

Internal Assessment Test - I

Sub:	Legal and Business Environment						Code:	18MBA24	
Date:	28/03/2019	Duration:	90 mins	Max Marks:	50	Sem:	II	Branch:	MBA

		OBE	
		CO	RBT
Part A -Answer Any Two Full Questions (02*20=40 Marks)		Marks	
1(a) What do you mean by “Contract”?	<p>A contract is an agreement between two or more parties to perform a service, provide a product or commit to an act and is enforceable by law</p>	[02]	L1
(b) Briefly discuss the Essential elements of a valid contract.	<p>Consent to contract</p> <p>All the parties must have agreed upon the subject matter of the agreement in the same sense. Section 14 says that if the agreement is induced by coercion, fraud misinterpretation or mistake, it is said to be "no free consent" and such a contract is voidable and cannot be enforceable by law.</p> <p>Lawful object</p> <p>If the object in the agreement is unlawful, the agreement is void. Eg: The landlord cannot recover rent through court of law when he knowingly lets his house to carry on prostitution.</p> <p>Certainty</p> <p>Every agreement of the contract must be certain. If the agreement is not certain or incapable of being made certain, it is void.</p> <p>Possibility of Performance</p> <p>Every contract must be capable of performance. Otherwise, the agreement is void. An agreement to do an impossible act whether physically or legally, is void.</p> <p>Not expressly declared void</p> <p>The agreement must not have been expressly declared to be void under the Act. Examples of such agreements are restraint of trade, marriage, legal proceedings and wagering agreements. Such agreements are not enforceable by law.</p> <p>Legal formalities like Writing, Registration etc.</p> <p>A contract may be oral or in writing according to the Indian Contract Act. In certain special cases the agreement must be in written. In some cases like contracts by companies, selling or buying of shares etc., the contract must be registered.</p>	[05]	L2

(c) Discuss the different types of contract.

[08]

CO1	L2

A contract is a legally binding agreement enforceable in a court of law. However, not every agreement between two parties is a legally binding contract. Parties in valid contracts gain rights and responsibilities; and in case of any arguments, the courts will make sure that the parties follow these rights and responsibilities.

There are many types of contracts, but the main ones are:

Bilateral Contracts

In a bilateral contract both of the parties involved promise to carry out certain things.

Example: If you sign a contract to buy a used car, for example, a Black Audi, for 1900, then you have entered into a bi-lateral contract, with the person who is selling the car. The seller promised that he will not sell the car to anyone other than you; and you have promised to buy the Black Audi and will hand in the 1900 to the seller. Two promises were made here; the sellers promise to sell and your promise to buy, hence Bi-lateral.

Unilateral Contracts

A Unilateral contract is a contract in which one of the party (offeror) demands performance from the other party (offeree), instead of a promise. Since the offeree makes no promise, he can not be sued for abandoning or failing to carry out his act; only the offeror is bound by the law and, therefore, this is a single-sided contract.

Example: Richard (offeror) offers a reward of 200 for the safe return of his lost cat. The offeree has made no promises, so he is not obliged to return Richards lost cat, but if he does, then Richard will have to pay 200 to the offeree.

Express Contracts

Express contract is a contract in which the terms of the contract are stated verbally, either orally or in writing.

Implied Contracts

Can either be implied in fact or implied in law;

Implied in fact: A contract in which an agreement is seemingly intended among the parties involved, but not particularly verbally (in writing).

Example: You go to the doctor for the treatment of an illness; you and the doctor do not negotiate the terms of the treatment, how much you will pay or how the doctor will conduct the examination. You appreciate that he will do whatever appropriate examinations to establish the cause of your illness; and that you will pay fees for the doctor's effort.

Implied-In-Law Contract: This is also known as a Quasi-Contract. It isn't actually a contract; rather, it is a way for the courts to rectify situations in which one party would be unfairly enriched, were they not obliged to compensate the other party.

Example: At the scene of an accident, a doctor treats an unconscious patient who has not agreed to pay the doctor for the emergency services. The patient was not required to pay the doctor for his services; and therefore, the patient would be unfairly enriched by the doctor's services.

Void Contracts

A void contract is an agreement to do illegal things or it lacks legal elements.

Example: A contract for selling weapons to a country which has a ban on weapons is a void contract. None of the parties can enforce the contract, because if the seller is allowed to collect the money, then it would encourage further violations of the law which bans sales of weapons.

Voidable Contracts

A contract is voidable if one of the parties has the option to abort the contract; usually in the cases of wrong presentation.

Simple Contracts

A simple contract is any written or oral agreement which is not required to be witnessed, signed or sealed.

2(a) What do you mean by "Law of agency"?

