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CAF 4
BUSINESS LAW DYNAMICS

VOLUME I – CHAPTER 6

PERFORMANCE OF CONTRACTS – I

1. INTRODUCTION

After a valid contract is made, the parties are bound to perform their promises.

This chapter explains the rules relating to the manner, time, place and mode of performance of a contract.

2. MANNER OF PERFORMANCE

When a contract prescribes or implies a certain manner of performance, it must be performed in that manner.

Rule	Examples
If the contract specifies the manner, that manner must be followed.	A agrees to deliver goods by rail. He must deliver by rail, not by road.
If no manner is prescribed, it must be done in a reasonable manner.	A agrees to deliver wheat to B. No manner is mentioned, so A must deliver in a reasonable manner.

3. TIME OF PERFORMANCE

The rules relating to time of performance are as follows:

Time Essence	If time is of the essence of the contract, delay in performance gives the other party the right to treat the contract as breached.
When Time Not Essence	If time is not of the essence, mere delay does not make the contract voidable.
Fixed Day	If a day is fixed for performance, it must be done on that day.
No Day Fixed	If no day is fixed, performance must be done within a reasonable time.
Time Becomes Impossible	If performance within the appointed time becomes impossible without fault of either party, contract becomes void.

4. PLACE OF PERFORMANCE

When a contract specifies a place for performance, it must be performed at that place.

Situation	Rule
Place Fixed by the Contract	Must be performed at the place mentioned.
No Place Fixed	Must be performed at the place where the promisee resides or carries on business.
Movable Goods	Delivery must be made at the place where the goods are at the time of the contract.

5. MODE OF PERFORMANCE

If the contract prescribes a particular mode (e.g., by post, by email, by registered courier), that mode must be followed.

If no mode is prescribed, any reasonable and usual mode may be adopted.

6. EFFECT OF NON-PERFORMANCE

If a party fails to perform his promise:

- It amounts to breach of contract.
- The other party may treat the contract as repudiated.
- He may claim damages for the loss suffered.
- He may also seek specific performance in appropriate cases.

7. EXAMPLES

1. A agrees to pay B Rs. 100,000 on 1st July. A pays on 5th July. Time was essence, B may treat contract as breached.
2. A agrees to deliver 100 bags of cement to B's godown in Karachi. A must deliver at B's godown in Karachi.
3. A agrees to send documents to B by registered post. A cannot send by ordinary post.

SUMMARY

Contract must be performed as per rules of manner, time, place and mode. → If time is essence, delay = breach. If not, contract remains valid. → Follow the place specified; otherwise, at place of promisee's residence/business. → Follow the mode agreed; otherwise, use a reasonable mode. → Non-performance leads to breach and liability for damages or specific performance.

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VOLUME I – CHAPTER 1

INTRODUCTION TO THE LEGAL SYSTEM

ONE PAGE REVISION

"Know the legal system, understand the rule, then apply it to the facts."

1. LAW & MERCANTILE LAW

- Law: rules of conduct designed and enforced by the State to control and regulate people.
- Business / Mercantile Law is part of civil law dealing with rights and obligations in business relationships.
- CA students study law to identify legal problems, assess financial implications and know when legal help is required.

2. SOURCES OF LAW IN PAKISTAN

- Legal system is based on the Constitution of Pakistan 1973 and Islamic law (Sharia).
- Legislation: Acts of Parliament, Ordinances and delegated legislation.
- Precedent: superior court decisions binding on subordinate courts.
- Custom and Agreement are also recognised sources.

3. CIVIL LAW vs CRIMINAL LAW

- Civil law: rights and duties between persons; claimant sues defendant; normal aim is remedy / compensation.
- Criminal law: State prosecutes accused for breach of criminal law; aim is punishment.
- The same act may create both civil liability and criminal prosecution.

4. CONSTITUTION 1973 – AT A GLANCE

- Supreme law of Pakistan; Parliament cannot make law inconsistent with it.
- Contains a Preamble, 12 Parts, 280 Articles and 5 Schedules.
- Part II: Fundamental Rights & Principles of Policy.
- Part III: Federation of Pakistan; Part VI: Finance, Property, Contracts & Suits.

