**Answer scheme**

**Business Regulatory Framework**

**First internals -Feb 2020**

**Section A**

*Answer any 5questions. Each question carries 2 marks.*

1. **What is Estoppel**?

      Estoppel refers to “later cannot deny”. When an acknowledgement is given by a party to the contract  ,later he cannot deny the fact .

2. **What is revocation?**

     The term revocation means 'taking back' or 'withdrawal'. An offer and acceptance may be revoked. An offer may be revoked at any time before the communication of acceptance is complete for the offeror, but not afterwards. An acceptance may be revoked at any time before communication of acceptance is complete for the acceptor, but not afterwards.

**3. Who is a stranger to contract**?

       A contract cannot be enforced by a person who is not a party to the contract, only parties to a contract may sue and be sued on the contract. This is known as stranger to contract or Privity of contract.

4. **Define Coercion.**

          Coercion is defined in section 15 as " committing or threatening to commit any act forbidden by the Indian penal code, or the unlawful detaining or threatening to detain, any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

**5. What is Mistake?**

         Mistake may be defined as an erroneous belief about something. It is an incorrect belief which leads one party to misunderstand other.

**6. What is a contingent contract?**

            A contingent contract is a contract to do or not to do something if some event, collateral to such contract does or does not happen.                                                                                                                                                                                                     **(5 X 2 = 10 marks)**

                                                                 **Section B**

*Answer any 5 questions. Each question carries 5 marks.*

**7.     Differentiate between void agreements with illegal agreements and void contracts.**

Void agreement and illegal agreement.

* An illegal agreements are void, but all void agreements are not illegal.
* An agreement becomes void when any of the essential elements are absent, but an agreement becomes illegal when it is criminal in nature, immoral, or opposed to public policy.
* An agreement collateral to an illegal agreement is void. But a collateral agreement to a void agreement may not be void.

   Void agreement and void contract.

* A void agreement is void from the very begining. A void contract was valid when it was originally made, but become void due to some circumstances.
* A void contract was perfectly valid till it become void. A void agreement has no legal effect at any point of time.

8.     What are the different types of offer?

* Standing Offer-An offer for the continuous supply of certain articles at certain rate over a definite period is called a standing offer. These types of offers are generally found where large quantity of goods is required from time to time.
* Counter Offer-The acceptance of an offer is valid only if it is absolute and unqualified. If the offeree communicates any terms deviating from the offer while giving his acceptance, then it cannot be termed as a contract. It is termed as counter offer.
* Cross Offer-When two parties make identical offers to each other, in ignorance of each others offer, such offers are known as cross offers.
* Specific Offer-An offer made to a particular person or a definite group of individuals.
* General Offer-An offer which is made to the world at large.

**9.     Explain   who all are incompetent to enter the contract.**

**Section 11** of the Act states that every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

Minors

[Section 3](https://indiankanoon.org/doc/1124939/) of the Indian Majority Act, 1875, declares that every person domiciled in India and attain the age of 18 years, but  for person or property or both the minor, a guardian has been appointed by the court, he will be deemed to have attained his majority when he completes the age 21 years.

Persons of unsound mind

[Section 12](https://indiankanoon.org/doc/367472/) of the Indian Contract Act, 1872, defines the term soundness of mind as follows:

A person is said to be of sound mind if he is capable of understanding the contract and effect of that contract on his interests. Besides, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is unsound mind.

Persons disqualified by law

1. Alien enemy: A person who is an Indian citizen is called an alien or non-citizen of the Republic of India. An alien enemy is a person whose country is at war with India. In India, a contract with an alien enemy is void but a contract with an alien friend is valid under the Indian Contract Act. No contract can be made with an alien enemy during the subsistence of war, except with the prior approval of the Indian Government.
2. Convicts: A convict is a person who is sentenced by a competent court to the death sentence or imprisonment. A convicted person cannot enter into a contract while undergoing sentence. When the period of his sentence is over or he is pardoned, then his incompetency is also over.
3. Insolvent: There is no prohibition against a contract by an insolvent after the insolvency proceedings have commenced but before adjudication. In simple words, the insolvent is disqualified from entering into a contract until he is discharged by the court of law.
4. Foreign sovereigns and diplomats: Foreign sovereigns have some special privileges. Generally, they cannot be sued unless they, themselves surrender under the jurisdiction of the Indian court of law. They cannot enter into a contract unless an Indian citizen obtained a prior sanction of the Government of India, in order to sue them in the Indian court of law.
5. Corporations: The power of a corporation to make a contract vary according to the character of the corporation. A company is an artificial person created by law and is competent to contract. But its power of contract is subject to the limitation which may be either necessary or express.