The definition of agency law deals with agent-principal relationships; that is a relationship where one party has the legal authority to act in place of another. Relationships that are commonly associated with agency law include employer-employee, administrator-decedent or executor, and guardian-ward.

(b) What do you mean by a company? Explain various characteristics of a company?

A company as an entity has many distinct features which together make it a unique organization. The essential characteristics of a company are following:

Separate Legal Entity:

Under Incorporation law, a company becomes a separate legal entity as compared to its members. The company is distinct and different from its members in law. It has its own seal and its own name, its assets and liabilities are separate and distinct from those of its members. It is capable of owning property, incurring debt, and borrowing money, employing people, having a bank account, entering into contracts and suing and being sued separately.

Limited Liability:

The liability of the members of the company is limited to contribution to the assets of the company upto the face value of shares held by him. A member is liable to pay only the uncalled money due on shares held by him. If the assets of the firm

[02]	CO1	L1
[05]	CO1	L1,L4

are not sufficient to pay the liabilities of the firm, the creditors can force the partners to make good the deficit from their personal assets. This cannot be done in the case of a company once the members have paid all their dues towards the shares held by them in the company.

Perpetual Succession:

A company does not cease to exist unless it is specifically wound up or the task for which it was formed has been completed. Membership of a company may keep on changing from time to time but that does not affect life of the company. Insolvency or Death of member does not affect the existence of the company.

Separate Property:

A company is a distinct legal entity. The company's property is its own. A member cannot claim to be owner of the company's property during the existence of the company.

Transfer ability of Shares:

Shares in a company are freely transferable, subject to certain conditions, such that no share-holder is permanently or necessarily wedded to a company. When a member transfers his shares to another person, the transferee steps into the shoes of the transferor and acquires all the rights of the transferor in respect of those shares.

Common Seal:

A company is an artificial person and does not have a physical presence. Thus, it acts through its Board of Directors for carrying out its activities and entering into various agreements. Such contracts must be under the seal of the company. The common seal is the official signature of the company. The name of the company must be engraved on the common seal. Any document not bearing the seal of the company may not be accepted as authentic and may not have any legal force.

Capacity to sue and being sued:

A company can sue or be sued in its own name as distinct from its members.

Separate Management:

A company is administered and managed by its managerial personnel i.e. the Board of Directors. The shareholders are simply the holders of the shares in the company and need not be necessarily the managers of the company.

(c) Define memorandum of association? Explain various contents of memorandum of association? [08]

The Memorandum of Association (MoA) helps establish the extent and scope of the business activities that a particular company can carry out. The company can perform business activities which they have specified in the Memorandum of Association (MoA). If you wish to expand your business activities into other areas of the market, you will have to make changes to the memorandum accordingly.

Memorandum of Association (MOA) includes five different clauses as mentioned below:

- Name Clause

CO1	L1,L4

- Domicile Clause
- Objects Clause
- Liability Clause
- Capital Clause
- Subscription Clause

Name Clause

The name of the company is its first unique identity. Thus the name clause of the memorandum consists of the authentic, legal and approved name of the company. Company names should not bear any similarities to a company registered with a similar name because many times these companies protect the name of their companies via a [Trademark Registration](#) procedure.

Domicile Clause

The domicile clause comprises of all possible details of the registered office of the company. It has the name of the State or Union Territory of the registered office and may and may not have the exact address of the office. It also has the names of the registrars enrolled.

Objects Clause

Objects Clause constitutes the main body of the memorandum. It provides a list of all the operations of the company. Every motive and operation the company indulges in must be mentioned in the object clause. Also, any such operation which is not mentioned in the object clause is considered to be beyond the reach of the company.

The objects of a company fall into two categories as prescribed below:

1. The proposed objects of the company for which it is being incorporated
2. Matters considered necessary in furtherance thereof

Apart from just stating out the objectives of the company the statement of objects in the company's MoA empowers the people associated with the company with the following benefits

- Gives protection to the subscribers as they have complete knowledge of where their valuable money is being invested.
- Protects the individuals and/ or companies which deal with the concerned company as they have knowledge of the extent of the companies powers.
- The board of directors of the company is restricted to using the funds of the company only to the objects specified in the Memorandum.

Liability Clause

Liability Clause mentions the liability of every member of the Company. It simply states that every member of the company has a limited liability. The clause also specifies the amount of contribution of agreed upon for each individual participant in case the company is closing or winding up.

Read: [Closing a Private Limited Company](#) and [Closing an LLP](#).

Irrespective of the financial state of the company, no member can be told to pay more than the amount that remains unpaid on his/her shares.

Capital Clause

This clause mentions the share capital with which the company is registered. In addition to this, the capital clause should also mention the types of shares, the number of each type of share, and the face value of each share.

