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**BATCH - 10**

**ASSIGNMENT NO. 1 QUESTION**

**Q. No. 1: The term capacity to contract: You will describe the condition for a person to enter into contract. Also describe the disqualified persons to enter into contract.**

In the context of the Pakistan Contract Act, 1872, which governs contracts in Pakistan, the term "capacity to contract" refers to the legal ability of a person to enter into a valid and enforceable contract. The Act specifies the conditions that a person must meet to have the capacity to contract, as well as those who are disqualified from entering into contracts. Here are the key aspects:

**Conditions for Capacity to Contract:**

1. **Age:** According to Section 11 of the Pakistan Contract Act, every person is competent to contract who is of the age of majority. In Pakistan, the age of majority is 18 years. Minors (those below the age of 18) are generally not considered competent to contract, with some exceptions discussed below.
2. **Sound Mind:** A person must be of sound mind at the time of making the contract. A person who is of unsound mind, whether temporarily or permanently, and who is incapable of understanding the consequences of the contract, lacks the capacity to contract.
3. **Not Disqualified by Law:** The person must not be disqualified from contracting by any law to which they are subject. Certain categories of individuals are disqualified from entering into specific types of contracts by law.

**DISQUALIFIED PERSONS FROM ENTERING INTO CONTRACTS:**

1. **Minors:** As mentioned earlier, minors (persons below the age of 18) are generally disqualified from entering into contracts. However, there are some exceptions, such as contracts for necessities (goods and services essential for the minor's well-being) and contracts that are beneficial to the minor.
2. **Persons of Unsound Mind:** Individuals who are of unsound mind at the time of entering into the contract are disqualified. However, if a person is of unsound mind but occasionally of sound mind, they can enter into contracts during periods of soundness.
3. **Persons Disqualified by Law:** Certain laws in Pakistan disqualify specific categories of individuals from entering into certain types of contracts. For example, public servants are often restricted from entering into contracts that could lead to a conflict of interest.
4. **Persons Disqualified by Specific Contracts:** Some contracts may explicitly state that certain individuals or categories of people are disqualified from participating in that contract. For instance, a contract might specify that employees of a particular company cannot enter into a contract with a competitor during their employment.

It's important to note that contracts entered into by persons lacking capacity (e.g., minors or persons of unsound mind) may be voidable at their option. This means that the incapacitated party can choose to either affirm or void the contract when they regain capacity. In contrast, contracts entered into by disqualified persons due to legal restrictions may be void ab initio (void from

the beginning).

**Q. No. 2: In the contract act 1872 one of the essentials of a valid contract is Free Consent: You will write down in brief about the free consent.**

"Free Consent" is one of the essential elements of a valid contract under the Pakistan Contract Act, 1872. It signifies that the parties entering into a contract must do so willingly, without any form of coercion, undue influence, fraud, misrepresentation, or mistake. Here is a brief explanation of free consent in the context of contract law:

1. **Voluntary Agreement:** For a contract to be valid, the consent of the parties involved must be voluntary and not obtained through any form of force, threat, or pressure.
2. **Absence of Coercion:** Coercion refers to the use of physical force or the threat of harm to compel someone to enter into a contract. Contracts entered into under coercion are voidable at the option of the coerced party.
3. **Absence of Undue Influence:** Undue influence occurs when one party uses their dominant position or authority to influence the decisions of the other party. Contracts influenced by undue influence may be voidable.
4. **Absence of Fraud:** Fraud involves deliberate deception or misrepresentation to induce someone to enter into a contract. If one party intentionally conceals information or provides false information to the other party, the contract can be voided due to fraud.
5. **Absence of Misrepresentation:** Misrepresentation involves making false statements, whether intentionally or negligently, that lead the other party to make a contract they would not have otherwise made. Misrepresentation can render a contract voidable.
6. **Absence of Mistake:** Mistake can occur when both parties to a contract are mistaken about a fundamental aspect of the contract. If the mistake is mutual, it can make the contract void.
7. **Sound Mental State:** Both parties must be of sound mind when entering into the contract. Contracts entered into with parties of unsound mind are voidable.
8. **Legal Capacity:** The parties must have the legal capacity to contract. For example, minors and individuals disqualified by law are not considered to have the legal capacity to enter into certain contracts.
9. **Meeting of Minds:** There must be a meeting of the minds, meaning that both parties must understand and agree to the essential terms and conditions of the contract. If there is a fundamental misunderstanding between the parties, the contract may be void.

Free consent is essential to ensure fairness and the integrity of contracts. It ensures that contracts are entered into voluntarily and without any form of exploitation or deception. If consent is not free due to coercion, undue influence, fraud, misrepresentation, or mistake, the affected party has the option to void the contract. This principle is critical in upholding the principles of justice and fairness in contract law.