5. FEDERAL PARLIAMENTARY SYSTEM

- President = Head of State; Prime Minister = Head of Government.
- Federal Legislature is bicameral Majlis-e-Shoora (Parliament).
- Parliament consists of President, National Assembly (Lower House) and Senate (Upper House).
- Senate is a permanent legislative body with provincial representation.

6. ORDINARY BILL – CORE FLOW

- Passed by the House in which it originates and sent to the other House.
- If rejected / amended and disagreement remains, it may go to a joint sitting at the request of originating House.
- Joint sitting passes by majority of members present and voting.
- Bill then goes to the President for assent.

7. MONEY BILL – ARTICLE 73

- Money Bill originates in the National Assembly.
- A copy is sent to the Senate for recommendations.
- National Assembly may accept or reject Senate recommendations.
- Senate approval is NOT required; Bill is presented to the President for assent.

8. PRESIDENT'S ASSENT – ARTICLE 75

- President shall assent within 10 days or return a Bill (other than Money Bill) for reconsideration.
- If returned, Parliament reconsiders it in joint sitting.
- If again passed by majority of members present and voting, it is presented again for assent.

9. ORDINANCE – ARTICLE 89

- President may promulgate an Ordinance when immediate action is necessary and Senate or National Assembly is not in session.
- It has the same force and effect as an Act of Parliament.
- It stands repealed after 120 days if not passed/presented as required.
- National Assembly may extend it for one further period of 120 days.

10. DELEGATED LEGISLATION

- Parliament delegates limited law-making power to an executive, minister or public body.
- Purpose is to make subordinate legislation for specified matters.
- Example: local authorities making bye-laws for a locality.
- Delegated power must remain within the limits set by Parliament.

11. ADVANTAGES / DISADVANTAGES

- Advantages: saves Parliament's time; technical matters can involve experts; more flexible and easier to amend.
- Disadvantages: law-making shifts to unelected officials; large volume can become difficult to manage and keep updated.

12. CONTROL + EXAM FOCUS

- Parliament controls delegated legislation by restricting and defining the power to make rules.
- Courts may declare delegated legislation void if it is ultra vires or made without due compliance.
- Exam focus: sources of law, civil vs criminal, Money Bill, Ordinance 120 days, delegated legislation and control.

QUICK RECALL

Sources	Money Bill	President	Ordinance	Delegated Law
Legislation • Precedent • Custom • Agreement	NA origin • Senate recommendations only	10 days for assent / return (non-money bill)	120 days + possible further 120 days	Court control: ultra vires = void

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CHAPTER 6: MORTGAGES AND CHARGES

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"A charge is a security interest created by a company over its assets to secure the payment of debt or the performance of an obligation."

1. MORTGAGE – INTRODUCTION

- A mortgage is a transfer of interest in specific property as security for the payment of money or performance of an obligation.
- Extends only to the property specifically charged.
- Does not extend to after-acquired property or other property of the company.
- Company's assets remain available for its business unless terms of mortgage state otherwise.

2. CREATION OF MORTGAGE

- Mortgage or charge can be created only by a resolution passed in a general meeting.
- Special resolution is required.
- Particulars of mortgage and terms of issue must be stated in the resolution.
- Powers of directors to create mortgage must be expressly conferred by the resolution.

3. REGISTRATION OF MORTGAGE / CHARGE

- Mortgage or charge must be registered with Securities and Exchange Commission of Pakistan (SECP).
- Registration must be made within 30 days of the creation of mortgage or charge.
- Particulars must also be filed with the registrar within 30 days.
- Registration gives notice to creditors and other persons.

REGISTERED

4. MODIFICATION OF MORTGAGE / CHARGE

- Any modification must be recorded in writing.
- A copy of the modification must be registered with SECP and filed with the registrar within 30 days.
- Otherwise, it is void against any creditor or member.

5. SATISFACTION AND DISCHAAGE

- When the debt or obligation secured is fully paid or performed, the mortgage/charge is deemed to be discharged.
- Company must register satisfaction with SECP and file with the registrar.
- Instrument of satisfaction must be executed in favour of the company.

6. RIGHTS OF MORTGAGEE / CHARGEE

- Can enforce the security in accordance with the terms of mortgage/charge.
- Can sell the secured assets under the powers conferred.
- Proceeds are applied towards the secured debt.
- Surplus, if any, belongs to the company.

