923)"^m **06**

Answer Q 6 (a) (ii) Information in the Notice (under Section 9): **04**

1. Name & Situation of the Factory.
2. Communication address of the Factory.
3. Nature of manufacturing process to be carried on.
4. Nature and amount of power to be used.
5. Name of the manager of the Factory.
6. Other particulars as may be prescribed.

The Notice has to be sent to the Inspector.

Answer Q 6 (b) **05**

1. Police.
2. Any of the defence services of Pakistan.
3. Any installation or service exclusively connected with armed forces of Pakistan including ordinance factory.
4. Pakistan Security Printing Corporation.
5. Pakistan Security Papers Ltd.
6. Pakistan Mint.
7. Security staff and other staff of specified pay groups of PIA.
8. Pakistan Television Corporation.
9. Pakistan Broadcasting Corporation.
10. In the administration of the State excluding those employed as workmen by Railways and Pakistan Post.
11. All establishment or institutions made for care of sick, infirm, destitute and mentally unfit persons excluding those run on commercial basis etc.
12. By an institution established for payment of employees' old age pensions or worker's welfare.
13. As a member of the Watch & Ward, Security or Fire Service Staff of an oil refinery or an establishment engaged in the production, transmission, or distribution of natural gas or liquefied petroleum gas or petroleum products or of a seaport or airport.

(Any ten of above)

THE END