

CONTRACT ACT, 1872

01. What is a Contract?

As per Section 2 (h) of the Contract Act, 1872; an agreement enforceable by law is a contract.

02. What are the elements of a contract?

The elements of a contract are;

- There has to be an agreement,
- That has to be enforceable by law,
- There has to be consideration with a few exceptions.

03. Can a contract be made without consideration?

A promise without consideration is a gift. But as per Section 25 of the Contract Act, 1872; under the following circumstances a contract can be made without consideration;

- Contract out of love and affection,
- Promise for consideration for voluntary service,
- Promise for performing legal duty,
- Time barred debt,
- Completed gift,
- Contract of creating agency,
- Contract of leaving debt.

04. Distinguish between a contingent contract and a wagering agreement?

The differences are as follows;

Contingent Contract	Wagering Contract
It is a valid contract.	It is a void agreement.
No characteristics of wagering.	It is a gambling.
Uncertain to all parties.	All parties enter into agreement considering the certainty.

05. Distinguish between a contract of guarantee and a contract of indemnity.

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default.

A contract by which one party promise to save the other from loss caused to him by the conduct of the promissor himself or by the conduct of any other person, is called a contract of indemnity.

06. Distinguish between a contract and an agreement?

As per Section 2 (h) of the Contract Act, 1872; an agreement enforceable by law is a contract.

As per Section 2 (c) of the Contract Act, 1872; every promise and every set of promises forming the consideration for each other, is an agreement.

07. Can a minor make a contract?

As per Section 11 of the Contract Act, 1872; a minor is not competent to a contract. So, he cannot make a contract and if any contract is made by the minor, it will be a void agreement i.e. void ab initio.

08. Why a person of sound mind is required to conclude a contract?

An essential element of a contract is capacity to contract. As per Section 11 of the Contract Act, 1872; an unsound mind is not competent to contract. If any contract is made by the unsound mind it will be a void agreement. So a sound mind is required to conclude a contract.

09. 'A', a girl aged 14, promised to marry Mr. B aged 25. State whether A or B may sue each other for breach of contract. Give reasons for your answer.

As 'A' is a minor girl aged 14 years, she cannot enter into an agreement as per Section 11 of the Contract Act, 1872. So A & B cannot sue each other for breach of the contract because this is a void agreement.

10. 'A' offers a reward to whoever shall return his lost briefcase. 'B' returns the lost briefcase, not knowing of the advertised reward. Is A bound to pay the reward to B?

No, A is not bound to pay reward to B. As per Contract Act, 1872; an offer must be communicated to the offeree. If the offeree does any act of acceptance without knowing, it does neither create any legal acceptance nor any contract.

11. 'A' offers to sell a car to 'B' for Tk. 300,000. B says, 'I accept it for Tk. 225,000'. A does not accept this amount. Consider whether B may have a cause of legal action against A.

No, the acceptance became a counter offer. It didn't make any contract. So B cannot sue against A. Acceptance must be unconditional and as desired by the offeror.

12. 'In the formation of a contract, consideration must be real but need not be adequate.' – Explain.

A main characteristic of consideration is that the consideration must be real. Any consideration which is uncertain, based on imagination is not treated as consideration but consideration need not be adequate. Due to inadequacy of consideration in a contract, it will not be void but the consent is required to be given freely.

13. A promise in writing to pay wholly an uncertain amount which is barred by limitations. Is this agreement valid? Justify your answer.

The promise should be specified. Any uncertain promise which is barred by limitation will not form any valid agreement.

14. Distinguish between void and voidable contract.

As per Section 2 (g) of the Contract Act, 1872; an agreement not enforceable by law is said to be void.

As per Section 2 (i) of the Contract Act, 1872; an agreement which is enforceable by law at the option of one or more of the parties there to, but not at the option of the others, is a voidable contract.