7. PRIORITY OF MORTGAGES / CHARGES

- Priority is determined by the date and time of registration.
- First in time, first in right.
- Unregistered mortgage or charge is void against any creditor or member.

8. FLOATING CHARGE

- A floating charge is a charge on the company's undertaking or substantial part of its undertaking and property.
- It attaches to assets as and when they come into existence.
- Must be created by special resolution and registered.

9. KEY POINTS TO REMEMBER

- Created by special resolution of shareholders.
- Registered with SECP within 30 days.
- Modification must be registered within 30 days.
- Unregistered charge is void against creditors.
- Priority by date and time of registration.
- Satisfaction must be registered and filed.

10. EXAM FOCUS / MUST KNOW

- Meaning and nature of mortgage and charge.
- Procedure for creation and registration.
- Time limit for registration and modification.
- Effect of non-registration.
- Rights of mortgagee/chargee.
- Priority rules.
- Floating charge – meaning and application.
- Satisfaction and discharge.

11. DIFFERENCE BETWEEN MORTGAGE AND CHARGE

Basis	Mortgage	Charge
Nature	Transfer of interest in specific property.	Right or interest in the property without transfer of interest.
Scope	Extends only to specific property.	May extend to whole or substantially the whole of assets.
Possession	Generally, mortgagee may take possession.	No right to possession unless default and terms allow.
Form	Usually by deed.	May be by deed or by registration as per the Act.

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CHAPTER 7: MEETINGS AND RESOLUTIONS

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“Effective meetings and valid resolutions ensure proper decision-making and legal compliance in a company.”

1. MEANING OF MEETING

A meeting is an event where members or directors assemble together at a specified time and place to transact the business for which the meeting is called.

2. TYPES OF MEETINGS

- **Statutory Meetings**
  e.g. Annual General Meeting
- **Extraordinary General Meetings (EGM)**
  Called for special business
- **Board Meetings**
  Meetings of directors to manage affairs
- **Committee Meetings**
  e.g. Audit Committee, HR Committee etc.

3. CONVENING OF GENERAL MEETING

- Notice must be given to all members, directors and auditors as prescribed.
- Notice of AGM: At least 21 clear days before meeting.
- Notice of EGM: At least 14 clear days before meeting.
- Notice must specify: day, date, time, place and agenda of the meeting.
- Shorter notice may be given with consent of members entitled to attend and vote.

4. QUORUM

- **For General Meeting:**
  Members personally present holding at least 1/10th of total paid-up share capital with voting rights.
- **For Board Meeting:**
  One-third of total directors or two directors, whichever is higher.
- If quorum not present within half an hour, meeting stands adjourned.

5. CHAIRMAN OF MEETING

- **In General Meeting:** Chairman of the Board shall preside.
- **In his absence:** Members present shall elect one of themselves.
- **In Board Meeting:** Chairman of the Board shall preside.
- **In his absence:** Directors present shall elect one of themselves.

6. VOTING

- Every member entitled to vote has one vote for every share.
- Voting may be show of hands, poll or electronic means as permitted.
- On a show of hands, a declaration by chairman of result is conclusive.
- On a poll, votes are counted and result declared.
- Casting vote: In case of equality, chairman has a casting vote.

7. PROXIES

- A member entitled to attend and vote may appoint another person as his proxy.
- Instrument appointing proxy and Power of Attorney (if any) must be deposited with the company not less than 48 hours before the meeting.
- A proxy need not be a member.

8. RESOLUTIONS – TYPES

Type	Requirement
Ordinary Resolution	Passed by simple majority (more than 50% of votes cast)
Special Resolution	Passed by at least 3/4th of the votes cast
Written Resolution	Signed by members holding requisite majority, circulated as per provisions
Resolution in Lieu of Meeting	Passed by written resolution in accordance with the Act

9. POSTAL BALLOT & E-VOTING

- Company may obtain members' consent through Postal Ballot.
- Notice with statement of purpose must be sent.
- Members must return their consent/objection within the specified time.
- Electronic voting as permitted under the Act and approved by the Commission.

10. MINUTES OF MEETING

- Minutes must be entered in Minute Book within 30 days.
- Minutes must be signed by the chairman of that meeting.
- Minutes are prima facie evidence of proceedings.

11. KEY POINTS TO REMEMBER

- Proper notice is essential.
- Quorum is mandatory.
- Resolutions must be passed as per prescribed majority.
- Minutes provide legal record.
- Always follow the Act and Articles.

