



**THE LAW OF BUSINESS ORGANIZATIONS  
SEMESTER- 6  
ASSIGNMENT NO.1**

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**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.**

**ANSWER-** The term capacity to contract is mentioned in section 11 of the contract act 1882. It lays down the qualifications/conditions which make a person eligible for a contract. Every person who has **attained the age of majority**, according to the law of the country he is subjected to, is of **sound mind** ( a person who is capable of producing a rational judgement), and is not **disqualified from any law** to which he is subjected to is competent to contract. If a person who doesn't have the above mentioned qualifications enters into a contract, that contract will not be enforceable according to section 10 of the contract act, since competency to contract is one of the essential conditions for a contract to be valid.

### **PARTIES WHO ARE DISQUALIFIED TO ENTER INTO A CONTRACT-**

**1- MINOR 2- UNSOUND MIND 3- OTHERS, FOR EXAMPLE ALIEN ENEMIES, INSOLVENTS, CONVICTS, AND COMPANY/CORPORATIONS.**

**1- MINOR-** a minor is a person who has not attained the age of majority, comes under the guardian and wards act 1980, and who is under supervision of a legal representative. A contract done with a minor is void ab initio, which means void from the beginning, since a minor is not capable of understanding the nature of liabilities mentioned in the contract, this result was the verdict of a famous case, Mohori Bibee vs. Dharmodas Ghose.

**2- UNSOUND MIND-** section 12 of the contract act 1882 says that a person who is usually of sound mind and rarely of unsound mind, is competent to contract when he is of sound mind. When a person is rarely of sound mind and usually of unsound mind can not make a contract when he is of unsound mind. Idiots, lunatics, and intoxicated people fall under the category of unsound mind.

**3- OTHERS- insolvents** are people against whom insolvency proceedings have been filed and are bankrupt.

**Convicts** can not enter into contract until their sentence is over. **Alien enemy** is the citizen of a country Pakistan is at war with. Any contracts made during the war period are void. **Company/corporation** is an artificial person. **Any contract made against the objectives clause of the memorandum of association will be null and void, since the MOA lays down a company's competency to contract.**

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

**ANSWER-** Section 14 of the contract act 1882 says that a consent is said to be free when it is not influenced by **coercion ( section 15), undue influence (section 16), fraud (section 17), misrepresentation (section 18),or mistake (sections 20, 21, and 22)**. If a contract contains any of the above factors it will not be enforceable according to section 10 of the contract act 1882, since free consent is essential for a valid contract.

**1-COERCION-** A person can coerce or intimidate in two ways; **1-** when he commits or threatens to commit anything against the pakistan penal code. **2-** when he detains or threatens to detain somebody's property illegally to make him enter into a contract. It can also be an act of a stranger. Whether the penal code is in force or not in the place of coercion is irrelevant.

**2- UNDUE INFLUENCE-** Undue influence is when one of the parties in a certain relationship, who is in a dominating position, tries to take an unfair advantage of the other party. A person can commit undue influence in the two following manners; **1-** When the party holds real authority (for example. A police officer over an accused) or has been bound in a fiduciary relationship with the other (for example, lawyer and client). **2-** When he makes a contract with a person who is mentally incapable ( either temporarily or permanently). In undue influence, there must be two parties who have a satisfying relationship between them. One of the parties must have a dominant position and **he must use that unfairly, and it must involve moral pressure.**

**3- FRAUD-** When a party intentionally deceives the other party to obtain his consent to the contract. A person commits dishonest and fraudulent acts in the following ways; **1-** A person making a false statement when he knows that is not true. **2-** Active concealment of facts having knowledge of them. **3-** promises with the intention of not fulfilling them. **4-** perform acts that are fitted to deceive. **5-** commit an act that is considered fraudulent under the law.

**4- MISREPRESENTATION-** means when a party misrepresents or misstates a material fact or the subject, in order to make the other party enter into a contract. It could be because of unwarranted statements (When you don't have proper or reliable information about a thing), breach of duty (There is no intention of deceiving the other party but to gain an advantage for the person committing it), or inducing mistakes about the subject matter (Making a mistake in the subject matter).

