

## Long Answer Questions

# 1) What are the essential elements of Indian contract Act?

## Agreement - Offer and Acceptance

The parties to the contract should have a mutual understand regarding the subject-matter of the contract. There must be a "lawful offer" and "lawful acceptance" thus resulting in an agreement. The parties must have agreed to the subject-matter in the same sense.

## Legal purpose

There must be an intention among the parties that the agreement should be attended to by legal consequences and create legal obligation. Agreements of social or domestic nature do not contemplate legal relations.

## Lawful Consideration

Consideration means 'something in return'. In every legal contract, there must be something in return. An agreement is legally capable to be enforced only when each of the parties to it gives something and gets something. The consideration should not be unlawful, illegal, immoral or opposed to public policy.

## Capacity to contract

Every person who enters into a contract must be competent. In other words, the person should be of the age of majority, should have a sound mind, and must not be disqualified from any law to which they subject. Minors, lunatics, unsound and intoxicated persons are incompetent to enter into a contract. However, there are exceptions as defined in Section 68. In case of an exception the minor or lunatic is not personally liable.

## Consent to contract

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.

## Lawful object

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.

## Certainty

Every agreement of the contract must be certain. If the agreement is not certain or incapable of being made certain, it is void.

## Possibility of Performance

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.

## Not expressly declared void

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.

## Legal formalities like Writing, Registration etc.

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.

All the above ingredients must be satisfied in every valid contract. It can be noted that all contracts are agreements, but not all agreements are contracts.

## Q.2 What are the different types of business entities?

In India, the following types of business entities are available:

- Private Limited Company
- Public Limited Company
- Unlimited Company
- Limited Liability Partnership ([LLP](#))

- Partnership
- Sole Proprietorship
- Liaison Office / Representative Office
- Project Office
- Branch Office
- Joint Venture Company
- Subsidiary Company

Both the Indian promoters and the foreign promoters can form the following business entities: Private Limited Company, Public Limited Company, Limited Liability Partnership, Unlimited Company, Partnership and Sole Proprietorship. The foreign companies also have the options of forming the following type of business entities: Liaison Office/Representative Office, Project Office, Branch Office, and Joint Venture Company. It must be noted that a Joint Venture Company is not a separate type of legal entity; it could be either a Private Limited Company, a Public Limited Company, or an Unlimited Company. Similarly a wholly owned Subsidiary of a foreign company in India could be either a Private Limited Company, a Public Limited Company, an Unlimited Company, or a Branch Office.

For a foreign Investor in India it is very important to choose a right kind of business or corporate entity which best suits its purposes and takes care of liability issues and tax planning issues. Foreign Companies planning to do business in India should pay special attention to Entry Strategies in India for Foreign Investors and corporate structuring to save taxes to the best extent allowed by laws and international tax treaties.

It is also mandatory for foreign investors or foreign shareholders, both individuals and corporate shareholders, to seek Government Approvals for Investing in India. In some special cases Foreign Investment Promotion Board, FIPB Approval for Foreign Investment in India is required. In other cases Reserve Bank of India, RBI Approvals for Foreign Investment in India is required. The sectors where RBI Approval for foreign investors is available under automatic route can be found at FDI in India Sector wise Guide.

There are various steps required to establish a business in India, before and after incorporation, as mentioned hereinafter. See also the Procedure for Formation of Company in India.

A Company in India can have foreign directors provided some conditions are fulfilled. The directors of an Indian company, both Indian and foreigner directors, are required to obtain Director Identification Number - DIN and Digital Signature Certificate - DSC.