12. EXAM FOCUS / HIGH YIELD TOPICS

- Notice periods for AGM, EGM and Board Meeting.
- Quorum requirements.
- Difference between Ordinary and Special Resolution.
- Requirements of Proxy and Postal Ballot.
- Minutes and their legal importance.

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MEETINGS AND RESOLUTIONS
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"Good meetings ensure good governance; valid resolutions drive legal actions."
1. MEETING – INTRODUCTION
A meeting is an assembly of members, directors or both for lawful business.
Companies Act, 2017 provides detailed rules for calling, quorum, proceedings and resolutions.
Meetings can be of members, directors or committee of directors.
2. TYPES OF MEETINGS
A. Members' Meetings
Annual General Meeting (AGM)
Extraordinary General Meeting (EGM)
Class Meeting
B. Directors' Meetings
Regular Board Meetings
Committee Meetings
3. CALLING OF MEMBERS' MEETING
Notice must be sent to every member, director and auditor.
21 clear days' notice required for AGM and EGM (shorter notice with consent).
Notice must state date, time, venue and agenda clearly.
Notice may be sent by hand, post, email or any electronic mode.
4. QUORUM – MEMBERS' MEETING
Quorum is the minimum number of members required to be present.
If quorum not present within half an hour, meeting stands adjourned.
If quorum not present in adjourned meeting also, the members present shall be the quorum.
5. PROCEEDINGS AT MEMBERS' MEETING
Chairman of the Board shall preside as Chairman of the meeting.
If no Chairman, then members present elect one as Chairman.
Poll may be demanded as per Act.
Chairman has a casting vote in case of equality.
6. VOTING
Every member has one vote for every share he holds.
Voting may be by show of hands or poll.
Poll means voting in person or by proxy or by post.
In equality of votes, Chairman has a casting vote.
VOTE
7. PROXY
A member entitled to attend and vote may appoint another person as proxy.
Instrument of proxy must be in writing.
A proxy must be deposited at the registered office not less than 48 hours before the meeting.
PROXY
8. RESOLUTIONS – TYPES
A. Ordinary Resolution
✓ Passed by simple majority of votes.
✓ Used for regular business matters.
B. Special Resolution
✓ Passed by not less than 3/4th majority of votes.
✓ Used for important matters as per Act (e.g. alteration in articles, winding up).
3/4
9. CIRCULATION OF RESOLUTION
Members' or directors' resolution may be passed by circulation.
Circulation must be accompanied by statement of material facts.
Resolution takes effect when majority of members/directors sign it.
Not applicable where meeting is required by members.
10. BOARD MEETING – KEY POINTS
Notice | 7 clear days' notice in writing (or shorter with consent).
Quorum | 1/3rd of total strength or two directors, whichever is higher.
Chairman | Elected by directors present.
Proceedings | Questions decided by majority of votes. In case of equality, Chairman has casting vote.
Circular Resolution | Permitted as per Act with consent and statement of facts.
11. KEY POINTS TO REMEMBER
Notice → Clear, timely & proper.
Quorum → Must be present.
Voting → Fair and transparent.
Resolutions → Ordinary or Special.
Proxy → In writing, deposited on time.
Minutes → Must be recorded and signed.
Compliance → Ensures validity of decisions.
EXAM FOCUS / MUST KNOW
Understand difference between members' meeting & directors' meeting.
Learn notice requirements, quorum & voting rules.
Know types of resolutions and majority required.
Master circular resolutions & proxy rules.
Practice past paper & scenario based questions.
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CHAPTER 8: DISTRIBUTION OF PROFITS

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"Profits are earned by the company, but distributed as per law and fairness."

1. DISTRIBUTABLE PROFIT

- Dividend can only be paid out of distributable profits.
- It includes current profits, past profits and reserves.
- Profits must be real, not notional or unrealized.
- Capital must be maintained; dividend cannot be paid out of capital.

2. DECLARATION OF DIVIDEND

- Dividend may be declared as interim or final.
- Interim dividend: Declared before year-end from current profits.
- Final dividend: Declared after year-end from accumulated profits.
- Approval by Board of Directors is required.

3. PAYMENT OF DIVIDEND

- Dividend must be paid within 10 working days from the date of declaration.
- Payment shall be made in cash through electronic mode directly into bank account.
- Chief Executive is responsible for payment to shareholders.