**Q. No. 3: Describe the features of unlawful objects and void agreement.**

Under the Pakistan Contract Act, 1872, certain agreements are considered void because they involve unlawful objects or are contrary to public policy. Here are the features of unlawful objects and void agreements according to the

Act:

## **Unlawful Objects:**

1. **Contrary to Law:** An unlawful object refers to the primary purpose or objective of the contract being in violation of any existing law or being against public policy. Contracts to engage in illegal activities, commit a crime, or violate statutory regulations are examples of agreements with unlawful objects.

2. **Implied Illegality:** The illegality may be implied from the nature of the contract. For example, agreements to defraud creditors or evade taxes are often considered to have unlawful objects.

3. **Void Ab Initio:** Agreements with unlawful objects are void from the outset, meaning they are not valid or enforceable from the moment they are made. They lack legal effect.

4. **No Legal Remedy:** Parties to a contract with an unlawful object cannot seek legal remedies or enforce the terms of the contract in court. The court will not enforce a contract that involves illegality.

5. **Exceptions:** In some cases, certain aspects of a contract may be legal, while others are illegal. In such instances, the court may sever the legal parts from the illegal parts if they are distinct and separate.

## **Void Agreements:**

1. **Absence of Free Consent:** A void agreement often arises from a lack of free consent. For example, if a contract is entered into under duress, undue influence, fraud, or misrepresentation, it may be considered void.

2. **Legal Incapacity:** Contracts made with parties who lack the legal capacity to contract, such as minors or individuals of unsound mind, are generally void.

3. **Against Public Policy:** Agreements that are against public policy or public interest are void. This can include contracts that are harmful to society or go against established moral and ethical standards.

4. **Illegal Consideration:** If the consideration (the something of value exchanged in a contract) is illegal, immoral, or contrary to public policy, the agreement is void.

5. **Impossibility:** Agreements that are impossible to perform or are based on impossible conditions are void. For example, a contract to bring back a dead person to life is impossible and void.

6. **Uncertainty:** If the terms of a contract are so vague and uncertain that they cannot be enforced, the agreement may be void.

7. **Wagering Agreements:** Wagering agreements, which involve betting or gambling, are void except in states or territories where they are specifically regulated by law.

8. **Restraint of Marriage:** Agreements that unreasonably restrain a person's freedom to marry are void. However, reasonable restrictions in the form of prenuptial agreements are generally valid.

9. **Restraint of Trade:** Agreements that unreasonably restrain a person's freedom to engage in a lawful profession, trade, or business are void. However, reasonable restrictions to protect legitimate interests are allowed.

It's important to note that while void agreements and agreements with unlawful objects are not enforceable, voidable agreements are different.

Voidable agreements are initially valid but can be voided at the option of one of the parties due to factors like coercion, undue influence, fraud, or misrepresentation. Void agreements, on the other hand, are fundamentally flawed and cannot be made valid through subsequent actions.

**Q. No. 4: What do you know about contingent contract and also describe essential elements of a contingent contract.**

A contingent contract is a type of contract defined under the Contract Act, 1872. It is a contract in which the performance and the rights and obligations of the parties are dependent on the occurrence or non-occurrence of a specific event in the future. In contingent contracts, the obligations of the parties are not immediately enforceable but are contingent upon the happening or non-happening of a particular event.

Here are the essential elements of a contingent contract according to the Contract Act, 1872:

- 1. Contingency or Uncertainty:** The contract must involve an event or contingency that is uncertain. This means that the event may or may not happen, or its timing may be uncertain. The contract's performance depends on the occurrence or non-occurrence of this event.
- 2. Future Event:** The contingent event must be a future event; it cannot be an event that has already occurred. Contracts based on past events are not considered contingent contracts.
- 3. Creation of an Obligation:** The contract must create an obligation on the parties involved. This means that one party undertakes to do or not do something based on the occurrence or non-occurrence of the contingent event, and the other party agrees to a reciprocal obligation.
- 4. Possibility of Performance or Non-Performance:** The contract should specify what will happen if the contingent event occurs and what will happen if it does not. The parties should agree on the terms and consequences of both scenarios.
- 5. Lawful Object:** The object or purpose of the contract must be lawful. Contingent contracts, like all contracts, cannot have illegal or unlawful objectives.
- 6. Certainty of Event:** While the event itself may be uncertain, the fact that the event is capable of being ascertained with certainty must be agreed upon by the parties. In other words, the event's occurrence or non-occurrence should be capable of being determined objectively when the time comes.
- 7. Possibility of Performance:** The event should not be impossible of performance. If the event is impossible of performance, the contract is void.
- 8. Mutual Consent:** Like all contracts, a contingent contract requires the free and mutual consent of both parties. There must be a meeting of the minds regarding the terms and conditions of the contract.
- 9. Performance or Non-Performance within a Specified Time:** Contingent contracts often specify a time frame within which the event must occur or not occur. The contract's terms should address what happens if the event does or does not occur within the specified time.
- 10. Communication of Acceptance:** If the contract is based on a proposal (offer) made by one party and accepted by another, the acceptance must be communicated in the manner specified or implied by the offeror.