**10.  Explain the agreements opposed to public policy.**

An agreement which is opposed to “Public Policy” cannot be enforced by either of the parties to it. Public Policy is the “Policy of the Law”. The question as to whether an agreement is opposed to public policy or not is to be decided on general principles only and not by considering the terms of any particular contract.

1. Trading with Enemies

All trade with enemies is against public policy. Thus it is unlawful and is void. However, if a contract is made during peace times and later on war breaks out, one of the two things may result, Either the contract is suspended or it stands dissolved depending upon the intention of the parties to contract.

2. Traffic in Public Offices

Agreements entered into for using corrupt influence in procuring Government jobs, titles or honours are unlawful and therefore are not enforceable. This is because, if such agreements are valid, corruption will increase and lead to inefficiency in public services.

Stifling Prosecution

An agreement in which one party agrees to drop criminal proceedings pending in a court in consideration of some amount of money, is unlawful. Therefore, such an agreement cannot be enforced except where crime is compoundable.

Example: ***A*** had committed a robbery and

Maintenance and Champerty

Maintenance and champerty agreements are against public policy. So they are void. Maintenance agreements are those agreements whereby a person promises to maintain a suit in which he has no interest. Champerty agreement is one whereby a person agrees to share the results of litigation.

. Agreements Creating Interest Against Duty

If an agreement is entered into by a person whereby he is bound to do something which is against his public duty, the agreement is void on the ground of public policy.

Marriage Brocage or Brokerage Agreements

It is an agreement, in which, one or other parties to it or third parties, receive a certain money, in consideration of marriage. Such agreements being opposed to public policy are void.

Agreements in Restraint of Parental Rights

For minor children, their father is the legal guardian and in his absence, their mother will be the legal guardian. A father by law is entitled to the custody of his minor child and so cannot enter into an agreement which is not consistent with his duties arising out of such custody. If such an agreement is made, it shall be void as it is against the public policy.

Agreements Restricting Personal Liberty

Agreements restricting personal liberty of the parties to it are void as being opposed to public policy.

. Agreement in Restraint of Trade

By law, every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is void to that extent.

Agreement to Defraud Creditors

An agreement which is made with an intention to defraud the creditors or revenue authorities is not enforceable as it is opposed to public policy.

**11.  Define consideration. Explain the essentials of valid consideration.**

1. CONSIDERATION AND VALID CONSIDERATION It is a essential element for formation of a valid contract . A contract is void without consideration. According to Sir Pollock-” Consideration is the price for which the promise of the party is brought”.
2. .EXAMPLE A agrees to sell his factory to B for Rs. 50,000. Here for A’s promise, the consideration is the price of his factory i.e. Rs. 50,000 and for B’s promise, consideration is A’s factory
3. ESSENTIAL ELEMENTS OF VALID OR LAWFUL CONSIDERATION A) Consideration may be an act to do something of doing something. B) Consideration may be past, present or future. C) Consideration must be real & not illusory. D) Consideration should move at the desire of the promisor. E) Consideration may move from any person including the promisee. F) For supporting each independent promise, there must be an independent consideration.
4. G) Consideration need not be adequate. H) Consideration must be something which the promisor is not already bound to do. I) Consideration must be valuable in the eyes of laws.

**12.  What is appropriation of payments?**

Appropriation means ‘application’ of payments. In case of a creditor and a debtor, Section 59 to 61 lay down certain rules regarding the appropriation of payments. When a debtor pays an amount to the creditor, the creditor is to take note of these sections before applying the payment to a particular debt, because the creditor would be inclined to appropriate the payments to the debt which is not likely to be realized easily.

Sections 59 to 61, of the Contract Act, embody the general rules as to appropriation of payments in cases where debtor owes several distinct debts to one person and voluntarily makes payments to him.

Where payment of debt to be discharged is indicated: (Sec.59)

Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment if accepted, must be applied accordingly.

Where payment of debt to be discharged is not indicated: (Sec.60)

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him by the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Where the debtor does not intimate and the creditor fails to appropriate: (Sec.61)

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

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**Section C**

*Answer any 1 question. It carries 15marks.*

1**3.  Define contract. Explain the essentials of a valid contrac**t.