15. In which cases a contract can be void?

In absence of essential elements of a contract, it will be void. The essential elements of a contract are as follows;

- Offer and acceptance,
- Legal consideration,
- Capacity to contract,
- Free consent,
- Lawful object,
- Certainty of meaning & object,
- Possibility of performance,
- Written and registered.

An agreement to do an act impossible in itself is void.

16. What are the elements of a contract?

The elements are;

- Offer and acceptance,
- Consideration,
- Legal capacity to contract,
- Free consent,
- Lawful object,
- Certainty of meaning & object,
- Possibility of performance,
- Written and registered.

17. What is undue influence?

A contract is said to be induced by undue influence, where the relation subsisting between the parties are such that one of the parties is in position to dominate the will of the other and uses the position to obtain an unfair advantage in the contract over the other who is dominated. [Sec. 16 (1) of the Contract Act, 1872]

18. What is counter offer? Give an example.

The acceptance shall be unconditional and absolute. If the acceptance is given with any condition changing any portion of the original offer then it is known as counter offer.

An example:

'A offers B to buy his car for Tk. 1,000,000 but B agrees to pay Tk. 900,000'. The offer made by B is a counter offer to A.'

19. When is consent said to be free?

As contained in the Section 14 of the Contract Act, 1872; a consent is said to be free when it is not caused by coercion, undue influence, fraud misrepresentation or by mistake.

20. 'Parties to a contract must be competent to contract.' – Explain.

An essential element of a contract is that the parties to a contract must be competent to contract. If the parties are not competent to a contract as per Section 11 of the Contract Act, 1872; the agreement will be a void agreement. It will not be a contract. So, it can be said that parties to a contract must be competent to enter into an agreement enforceable by law to make it a contract.

21. The Contract Act specifically declares certain agreements to be void. You are required to list such agreements.

As per Contract Act, 1872; the following agreements are void;

- Where both the parties to an agreement are under mistake as to a matter of fact essential to the agreement,
- If any part of a consideration is unlawful,
- Agreement without consideration,
- Every agreement in restraining marriage other than a minor,
- An agreement made by a minor or by an unsound mind,
- The meaning of the agreement is not certain,
- Agreement by way of wagering,
- Agreement which is not possible,
- Supervening impossibility.

22. What is contract of bailment? Give an example.

Or ~ Distinguish between bailment and pledge.

As per Section 148, a contract of bailment is the delivery of goods by one person to other for some purpose upon a contract that they shall. When the purpose is accomplished be returned and otherwise disposed of according to the directions of the person deliver them.

For example: 'A' delivers his watch to 'B' for repairing as per Section 172 of the Contract Act, 1872. The bailment of goods as security for payment of a debt or performance of the promise is called pledge.

23. What are the characteristics of consideration?

The characteristics are;

- Consideration must be at the desire of the promisor,
- Consideration must be real,
- Consideration may move from promisee or from any other person,
- Consideration need not be adequate,
- It must be lawful,
- It may be past, present or future.

24. What is consideration?

As per Section 2 (d) of the Contract Act, 1872; when at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to be abstaining from doing something, such act or abstaining or promise is called a consideration for the promise.

25. What is a voidable agreement?

As per Section 2 (i) of the Contract Act, 1872; an agreement which is enforceable by law at the opinion of one or more of the parties thereto, but not at the option of the other or others, is a voidable agreement.

26. 'Ignorance of law is no excuse to avoid a contract.' – Discuss.

We all are working and exercising our rights and obligations under the law. These laws are unlikely to be known to all of us. The ignorance of the law is not a valid reason to avoid contract. In this case, contract should be performed specifically. But not knowing these does not exclude one from the obligations and rights stemming from law for non-performance of the contract one will be held liable for damages as contained in the Act for breach of the contract on the ground of ignorance of law only.

27. What is the Agent's duty to the Principal?

The duties are;

- Conduct the business according to the direction of the principal,
- To carry out the business with reasonable care, skill and diligence,
- To keep proper accounts,
- Communication with principal,
- Not to deal on his own account,
- Refund of benefit,
- Protection of interest of principal,
- Not to delegate authority,
- Disclosure of all information to the principal.