Contingent contracts are commonly used in various situations where the outcome depends on future events or circumstances. They provide a framework for parties to enter into agreements with a degree of uncertainty but with clearly defined terms and conditions contingent on the event's occurrence or non-occurrence.

**Q. No. 5: Describe the three main forms of a business. Also write down two to three line each characteristics of a company.**

The three main forms of business organization are:

**1. Sole Proprietorship:**

• **Characteristics:**

- Owned and operated by a single individual.
- Simplest and easiest to set up.
- The owner has unlimited personal liability for business debts.
- All profits belong to the owner, but they are also responsible for all losses.
- Decision-making and management are solely in the hands of the owner.

• **Partnership:**

• **Characteristics:**

- Owned and operated by two or more individuals (partners).
- Partners share profits, losses, and responsibilities according to a partnership agreement.
- Partnerships can be general (with shared management) or limited (with passive investors).
- Partners have joint and several liability for business debts.
- Decision-making is typically shared among partners.

**2. Company (Corporation):**

• **Characteristics:**

- A legal entity separate from its owners (shareholders).
- Limited liability: Shareholders are generally not personally responsible for company debts.
- Complex formation and governance requirements.
- Shares of ownership (stock) can be bought and sold, facilitating investment.
- Professional management by a board of directors.
- Subject to more regulations and reporting requirements.

**Q. No. 6: Write down the features of company formation.**

1. **Incorporation:** The process begins with the incorporation of the company, which involves selecting the type of company (e.g., private limited, public limited, LLP) and registering it with the Registrar of Companies (ROC) under the Companies Act.

2. **Memorandum of Association (MOA):**

- The MOA is a legal document that defines the company's scope of activities, objectives, and the powers of the company.
- It includes details such as the company's name, registered office, and authorized capital.

3. **Articles of Association (AOA):**

- The AOA outlines the internal rules, regulations, and governance structure of the company.
- It specifies the rights and duties of shareholders, directors, and other key stakeholders.

4. **Share Capital:**

- The company must specify its authorized and paid-up share capital in the MOA.

- Shareholders subscribe to shares and contribute to the company's capital.
- 5. Director Appointment:**
    - Directors are appointed to manage the company's affairs.
    - The number of directors and their roles are defined in the AOA.
  - 6. Registered Office:**
    - The company must have a registered office in Pakistan, and the address must be specified in the MOA.
    - The ROC must be informed of any changes in the registered office address.
  - 7. Statutory Compliances:**
    - The company must comply with various statutory requirements, including filing of annual financial statements, holding annual general meetings (AGMs), and maintaining statutory registers.
  - 8. Appointment of Auditors:**
    - The company must appoint auditors who will audit its financial statements.
    - The auditors' appointment is ratified by shareholders at each AGM.
  - 9. Issue of Shares:**
    - Companies may issue shares to raise capital. The process of issuing shares is governed by the Companies Act and SEBI regulations (if applicable).
  - 10. Corporate Governance:**
    - The company is required to adhere to corporate governance norms and principles outlined in the Companies Act.
    - Compliance with these norms ensures transparency and accountability.
  - 11. Compliance with Other Laws:**
    - Companies must also comply with various other laws and regulations applicable to their specific industry or sector, such as taxation, environmental regulations, labor laws, and more.
  - 12. Annual Filings and Reports:**
    - Companies must file annual returns, financial statements, and reports with the ROC, Income Tax Department, and other relevant authorities.

It's important to note that the specific requirements and procedures for company formation can vary based on the type of company (e.g., private limited, public limited, LLP) and the nature of its business activities.

### **Q. No. 7: Describe memorandum of association (MoA).**

The Memorandum of Association (MoA) is a vital legal document that plays a significant role in the formation of a company, and it is governed by company law rather than the Contract Act, 1872. The MoA sets out the company's constitution, defines its scope of activities, and outlines the company's relationship with its shareholders and the outside world. Here are the key components and aspects of the MoA:

- 1. Name Clause:**
  - The MoA must state the company's name, and this name should end with words like "Limited" for public limited companies or "Private Limited" for private limited companies, in compliance with the Companies Act.
- 2. Registered Office Clause:**

- The document must specify the company's registered office address, which is the official address for all communication and legal proceedings related to the company.