BANK TRANSFER

4. CIRCUMSTANCES WHERE NON-PAYMENT IS NOT AN OFFENCE

- Operation of any law.
- Shareholder has given directions that cannot be complied with.
- Dispute regarding the right to receive dividend.
- Dividend has been lawfully adjusted against any sum due from shareholder.
- Any other reason, not due to default of the company.

5. LAWFUL WITHHOLDING OF DIVIDEND

- Company may withhold payment of dividend if shareholder has not provided complete information or documents as specified by SECP.
- No approval of SECP is required for such withholding.

6. BOOK CLOSURE

- Register of members may be closed for a period not exceeding 30 days.
- Purpose is to determine entitlement of shareholders to dividend.
- Date of commencement of book closure is important for dividend declaration.

CLOSED

7. TRANSFER OF SHARES DURING BOOK CLOSURE

- No transfer of shares is registered during book closure.
- Shares transferred before book closure: transferee entitled.
- Shares transferred after book closure: transferor remains entitled.

8. ADJUSTMENT OF DIVIDEND

- Dividend may be adjusted against any sum due to the company from the shareholder.
- Adjustment must be lawful and properly authorized.

9. DISTRIBUTION AMONG CLASSES OF SHARES

- Dividend must be distributed equally among the shares of the same class.
- Different classes may have different rights as per Articles and Act.

10. INTERIM vs FINAL DIVIDEND

	INTERIM DIVIDEND	FINAL DIVIDEND
Timing	Declared before financial year end	Declared after financial year end
Source	From current profits	From accumulated profits
Approval	By Board of Directors	By Members in General Meeting
Payment Period	Within 10 working days from declaration	Within 10 working days from declaration
Amount	Generally smaller and interim in nature	Usually larger and final for the year

11. KEY POINTS TO REMEMBER

- Dividend only out of distributable profits.
- Interim dividend declared from current profits.
- Final dividend declared from accumulated profits.
- Payment within 10 working days through electronic mode.
- Non-payment is not an offence in specific circumstances.
- Company may withhold dividend for non-provision of information/documents.
- Book closure period cannot exceed 30 days.
- Dividend can be adjusted against dues of company.
- Equal distribution among same class of shares.

12. EXAM FOCUS / MUST KNOW

- Understand conditions for legal distribution of profits.
- Differentiate between interim and final dividend.
- Know circumstances where non-payment is not an offence.
- Learn rules about payment, withholding and adjustment.
- Practice scenario-based questions for better understanding.

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CAF 4 – BUSINESS LAW DYNAMICS

CHAPTER 9: INVESTMENTS AND DISCLOSURE OF INTEREST

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"Transparency in interest, clarity in investment, integrity in governance."

1. INVESTMENT BY COMPANY

- Company may invest in any mode or in any other manner as provided in its Memorandum of Association.
- Investment must be in accordance with the Act and Articles of Association.
- Board must ensure investment is in the best interest of the company.
- Investment must not jeopardize company's liquidity and solvency.
- Prior approval of shareholders is required in certain cases.

2. LIMITS ON INVESTMENTS

- Company cannot invest in shares or debentures of a holding company.
- Limits apply on investment in other companies (as per SECP regulations).
- Loans to directors and related parties are restricted.
- Investment in association not carrying on business is prohibited.

3. LOANS AND ADVANCES TO DIRECTORS

- Company cannot directly or indirectly give loan to a director.
- Includes any loan, advance, or guarantee on behalf of director.
- Exception: With approval of shareholders by special resolution.
- Loan already given must be repaid within specified time.

4. DISCLOSURE OF INTEREST – GENERAL

- Directors must disclose their interest in any contract or arrangement.
- Disclosure must be made at the first board meeting after becoming interested.
- Interest must be recorded in the minutes of the meeting.
- Director with interest cannot participate in discussion or voting.

5. DIRECT INTEREST

- A director is treated as having direct interest in a contract or arrangement in which he is a party.
- Includes contracts with firms or other companies where he is a member, director or manager.

6. INDIRECT INTEREST

- A director has indirect interest if he is interested through:
  - ✓ His partner
  - ✓ Any firm in which he is a partner
  - ✓ A private company of which he is a director or member

7. CONTRACTS WITH COMPANY

- Company cannot enter into contract with any director in which he is interested.
- Exception: Approved by shareholders through special resolution.
- Such contracts must be disclosed in the annual return.

