

ANSWER KEY- BLP, 17MBA24, IAT 1

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Internal Assessment Test – I

Sub:	BUSINESS LAW & POLICY						Code:	17MBA24	
Date:	23.03.2018	Duration:	90 mins	Max Marks:	40	Sem:	II	Branch:	MBA

Q1.a.- What do you understand by contract?

Ans: According to **Sec 2(h)**: “Contract: “A contract is an agreement enforceable by law’. Thus a contract is an agreement made between two or more parties which the law will enforce.

Q1.b.- Briefly mention elements of a valid contract.

Ans: Elements of a Valid Contract

**1. Offer and acceptance:**

In a contract there must be at least two parties one of them making the offer and the other accepting it. There must thus be an offer by one party and its acceptance by the other. The offer when accepted becomes agreement.

**2. Legal relationship:**

Parties to a contract must intend to constitute legal relationship. It arises when the parties know that if any one of them fails to fulfil his part of the promise, he would be liable for the failure of the contract.

If there is no intention to create legal relationship, there is no contract between parties. Agreements of a social or domestic nature which do not contemplate a legal relationship are not contracts.

**3. Consensus-ad-idem:**

The parties to an agreement must have the mutual consent i.e. they must agree upon the same thing and in the same sense. This means that there must be consensus ad idem (i.e. meeting of minds).

**4. Competency of parties:**

The parties to an agreement must be competent to contract. In other words, they must be capable of entering into a contract.

According to Sec 11 of the Act, “Every person is competent to contract who is of the age of majority according to the law to which he is subject to and who is of sound mind and is not disqualified from contracting by any law to which he is subject.”

### 5. Free consent:

Another essential of a valid contract is the consent of parties, which should be free. Under Sec. 13, “Two or more parties are said to consent, when they agree upon the same thing in the same sense.” Under Sec. 14, the consent is said to be free, when it is not induced by any of the following:- (i) coercion, (ii) misrepresentation, (iii) fraud, (iv) undue influence, or (v) mistake.

### 6. Lawful consideration:

Consideration is known as ‘something in return’. It is also essential for the validity of a contract. A promise to do something or to give something without anything in return would not be enforceable at law and, therefore, would not be valid.

Consideration need not be in cash or in kind. A contract without consideration is a ‘wagering contract’ or ‘betting’. Besides, the consideration must also be lawful.

### 7. Lawful objects:

According to Sec. 10, an agreement may become a valid-contract only, if it is for a lawful consideration and lawful object.

### 8. Agreement not expressly declared void:

An agreement to become a contract should not be an agreement which has been expressly declared void by any law in the country, as it would not be enforceable at law.

Q1.c. - Differentiate between Public and Private company.

Ans.:

Basis	Private Company	Public Company
Formulation of company	After receiving the certificate of incorporation	After receiving the certificate of commencement of business
Minimum no. of members to form a company	Two	Seven
Maximum no. of members	Fifty	No restriction
Minimum paid up capital	One lakhs rupees of such higher capital as may be prescribed	Five lakhs rupees or such higher capital as may be prescribed.

Minimum no. of directors	Two	Three
Maximum no. of directors	No such restriction	Twelve for more than 12 approval of Central Government is necessary.
Transfer of Shares	Restricted	Freely Transferable
Prospectus	Can not be issued	General Public is invited to subscribe through prospectus
Director's appointment	In a single Resolution	Each directors appointment requires separate resolution.
Managerial Remuneration	No restrictions	Not more than 11% of net profit. (not more than 5% to single manager/director)
Director's Retirement	Not required to retire by rotation	At least 2/3 <sup>rd</sup> required to retire by rotation.
Quorum	2	5
Initial Capital	Can be registered with a paid up capital of 1 Lakh	Can be registered with a paid up capital of 5 Lakh
Exemption	Exempted from filing various returns	Not exempted
Public Deposits	Can not Accept	Can Accept
Statutory Meeting	Need not hold, nor file a statutory report	Must do so

Q2. a- What do you understand by Pledge?