**5- MISTAKE-** A mistake (either of fact or law), in contract law, is an erroneous or a mistaken belief of believing that certain facts are true. It could be bilateral (section 20- when both parties are mistaken about the subject matter and the contract is void), mistake about the law (**section 21-** The contract signed under the effect of a mistake as to law is not voidable in native law. But, if there is a mistake as to foreign law, the contract is voidable), and unilateral mistake (**Section 22-** when only one party is mistaken about the subject matter, the contract is not voidable).

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

The features of unlawful objects are discussed in section 23 of the contract act. It is an unlawful object if;

**1-** it is **forbidden by law**. **2-** It is immoral in nature and opposes public policy. **3-** it defeats the provisions of the law if allowed. **4-** It is fraudulent in nature. **5-** it includes an act which involves causing harm to another person or property,

If an agreement has any of the above-mentioned objects, it will be considered void since a lawful object is an essential condition for an agreement to be valid. (**Section 10**)

**For example,** x, y and z enter into an agreement for the division among them of profits acquired, or to be acquired, by them by **fraud**. The agreement is void, as its object is unlawful (**fraudulent in nature**).

#### **FEATURES OF A VOID AGREEMENT-**

**1-** If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful. **2-** An agreement without any consideration. **3-** Every agreement in restraint of the marriage of any person. Minor is an exception. **4-** if a person is restrained from exercising a lawful profession, trade or business of any kind, it is a void agreement. **5-** an agreement made in restraint of legal proceedings is not enforceable. **6-** agreements that have even a bit of uncertainty will be considered void. **7-** wagering makes an agreement void.

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

**ANSWER-** Contingent contracts are mentioned in sections 31 to 36 of the contract act. A contingent contract is defined in section 31 of the contract as “ is a contract to do or not to do something, if some event, collateral (guarantee) to such contract, does or does not happen”. It is also termed as a **conditional contract**. **Section 32- Contracts contingent on the happening of an event-** this contract is not enforced until the event takes place and becomes void if the event becomes impossible. For example, Peter

promises to pay Haaland \$500 if he marries Kate. But, Kate dies. Hence, this contract becomes void. **Section 33- Contracts contingent on an event not happening-** this contract becomes enforceable only when the happening of an event becomes impossible. For example, John promises to pay \$500 if the ship named Holmes does not return. This contract will be enforceable if the ship sinks, because the return has become impossible. **Section 34- Contracts contingent on the conduct of a living person who does something which makes the contract impossible-** this means that a contract becomes void if a person acts in a way which makes the happening of that event impossible. For example, John promises to give \$500 to Haaland if he marries Ciara. The contract becomes void if Ciara marries another man. **Section 35- Contracts Contingent on an event happening within a specific Time-** This is enforceable when a future uncertain event takes place within a fixed time and becomes void when the time lapses. For example, Kate promises to pay John \$500 if the ship named Peerless returns before July 2. The contract is void if the ship sinks and enforceable if the ship returns before July 2. **Contract contingent on an event not happening within specified time.** This contract will be enforced only when the event doesn't take place till the lapse of time. For example, Kate promises to pay John \$500 if the ship named Peerless does not return before July 2. The contract is enforceable if it does not return before July 2. **Section 36-Contracts contingent on impossible events-** If a contingent contract is based on the happening or non-happening of an impossible event, then it will be void. For example, Jerry promises to pay Katy \$500 if the sun rises in the west on Monday. This contract is void.

**The essentials** of a contingent contract are; there are two persons, an uncertain event over which the party has some control but not absolute, it is a valid contract with no reciprocal promise. Other people might be interested in it.

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

**ANSWER-** The three main forms of business are; sole trader, partnership, and company.

**1- Sole trader-** a sole trader is a business entity which is run by just one owner who is entitled to keep all profits from the business to himself. He has unlimited liabilities which means that he is liable for all the losses that take place in the business. His assets will be at risk at times of debts. There is no legal distinction between the business entity and the owner.

