

Question No.5 Write short notes on of the following:

d) Essential Elements of a Valid Contract

Solution: The law of contract enforces only those agreements which graduate to contract. The agreements in order to be enforceable by the law of contract must graduate to a valid contract. For the purpose, the agreement must fulfill certain essential conditions or elements. In the absence of one or more of these elements the agreement is void ab initio (right from the beginning). In view of this the agreement must have the following essential elements to be a valid contract, as contained in Sec 10 of the Indian Contract Act 1872.

1. **Parties :** The agreement must be made between two or more parties/persons as one person cannot form an agreement.
2. **Offer and Acceptance :** There must be a valid offer and valid acceptance of the offer. As such the terms of the offer must be definite and certain and communicated to the person to whom the offer is made and offer must be made with an intention to create legal obligations. The acceptance of the offer must be absolute and unconditional and according to the mode prescribed and must be communicated to the offeror
3. **Intention to Create Legal Obligations:** The parties must have the intention to create legally binding obligations. Obligation should be commercial and not social or domestic.
4. **Competency or capacity of the parties (Section 11 and 12):** The agreement must be between parties who are competent or capable to contract. For the purpose parties should not be minors or persons of unsound mind or disqualified from contracting by any law to which they are subject.
5. **Genuine consent (Sec-13) :** There must be consensus ad idem for the validity of the agreement which means consent given by the parties to the agreement must be real and genuine and it should not be vitiated by mutual or common mistakes. The parties must understand and agree the same thing (subject matter) in the same sense (terms).
6. **Consideration (Sec-25) :** The agreement must be supported by consideration.
7. **Lawful object and consideration (Section 23 & 24) :** The object as well as the consideration must be lawful.
8. **Certainty (Sec-29) :** The agreement must be certain and not vague or indefinite.
9. **Possibility of performance (Sec 56(i)) :** The agreement must not be entered into to do an act impossible in itself i.e. the act must be capable of performance.
10. **Agreement not declared void (Sec 26-30) :** Here we are listing some of void agreements which are against public policy as contained in the Act.
 - Agreements in restraint of marriage (Sec -26)
 - Agreements in respect of trade (Sec. 27)
 - Agreements in restraint of legal proceedings (Sec. 28).
 - Agreements by way of Wager