Ans: The temporary placement of control over, or possession of Personal Property by one person, into the hands of another, against a debt or a loan which the parties have agreed.

Q2b. Elaborate the various modes of winding up of a company?

Ans: **Compulsory Winding-Up:**

It takes place when a company is directed to be wound-up by an order of the Court.

**Grounds for Compulsory Winding-up (Sec. 433):**

A company may be wound-up by the Court under the following cases:

(i) Special Resolution of the Company:

If the company has, by special resolution, resolved that the Company be wound-up by the Court;

(ii) Default:

If a default is made in delivering the statutory report of the Registrar of Companies or in holding the statutory meeting of the company, the court may make a winding-up order;

(iii) Not commencing or suspending the Company:

If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(iv) Reduction of Members:

If the number of members falls below seven in case of a public company or below two in case of a private company;

(v) Inability to pay Debts:

If the company is unable to pay its debts;

(vi) The Just and Equitable Clause:

If the Court is of opinion that it is just and equitable that the company should be wound-up.

**Voluntary Winding up:**

A petition for the winding-up of a company may be presented by any one of the following entities:

- (a) By the Shareholders
- (b) By any Creditor

Q2c.- Discuss the ways in which an agency can be created.

Ans: The following are different modes of creation of agency.

1. Agency by Express agreement.
2. Agency by Operation of law.
3. Agency by Ratification.
4. Agency by Implied authority.

**Agency by Express agreement:** Number of agency contract come into force under this method. It may be Oral or documentary or through power of attorney.

**Agency by operation of law:** At times contract of agency comes into operation by virtue of law.

For example: According to partnership act, every partner is agent of the firm as well as other parties. It is implied agency. On account of such implied agency only a partner can bind over firm as well as other partners, to his activities. In the same way according to companies act promoters are regarded as agents to the company.

**Agency by Ratification:** Ratification means subsequent adoption of an activity. Soon after ratification principal – agent relations will come into operation. The person who has done the activity will become agent and the person who has given ratification will become principal.

Ratification can be express or implied. In case where adoption of activity is made by means of expression, it is called express ratification. For example: Without A`s direction, B has purchased goods for the sake of A. There after A has given his support (adoption) to B`s activity, it is called Ratification. Now A is Principal and B is agent.

The ratification where there is no expression is called implied ratification. For example: Mr. Q has P`s money with him. Without P`s direction Q has lent that money to R. There after R has paid interest directly to P. Without any debate P has taken that amount from R. It implies that P has given his support to Q`s activity. It is implied ratification.

**Agency by implied authority:** This type of agency comes into force by virtue of relationship between parties or by conduct of parties.

For example: A and B are brothers, A has got settled in foreign country without any request from A, B has handed over A`s agricultural land on these basis to a farmer and B is collecting and remitting the amount of rent to A. Here automatically A becomes principal and B becomes his agent.

Agency by implied authority is of three types as shown below;

- Agency by Necessity
- Agency by Estoppel
- Agency by Holding out.

*By Necessity:* At times it may become necessary to a person to act as agent to the other. For example: A has handed over 100 quintals of butter for transportation, to a road transport company. Actually it is bailment contract, assume that in the transit all vehicles has got stopped where it takes one week for further movement. So the transport company authorities have sold away the butter in those nearby villages. Here agency by necessity can be seen.

*By Estoppel:* In presence of A, B says to C that he (B) is A`s agent though it is not so actually. A has not restricted B from making such statement. Here agency by Estoppel can be seen

*By Holding out:* B is A`s servant and A has made B accustomed to bring good on credit from C. On one occasion A has given amount to B to bring goods from C on cash basis. B has misappropriated that amount and has brought goods on credit as usually, here is agency by holding out and therefore A is liable to pay amount to C.

Q3a.- Define a company.

Ans: Chief Justice Marshall of U.S.A. has defined the term company, as ‘a company is a person, artificial, invisible, intangible and existing only in the contemplation of the law. Being a mere creature of law, it posses only those properties which the charter of its creation confers upon it either expressly or as incidental to its very existence.’