According to Section 2(h) of the Indian Contract Act, An agreement enforceable by law is a contract. A contract, therefore, is an agreement the object of which is to create a legal obligation *i.e.* a duty enforceable by law. The essentials of valid contracts are

Essentials of Valid Contract:

1. Offers and Acceptance: For a contract to be valid there must be a lawful offer by one party and lawful acceptance by another party.

2.  Legal Relationship: For a agreement to be valid, the parties must create legal relationship. For Agreement of social or domestic nature, legal relationship is not considered.

3. Lawful Consideration:  Consideration has been defined as the price paid by one party for the promise of the other. An agreement is enforceable only when both the parties get something and give something.

 4.  Capacity of Parties:  Parities to an agreement must be capable to contract. Even if one of the parties is not capable of contract, then the contract is invalid.

 5.  Free Consent: The parties must agree upon same thing in the same sense

 6. Lawful Objects: Object of an agreement must be valid. It means the design of the contract

7.  Writing and Registration: A contract may be oral or in writing according to Contract Act. It is required for the validity of a contact that the agreement must be in writing and signed and attested by witness and registered if so required by the law.

8. Certainty: According to Section 29 of the Contract Act, “Agreements the meaning of which are not certain or capable of being made certain are void.

9. Possibility of Performance: According to section 56 lays “An agreement to do an act impossible in itself is void.”

 10. Not Expressly Declared Void: Condition for the contract should be capable of performance.

**14.  Explain the rules regarding minor agreements.**

Section 11 of the Contract Act, 1872 explains the requirements of competency for entering into[contracts](https://www.toppr.com/guides/business-laws/indian-contract-act-1872-part-i/what-is-a-contract/). Individuals or entities can create contracts only if they meet these requirements. The very first such requirement is that of majority age.

Although, as a general rule, a contract with minors is void, we must keep in mind the following rules as well:

1,Void abinitio

A contract by a minor is void ab initio i.e., from the very beginning and not merely voidable.

2. No Estoppel Against Minor

When someone makes another person to believe that a particular fact or thing is true, then later on he cannot be allowed to deny the truth of that thing ([Sec. 115 of the Indian Evidence Act, 1872](https://indiankanoon.org/doc/565781/)). However, there is no such estoppel against the minor.

3. Beneficial Contracts

A minor can be a promisee or a beneficiary of a contract. Due to his minority, he can’t bind himself by a contract, but he can derive benefit under the contract.

4. No Ratification of Agreement

An agreement made by a minor cannot be confirmed by him on attaining majority. This is because, minor’s agreement is void ab initio, and, therefore cannot be made valid by ratification.

5. No Liability in Contract or in Tort Arising out of Contract

The term tort means any wrong for which a civil suit can be brought. If a minor enters into an agreement by misrepresenting his age, he cannot be sued either in contract or in tort for deceit (i.e., fraud). This is because, if the injured party were allowed to sue, it would be an indirect method of enforcing the[void agreement](http://accountlearning.com/void-agreement-meaning-void-agreement-vs-voidable-contract/).

6. Doctrine of Restitution

It implies that when a person obtains property or goods by false representation, he can be compelled to restore it to the person from whom he has received it. This doctrine applies to minors also. But, the minor can be compelled to restore the property or goods so long as the same is traceable in his possession.

7. Liability for Necessaries

If a person supplies necessaries to a person who is incapable of entering into a contract or to anyone whom such incapable person is legally bound to support, he can claim reimbursement from the property of such incapable person. A minor is also liable for the value of necessaries supplied to his wife.

8. Minor as an Agent

A minor can be appointed as an agent because an agent is merely a connecting like between the principal and the third party. But he will not be personally liable for his acts as an agent.

9. Minor as an Insolvent

All agreements with a minor are absolutely void. Therefore, a minor cannot be declared as insolvent.

10. Minor can Execute Negotiable Instrument

A minor is competent to draw, negotiate or endorse the negotiable instruments. However, it may be noted that the minor will not incur any personal liability under such instruments. But the minor can enforce the negotiable instruments executed in favour of him

11. The Liability of Minor’s Parents or Guardians

The minor’s contracts do not impose any liability on his parents/guardians even if the contracts are for necessaries. However, if the minor is acting as an agent for the parents/ guardian, then the parents/guardians shall be liable under the contract.

12. Minor as a Partner

A minor cannot be a partner in the partnership firm. However, he can be admitted to the benefits of the firm with the consent of all other partners. He has no right to take part in the management of the firm. But his liabilities are limited to the extent of his interest in the partnership.

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