8. PROCEEDS OF CONTRACT

- Where contract is entered into with director (with approval), proceeds must be paid to the company.
- Director cannot retain any benefit arising from such contract.

9. PENALTY FOR NON-DISCLOSURE

- Director who fails to disclose interest commits an offence.
- Liable to fine which may extend to Rs. 500,000.
- Defaulting director may also be liable to repay profits.

10. KEY POINTS TO REMEMBER

- ★ Investments must be in company's best interest and within legal limits.
- ★ No loan or guarantee to directors without shareholder approval.
- ★ Disclosure of interest is mandatory at the first Board meeting.
- ★ Interested director cannot participate in discussion or voting.
- ★ Non-disclosure attracts penalty up to Rs. 500,000.

11. EXAM FOCUS / MUST KNOW

- ✓ Types of investments allowed and prohibited.
- ✓ Restrictions on loans and guarantees to directors.
- ✓ Direct vs indirect interest with examples.
- ✓ Disclosure process and exceptions.
- ✓ Penalties and consequences.

12. DIRECT vs INDIRECT INTEREST (QUICK COMPARISON)

Feature	Direct Interest	Indirect Interest
Meaning	Director is a party to the contract.	Interest through partner, firm or company.
Examples	Contract with him personally.	Contract with his firm or private company.
Disclosure	Mandatory at first Board meeting.	Mandatory at first Board meeting.
Participation	Cannot participate in discussion or voting.	Cannot participate in discussion or voting.
Approval Required	Shareholders' special resolution if contract allowed.	Shareholders' special resolution if contract allowed.
Penalty for Non-Disclosure	Fine up to Rs. 500,000 + repay profits.	Fine up to Rs. 500,000 + repay profits.

NOTE

Always read the facts carefully and identify whether interest is direct or indirect. Check if shareholder approval is required and whether disclosure was made properly.

FOCUS ON CONCEPTS Understand the law thoroughly.

PRACTICE SCENARIOS Apply rules to different situations.

SOLVE PAST PAPERS Identify examiner's expectations.

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CHAPTER 7: MEETINGS AND RESOLUTIONS

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"Valid meetings and proper resolutions are the foundation of good corporate governance."

1. TYPES OF MEETINGS

- Annual General Meeting (AGM)
- Extraordinary General Meeting (EGM)
- Class Meeting
- Board Meeting
- Committee Meeting

2. CALLING OF MEETINGS

- Notice must be given to all members, directors & auditors.
- Notice must state date, time, venue and agenda.
- Notice may be sent by hand, post, email or any electronic mode.
- 21 clear days' notice for AGM (shorter notice possible with consent).

NOTICE

3. QUORUM

- Minimum number of members required to be present.
- If quorum not present within half an hour, meeting stands adjourned.
- If quorum not present in adjourned meeting also, the members present shall be the quorum.

4. CHAIRMAN

- Chairman of the board presides at members' meeting.
- If no chairman, members present elect one as chairman.
- Chairman has a casting vote in case of equality.

5. PROCEEDINGS

- Business must be as per agenda.
- Members may demand a poll as per Act.
- Questions decided by majority of votes.
- Minutes must be recorded and signed.

6. VOTING

- Every member has one vote for each share he holds.
- Voting may be by show of hands or poll.
- Poll means voting in person or by proxy or by post.
- In equality of votes, chairman has a casting vote.

VOTE

7. PROXY

- Member entitled to attend and vote may appoint another person as proxy.
- Instrument of proxy must be in writing.
- Proxy must be deposited at registered office not less than 48 hours before the meeting.

PROXY

8. RESOLUTIONS – TYPES

A. Ordinary Resolution

- ✓ Passed by simple majority of votes.
- ✓ Used for regular business matters.

B. Special Resolution

- ✓ Passed by not less than 3/4th majority of votes.
- ✓ Used for important matters (e.g. alteration of articles, winding up).

3/4

9. CIRCULATION OF RESOLUTION

- Members' or directors' resolution may be passed by circulation.
- Circular resolution must be accompanied by statement of material facts.
- Takes effect when majority of members/directors sign it.
- Not applicable where meeting is required by members.