Private companies and public companies not intended to be listed in the stock exchange may assume any face value depending on a number of factors however, public companies to be listed will have a prescribed face value of the shares.

Subscription Clause

The last and final clause of the Memorandum of Association is called the subscription clause. The subscription clause basically lists down the motives of the shareholders behind the incorporation of the company and also states that the subscribers are agreeing to take up shares in the company. It also specifies the number of shares taken up by each subscriber.

3(a) What is “lifting of corporate veil”?

Lifting of the corporate veil means disregarding the corporate personality and looking behind the real person who are in the control of the company. In other words, where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. In this regards the court will break through the corporate shell and apply the principle of what is known as “lifting or piercing through the corporate veil.” And while by fiction of law a corporation is a distinct entity, yet in reality it is an association of persons who are in fact the beneficial owners of all the corporate property. In United States V. Milwaukee Refrigerator Co., the position was summed up as follows:

“A corporation will be looked upon as a legal entity as a general rule.....but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons.”

(b) Define articles of association? Describe various contents of articles of association?

The **Articles of Association or AOA** are the legal document that along with the memorandum of association serves as the constitution of the company. It is comprised of rules and regulations that govern the company’s internal affairs.

The articles of association is comprised of following provisions:

- Share capital, call of share, forfeiture of share, conversion of share into stock, transfer of shares, share warrant, surrender of shares, etc.
- Directors, their qualifications, appointment, remuneration, powers, and proceedings of the board of directors meetings.
- Voting rights of shareholders, by poll or proxies and proceeding of shareholders general meetings.
- Dividends and reserves, accounts and audits, borrowing powers and winding

[02]

CO1

L1

[05]

CO1

L1,L4

up.

(c) Write short notes on following (02*05=10)

(i) Doctrine of Ultra Vires

(ii) Doctrine of Indoor Management and constructive notices

[08]

CO1

L2

The Doctrine of Ultra Vires is a fundamental rule of the Company Law. It states that the objects of a company, as specified in its [Memorandum of Association](#), can be departed from only to the extent permitted by the Act. Hence, if the company does an act, or enters into a contract beyond the powers of the directors and/or the company itself, then the said act/contract is void and not legally binding on the company.

The term Ultra Vires means 'Beyond Powers'. In legal terms, it is applicable only to the acts done in excess of the legal powers of the doers. This works on an assumption that the powers are limited in nature.

Section 399 allows any person to electronically inspect make a record, or get a copy/extracts of any document of any company which the Registrar maintains. There is a fee applicable for the same. The documents include the certificate of incorporation of the company.

By now we know that the Memorandum and [Articles of Association](#) are public documents. This section confers the right of inspection to all.

Before any person deals with a company he must inspect its documents and establish conformity with the provisions. However, even if a person fails to read them, the law assumes that he is aware of the contents of the documents. Such an implied or presumed notice is called Constructive Notice.

The doctrine of indoor management is an exception to the earlier doctrine of constructive notice. It is important to note that the doctrine of constructive notice does not allow outsiders to have notice of the internal affairs of the company.

Hence, if an act is authorized by the Memorandum or Articles of Association, then the outsider can assume that all detailed formalities are observed in doing the act. This is the Doctrine of Indoor Management or the Turquand Rule. This is based on the landmark case between The Royal British Bank and Turquand. In simple words, the doctrine of indoor management means that a company's indoor affairs are the company's problem.

Part B - Compulsory (02*05=10 marks)

4	Analyze the following cases:		CO1	L4
	(a) 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?why?	[05]	CO2	L1
	(b) 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?	[05]	CO2	L1

CO-PO MAPPING

CO	PO				
	PO1	PO2	PO3	PO4	PO5
CO1	X				
CO2		X			X
CO3				X	
CO4			X		

Cognitive level	KEYWORDS
L1	List, define, tell, describe, identify, show, label, collect, examine, tabulate, quote, name, who, when, where, etc.
L2	summarize, describe, interpret, contrast, predict, associate, distinguish, estimate, differentiate, discuss, extend
L3	Apply, demonstrate, calculate, complete, illustrate, show, solve, examine, modify, relate, change, classify, experiment, discover.
L4	Analyze, separate, order, explain, connect, classify, arrange, divide, compare, select, explain, infer.
L5	Assess, decide, rank, grade, test, measure, recommend, convince, select, judge, explain, discriminate, support, conclude, compare, summarize.

PO1 - Knowledge application; PO2 - Analytical and logical thinking; PO3 - Team work;
 PO4 - Leadership; PO5 - life-long learning; PO6 - Analyze and practice aspects of business; PO7- Personal and Societal growth;