Q3b. Differentiate between quasi contract and implied contract. Give examples

Ans: **Implied Contract:** The Contracts where there is no expression are called implied contracts. Sitting in a Bus can be taken as example to implied contract between passenger and owner of the bus. Examples to be added by students:

**Quasi Contract:** In case of Quasi Contract there will be no offer and acceptance so, Actually there will be no Contractual relations between the partners. Such a Contract which is created by Virtue of law is called Quasi Contract.

Q3c. Elaborate on the various kinds of companies.

Ans:: 1. Chartered Companies: The companies which are incorporated by a charter granted by the “Crown” in exercise of royal prerogative Eg. East India Company.

2. Statutory Companies: The companies incorporated by means of Statute of special Act of the parliament or any State Legislative Eg. RBI, LIC etc.

3. Registered Companies: The companies registered under the companies Act, 1956 or the earlier Companies Act. Registered Companies are of the following types:

- (i) Companies limited by Share: The companies in which the liability of the members are limited by the memorandum to the amount, if any, unpaid on the share respectively held by them.
- (ii) Companies limited by Guarantee: The companies in which the liability of the members are limited to such amounts as they may respectively undertake by the memorandum to contribute to the assets of the company in the event of being its wound up.
- (iii) Unlimited Companies: The companies in which the liability of the members is not limited at all.

A company which controls another company is known as **the holding company** and the company so controlled is the **subsidiary company**. Section 4, provides that:- A company is a holding company if it

1. Controls the composition of board of directors of another company.
2. Holds more than half of the nominal value of equity share capital of another company.
3. Is a subsidiary of any company which is in turn a subsidiary of another company.

Q4a With reference to Companies Act 1956, elaborate on the meaning and contents of M.O.A ?

Ans:- Memorandum of Association is the most important document of a company. It states the objects for which the company is formed. It contains the rights, privileges and powers of the company. Hence it is called a charter of the company. It is treated as the constitution of the company. It determines the relationship between the company and the outsiders.

Contents of Memorandum of Association

According to the Companies Act, the Memorandum of Association of a company must contain the following clauses:

#### 1. Name Clause of Memorandum of Association

The name of the company should be stated in this clause. A company is free to select any name it likes, the name of the company should end with the word 'Limited' and if it is a Private Limited Company, the name should end with the words 'Private Limited'.

#### 2. Situation Clause of Memorandum of Association

In this clause, the name of the State where the Company's registered office is located should be mentioned. Registered office means a place where the common seal, statutory books etc., of the company are kept. The company should intimate the location of registered office to the registrar within thirty days from the date of incorporation or commencement of business.

### 3. Objects Clause of Memorandum of Association

This clause specifies the objects for which the company is formed. It is difficult to alter the objects clause later on. Hence, it is necessary that the promoters should draft this clause carefully. This clause mentions all possible types of business in which a company may engage in future.

### 4. Liability Clause of Memorandum of Association

This clause states the liability of the members of the company. The liability may be limited by shares or by guarantee. This clause may be omitted in case of unlimited liability.

### 5. Capital Clause of Memorandum of Association

This clause mentions the maximum amount of capital that can be raised by the company. The division of capital into shares is also mentioned in this clause. The company cannot secure more capital than mentioned in this clause. If some special rights and privileges are conferred on any type of shareholders mention may also be made in this clause.

### 6. Subscription Clause of Memorandum of Association

It contains the names and addresses of the first subscribers. The subscribers to the Memorandum must take at least one share. The minimum number of members is two in case of a private company and seven in case of a public company.

Q4b:- i. Aamir agreed to pay Amar Rs 50,000 if he marries Charu. Charu was already married at the time of agreement. What kind of an agreement is this?

Ans 4b i: It is a void agreement and cannot be enforced by law.

ii. Madhav, of Ooty, invited Manoj, of Mumbai, to stay with him during summer break. When Manoj reaches Ooty, he finds the house locked and has to stay in a hotel. Can Manoj claim damages from Madhav?

Ans: no he cannot claim as this agreement is not enforceable by law. It is a social agreement, In a way that parties don't want to create a legal relationship.