### 3. **Object Clause:**

- The object clause defines the company's primary and ancillary objects. It outlines the range of business activities the company is authorized to undertake.
- The company is typically restricted to activities within the objects stated in the MoA, and any activities outside these objects may require an alteration of the MoA.

### 4. **Liability Clause:**

- This clause specifies the liability of members (shareholders) in case the company is wound up. For companies limited by shares, this liability is limited to the unpaid amount on their shares. For companies limited by guarantee, members guarantee a specific amount in case of winding up.

### 5. **Capital Clause:**

- The MoA outlines the authorized share capital of the company, which represents the maximum amount of capital the company can raise through the issuance of shares.
- It also specifies the division of the authorized share capital into shares of a fixed denomination.

### 6. **Association and Subscription Clause:**

- This clause includes the names, addresses, and signatures of the subscribers (initial shareholders) who agree to form the company and take specified numbers of shares.
- The subscribers' details indicate their consent to become members and shareholders of the company.

### 7. **Alteration Clause:**

- The MoA may include a clause allowing the company to alter its MoA, subject to compliance with the Companies Act.
- Alterations typically require the approval of shareholders through a special resolution.

### 8. **Conversion Clause:**

- If a company is converting from one type to another (e.g., from private limited to public limited), the MoA may include provisions related to this conversion.

### 9. **Other Clauses:**

- Depending on the specific requirements and objectives of the company, the MoA may include additional clauses, such as the power to borrow, enter into contracts, appoint directors, and so on.

The MoA, along with the Articles of Association (AoA), forms the company's constitution and serves as a foundational document that defines the company's legal identity, scope of operations, and relationships with its shareholders. It is a public document accessible by anyone interested in the company's affairs and is a critical part of the company's statutory compliance.

## **Q. No. 8: Describe article of association (AoA).**

The Articles of Association (AoA) is a significant document that governs the internal management, regulations, and procedures of a company. However, it is not governed by the Contract Act, 1872. Instead, the AoA is an integral part of the company's constitution and is subject to company law, specifically the Companies Act. Here are the key aspects and components of the Articles of Association:

### 1. **Internal Regulations:**

- The AoA contains internal regulations and rules for the company's management and operations. It governs the relationship between the company, its shareholders, and its directors.
- 2. Binding Document:**
    - The AoA is a binding document that all members (shareholders) and the company must adhere to. It forms a contract among the members and between the members and the company.
  - 3. Contents:**
    - The AoA typically covers various aspects, including the appointment and removal of directors, their powers and responsibilities, rules for convening and conducting board meetings and general meetings, dividend distribution, transfer of shares, and more.
  - 4. Powers and Objectives:**
    - It outlines the powers and objectives of the company and provides guidance on how these powers should be exercised by the directors and the company as a whole.
  - 5. Shareholders' Rights and Duties:**
    - The AoA may define the rights and duties of shareholders, including voting rights, share transfer restrictions, pre-emption rights, and dividend entitlements.
  - 6. Directors' Powers:**
    - The AoA specifies the scope of authority and responsibilities of the directors, including their ability to borrow money, enter into contracts, issue shares, and more.
  - 7. General Meetings:**
  8. It contains provisions regarding the holding of general meetings, such as annual general meetings (AGMs) and extraordinary general meetings (EGMs). It outlines the procedures for convening, conducting, and voting at these meetings.
  9. Amendments to AoA:
    - The AoA may include procedures for making amendments or alterations to the AoA itself. Any changes to the AoA typically require approval by shareholders through a special resolution.
  - 10. Enforcement:**
    - The AoA provides a mechanism for enforcing the rights and obligations of the company and its members. Shareholders and the company can use the AoA to protect their interests.
  - 11. Public Document:**
    - The AoA is a public document and is available for inspection by anyone interested in the company's internal regulations. However, certain personal details may be redacted for privacy reasons.
  - 12. Compliance with Law:**
    - The AoA must comply with the provisions of the Companies Act, 2013, and other applicable laws and regulations. Any provisions in the AoA that are inconsistent with the law are considered void.

In summary, the Articles of Association is a crucial document that outlines the internal governance and operational framework of a company. It complements the Memorandum of Association (MoA) and together forms the company's constitution. The AoA helps in ensuring transparency, accountability, and efficient management of the company's affairs while respecting the rights and interests of its shareholders.