28. What are the rights of bailor and bailee under the contract Act?

Rights of the Bailor;

- Specific performance,
- Voidable agreement for the optioned to him if bailee breach any term of the contract,
- Refund of goods for bailment without any charges,
- Suit by bailor against wrong doer.

Rights of the Bailee;

- Specific performance,
- Delivery of goods to or according to the direction of the bailor or of anyone in case of joint owners,
- Not responsible to the owner after delivery of goods if the Bailor has no title,
- Sue against third party,
- Lien on goods.

29. 'An agreement enforceable by law is a contract.' – Explain.

As per Section 2 (h) of the Contract Act, 1872; 'an agreement enforceable by law is a contract' and as per Section 2 (g) of the Contract Act, 1872; 'an agreement not enforceable by law is void'.

Following are the essential elements of a contract which are required in an agreement to be enforceable by law;

- Offer and acceptance,
- Consideration,
- Legal capacity to contract,
- Free consent,
- Lawful object,
- Certainty of meaning and object,
- Possibility of performance,
- Written and registered.

If the above elements are available in the agreement, the agreement will be enforceable by law and it will be a contract.

30. What do you understand by supervening impossibility? How it may occurred.

As per Section 56 of the Contract Act, 1872; a contract to do an act which after the contract is made becomes impossible or by reason of some events, which the promisor could not prevent, unlawful becomes void when the act becomes impossible or unlawful.

Following are the events;

- Destruction of an object necessary for the performance of the contract,
- Failure of preconditions for performance of contract,
- Personal incapability or death,
- For declaration of war,
- Change of law.

31. 'A' a wholesale merchant authorizes his agent 'B' to purchase rice from 'Rajshahi' for Tk. 50,000. 'B' without purchasing rice purchased Jute from 'C' for the same amount and entered into an agreement that the price will be paid by 'A'. But 'A' refuses to pay. Has 'C' any remedy against 'A' or 'B'? Discuss.

B is the agent of A and B has done the activity beyond his authority violating Section 188 of the Contract Act, 1872 and for this reason A will not be liable to pay the bill to C. But C can sue against B for payment of Tk. 50,000.

32. Can a minor be employed as an agent?

As per Section 184 of the Contract Act, 1872; a person who is not of the age of majority and of sound mind cannot become an agent. So, a minor cannot be an agent.

33. 'A' a petrol pump dealer purchases oil from Bangladesh Petroleum Corporation and sales it to public at a price fixed by the petroleum corporation. He pays all the collection petroleum corporation on a daily basis and monthly adjustment is made for his fixed margin on sales. Is he an agent? If yes why, if not why not?

There are various types of agent and agency created under different ways. In this case, A is a commission agent of Bangladesh Petroleum Corporation (BPC). Under the Contract Act, 1872; a commission agent or a broker is treated as an agent. So, A is the agent of BPC.

34. What is the difference between a void agreement and an illegal agreement?

The differences are;

Void Agreement	Illegal Agreement
A void agreement is an agreement although it is not enforceable by law.	An illegal agreement is not an agreement.
A void agreement may be valid and enforceable before declaration as void.	Illegal agreement is void since entered into and is not enforceable at all.
Agreements which are incidental or collateral to void agreement may be valid.	In case of illegal agreement, other incidental or collateral agreements to this are absolutely void.
A void agreement is generally made with good intention.	An illegal agreement made with criminal intention.
As per Section 2 (g), an agreement not enforceable by law is said to be void.	Illegal agreement is an agreement which is prohibited by any law of the country.

35. Under what circumstances a contract of bailment is terminated?

The circumstances are;

- By expiry of time,
- The objective is achieved,
- By breaching of the term of Bailment,
- By death, (Contd.)

- Destruction of the subject matter of Bailment.