**2- Partnership-** a partnership is a formal agreement between two or more parties in charge of business and share profits, as co-owners. General partnership is the type

where all owners share legal and financial liabilities together, which means they have an unlimited liability. In a limited partnership, partners have a limited liability and not all partners have company involvement on a daily basis.

**3- Company-** A company is a legal entity which is an association or collection of individuals or other companies. All of them provide some form of capital. The individuals have a limited liability, which means that they will be liable only to the amount of their respective share.

## **CHARACTERISTICS OF A COMPANY**

**1- SEPARATE LEGAL ENTITY-** a company is a separate legal entity, which means that it is distinct from its owners. It can sue and be sued under its corporate and capacity.

**2- PERPETUAL EXISTENCE-** A company is not affected by the death, insolvency, departure of its members or if there are any changes in the ownership. It was created by the law and will only come to an end when it is dissolved.

**3- LIMITED LIABILITY-** there is a limitation on the liability either by Shares or Guarantee. Liability of shareholders is limited to a certain amount of guarantee mentioned in the MOA, which is to be paid only at the time of dissolution and losses occurred by the company. Liability of the members shall be limited to the extent of unpaid money or shares held by them.

**4- BUSINESS PROPERTY-** company owns the business property not the shareholders. This means that a company can not be sued for the debts of its shareholders.

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

### **ANSWER-**

The elements required for the company formation are; **1-name** of the company (it must be a unique name). **2-Memorandum of association-** an important document which states the activities and the purpose of the formation of the company. **3-Articles of association-** It is a document which contains the rules and regulations of internal management. **4- Cnic copies of the directors.** **5- company secretary selection-** secretary is an official on the board who deals with legal and monetary issues . **6- Prospectus of company-** the prospectus is a small booklet that explains the prospects of the company and inspires them to buy shares. **7-address of the head office.** **8- selection of the chief executive officer-** the highest ranking person who directs and manages the company and appointed by the board of directors.

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

The memorandum of association is the most important document of the company, which is required at the time of the registration. It is also called the constitution of the company, since the superstructure of the company is based on it. It lays down objects and scope of activities. It defines the company's relationship with its shareholders and specifies the objectives for which the company has been created. It contains five clauses; **1- Name clause-** it specifies the name of the company which must be unique. **2- Registered office-** this clause specifies the state where the registered office is situated. **3- Objects-** This lays down the objectives due to which the company was formed and the limits in which it can operate. **4- Liability-** this clause specifies the nature of the liability (either liability by shares or guarantee) of its members. **5- Capital clause-**It specifies the share capital with which the company is registered. It specifies the maximum capital that that company is allowed to raise.

The MOA not only defines but also confines the powers of the company. The purpose of the MOA is to make potential investors aware of the purpose for which their capital is going to be used and what risk they are taking while investing. The other purpose is to make outsiders aware of the range of activities of the company.

Hence, we can see how important MOA is for the company, and the company can not be formed without the memorandum of association, since it is required at the time of registration. It must be signed by at least 7 members for a public limited company and 2 members for a private company.

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

The articles of association is an important document for the company since it lays down the rules and regulations of internal management. The AOA is subordinate to the MOA of a company since it is governed by the MOA. AOA is essential for every company as it plays a crucial role in defining its internal rights, workings, management and duties. The contents of AOA should not contradict the provisions of MOA and the Companies Act, 2013.

An AOA contains; details regarding the share capital. Details of qualifications, appointment, powers, remuneration, duties of the directors. Rules regarding company dividends and reserves. Details regarding company accounts and audit. Provisions relating to the company's borrowing powers including the issue of debentures. Provisions relating to conducting meetings. Process of dissolution of the company. It also contains rules regarding the allotment, Calls, Forfeiture (penalty) of shares, transfer of shares, amount of money issued, and the classes of shares. AOA is a mandatory document for a company since it defines the duties, powers, liabilities, and rights of individuals related to the organization.