## **What are the salient features of IT Act 2008?**

## **Salient features of the Information Technology (Amendment) Act, 2008**

1. The term ‘digital signature’ has been replaced with ‘electronic signature’ to make the Act more technology neutral.
2. A new section has been inserted to define ‘communication device’ to mean cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text video, audio or image.
3. A new section has been added to define cyber cafe as any facility from where the access to the internet is offered by any person in the ordinary course of business to the members of the public.
4. A new definition has been inserted for intermediary.
5. A new section 10A has been inserted to the effect that contracts concluded electronically shall not be deemed to be unenforceable solely on the ground that electronic form or means was used.
6. The damages of Rs. One Crore prescribed under section 43 of the earlier Act of 2000 for damage to computer, computer system etc. has been deleted and the relevant parts of the section have been substituted by the words, ‘he shall be liable to pay damages by way of compensation to the person so affected’.
7. A new section 43A has been inserted to protect sensitive personal data or information possessed, dealt or handled by a body corporate in a computer resource which such body corporate owns, controls or operates. If such body corporate is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, it shall be liable to pay damages by way of compensation to the person so affected.
8. Sections 66A to 66F has been added to Section 66 prescribing punishment for offences such as obscene electronic message transmissions, identity theft, cheating by impersonation using computer resource, violation of privacy and cyber terrorism.
9. Section 67 of the IT Act, 2000 has been amended to reduce the term of imprisonment for publishing or transmitting obscene material in electronic form to three years from five years and increase the fine thereof from Rs.100,000 to Rs. 500,000. Sections 67A to 67C have also been inserted. While Sections 67A and B deals with penal provisions in respect of offences of publishing or transmitting of material containing sexually explicit act and child pornography in electronic form, Section 67C deals with the obligation of an intermediary to preserve and retain such information as may be specified for such duration and in such manner and format as the central government may prescribe.
10. In view of the increasing threat of terrorism in the country, the new amendments include an amended section 69 giving power to the state to issue directions for interception or

monitoring of decryption of any information through any computer resource. Further, sections 69A and B, two new sections, grant power to the state to issue directions for blocking for public access of any information through any computer resource and to authorize to monitor and collect traffic data or information through any computer resource for cyber security.

11. Section 79 of the Act which exempted intermediaries has been modified to the effect that an intermediary shall not be liable for any third party information data or communication link made available or hosted by him if; (a) The function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; (b) The intermediary does not initiate the transmission or select the receiver of the transmission and select or modify the information contained in the transmission; (c) The intermediary observes due diligence while discharging his duties. However, section 79 will not apply to an intermediary if the intermediary has conspired or abetted or aided or induced whether by threats or promise or otherwise in the commission of the unlawful act or upon receiving actual knowledge or on being notified that any information, data or communication link residing in or connected to a computer resource controlled by it is being used to commit an unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.
12. A proviso has been added to Section 81 which states that the provisions of the Act shall have overriding effect. The proviso states that nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957.

## **What are the salient features of Consumer Dispute Redressal Forum?**

It enshrines the following rights of consumers:

(a) right to be protected against the marketing of goods and services which are hazardous to life and property; (b) right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices; (c) right to be assured, wherever possible, access to a variety of goods and services at competitive prices; (d) right to be heard and to be assured that consumers' interests will receive due consideration at the appropriate fora; (e) right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and (f) right to consumer education;

(iii) The Act also envisages establishment of Consumer Protection Councils at the central, state and district levels, whose main objectives is to promote and protect the rights of consumers;

(iv) The Act provides for simple, inexpensive and timely redressal of consumer complaints. To this end the Act envisages a three-tier quasi-judicial machinery at the national, state and district levels. These are: National Consumer Disputes Redressal Commission known as National Commission, State Consumer Disputes Redressal Commissions known as State Commissions and District Consumer Disputes Redressal Forum known as District Forum. As on date, 627 District Fora, 35 State Commissions and the National Commission have been established in the country. The Act also provides for setting up of Consumer Protection Councils at the Central, State and District level, which are advisory bodies to promote and protect the rights of the consumers.

## **Short Answer Qusetions**

- 1) State the definition of consumer and Complaint.
- 2) What do you mean by a Digital signature?
- 3) What are the conditions for Capacities to contract?
- 4) What do you mean by a Public Company?