36. What are the remedies for breach of contract? What are the breaches due to supervening impossibility?

Remedies for breach of a contract:

Following are the remedies for the person in the contract who suffered losses for breach of a contract;

- Rescission or exoneration of the contract,
- Claim for damages,
- Claim quantum meruit is reasonable sum,
- Specific performance of contract,
- Injunction.

Breach of a contract due to supervening impossibility:

When the contract cannot be performed any circumstance for the following reason, then it is known as the breach of a contract due to supervening impossibility;

- Change of law,
- Destruction of an object necessary for the performance of the contract,
- Failure of preconditions for performance of contract,
- Personal incapability or death,
- For declaration of war.

37. What are the limitations of the wife as an agent in binding her husband?

The husband is not liable to pay any debt of his wife created marriage. The wife has right to purchase any essential goods for which the husband will be liable subject to the following limitations;

- The wife was prohibited publicly to purchase in credit,
- The goods were not essential,
- Sufficient cash was given to wife,
- The supplier was prohibited to deliver goods the wife on credit.

38. What is agency by necessity?

When any activity was done by any person for another, without the consent of the later and if it was considered that;

- The activity was very necessary,
- No time was available to take consent,
- It was done honestly by the person.

Then an agency is created and it is known as agency is necessity.

39. Discuss about the extent of authority of an agent.

The authority of an agent;

- When agent is authorized to do anything he may do all related lawful activity, (Contd.)

- An agent having authority to carry on business his authority to do every lawful thing necessary for the purpose as usually done in the course of conducting such business,
- Incase of emergency the agent has to protect the interest of principal, he will do all things diligently.

40. What is the Principal's duty to Agent?

Duty of Principal to Agent;

- To indemnify the agent against the consequences of all lawful acts done by the agent,
- To indemnify the agent for the activity of good faith,
- The principal must make compensation to his agent in respect of losses caused to agent by the negligence of the principal,
- To pay his remuneration/commission etc.

41. When is the communication of proposal and acceptance complete? How and when can they be revoked?

The communication of proposal is completed when it comes to the knowledge of the person to whom it is made.

The communication of acceptance is completed as against the proposal when it is put into a course of transmission to him.

Revocation of Proposal:

A proposal may be revoked at any time before the communication of its acceptance is completed as against the proposal but not afterwards. The procedures of revocation of proposal are;

- By notice,
- By lapse of time,
- By lapse of reasonable time,
- By death or insanity of offerer.

Revocation of Acceptance:

An acceptance may be revoked at any time before the communication of the acceptance is completed as against the acceptor, but not afterwards.

42. What are the legal consequences of a contract which has been frustrated due to supervening impossibility?

The legal consequences are;

- The contract will be void,
- Benefit is to be returned back,
- To pay compensation for the impossibility, illegality was known by any party.

43. What do you understand by 'Offer' and 'Acceptance'?

An 'Offer' involves the making of a 'Proposal'. The term proposal is defined in the Contract Act, 1872 as follows; (Contd.)

When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the amount of the other to such act or abstinence, he is said to make a proposal.

A proposal is called offer when it is treated as a promise. The person making the offer is called the offerer. The person to whom the offer is made called the offeree.

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. On the other hand assent of the offeree on the offer of the offerer is known as acceptance. A proposal when accepted becomes a promise. The person making the proposal is called the promisor and the person accepting the proposal is called the promisee.

44. What is a contract of agency? Discuss the general rules of agency?

Agency is a relationship between two parties namely Principal and Agent. An agent is a person employed to do any act for another to represent another in dealings with third persons. The person for whom such act is done is called the principal. An agent may be appointed by the principal executing a written and stamped document, which is called Power of Attorney. The power of attorney is generally known as contract of agency.

There are two kinds of power of attorney;

1. General: A general power is one by which the agent is given an authority to do certain general objectives. Say managing a business.
2. Special or particular: A special or particular power may be given for doing a specific thing. Say selling some goods.

General rules of Agency:

Usually agents are appointed with specific instruction and authorized to act within the scope of their instructions. Acts of the agent within the scope of power of attorney bind the principal. The act of an agent is the act of the principal.