10. KEY TIME LIMITS

AGM Notice	At least 21 clear days (shorter with consent)
Proxy Deposit	Not less than 48 hours before meeting
Quorum Check	Within half an hour of meeting time
Record	Minutes to be maintained and signed

11. KEY POINTS TO REMEMBER

- ★ Notice, quorum and voting rules are examiner's favourite area.
- ★ Understand difference between members' & directors' meeting.
- ★ Learn ordinary vs special resolution with examples.
- ★ Proxy rules are frequently tested.
- ★ Master the process and timelines for meetings.

EXAM FOCUS / MUST KNOW

- Learn meeting & resolution rules with time limits.
- Differentiate ordinary vs special resolution.
- Master proxy and voting procedures.
- Practice past paper & scenario based questions.
- Focus on examiner comments and common traps.

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CHAPTER 3: DIRECTORS

APPOINTMENT, ELECTION & CASUAL VACANCY

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> "Strong leadership and sound governance start with the right directors."

1. WHO CAN BE A DIRECTOR?

- A director must be a natural person.
- Must be a member of the company.
- Must not be disqualified under Section 159.
- Must satisfy criteria of independence (if required by law or Articles).

NOTE: All directors must act in the best interest of the company.

2. APPOINTMENT OF DIRECTORS

- Can be appointed by:
  - Directors
  - General meeting
  - In accordance with Articles
- Alternate director: Appointment must be notified to the company.
- Additional director: May be appointed by directors, valid until next AGM.

3. ELECTION OF DIRECTORS

- Existing directors fix the number of directors to be elected not later than 35 days before the meeting.
- Notice of intention to contest must be filed at least 14 days before election.
- If number of candidates > seats, election is by poll.
- Retiring director is eligible for re-election.

VOTE

4. CASUAL VACANCY

Vacancy occurs due to:

- Death
- Resignation
- Disqualification
- Removal
- Other reasons

Listed company: vacancy must be filled at the earliest and not later than 90 days.

5. DISQUALIFICATION OF DIRECTORS

A person cannot be director if:

- Of unsound mind, or undischarged insolvent
- Convicted of offence involving moral turpitude
- Not a member (except certain cases)
- Disqualified under any other provision of the Act or Articles

6. REMOVAL OF DIRECTORS

- By ordinary resolution in general meeting (with notice).
- Special notice by member having requisite shareholding.
- Director has right to be heard.
- Removal does not affect any contract entered into in good faith.

7. POWERS & DUTIES OF DIRECTORS

- Manage and supervise the affairs of the company.
- Act honestly, in good faith and in the best interest of the company.
- Exercise due care, skill and diligence.
- Avoid conflict of interest.

8. MEETINGS OF DIRECTORS

- Board may meet for transaction of its business, adjourn & otherwise regulate its meetings.
- Quorum: One-third of total directors or two directors, whichever is higher.
- Decisions by majority vote.

9. KEY POINTS TO REMEMBER

- ★ Eligibility and independence are crucial.
- ★ Timely filling of casual vacancies is mandatory for listed companies.
- ★ Notice and procedure must be strictly followed for election and removal.
- ★ Directors must always act in company's best interest.

10. APPOINTMENT vs ELECTION vs CASUAL VACANCY (AT A GLANCE)

	APPOINTMENT	ELECTION	CASUAL VACANCY
Who does it?	Directors / Members / Articles	Members in General Meeting	Directors (to fill)
When?	Anytime (as per need)	At AGM or requisitioned election	As soon as possible
Approval	As per Articles / Resolution	By members	Board resolution
Tenure	Up to next AGM (if additional)	As per Articles	Up to next AGM
Purpose	To strengthen the board	To ensure representation	To maintain minimum strength

11. EXAM FOCUS

- Rules for fixing number of directors and notice periods.
- Requisition of election by members.
- Conditions for filling casual vacancy.
- Disqualification and removal of directors.
- Powers, duties and liabilities of directors.
- Directors' meetings and quorum.

EXAM MUST KNOW

- Read Articles carefully.
- Remember time limits (35 days, 14 days, 90 days).
- Notice and quorum are frequently tested.
- Directors' duties = Good governance in exam.
- Practice scenario-based questions regularly.

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CHAPTER 10: ACCOUNTS AND ANNUAL RETURN

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"Accurate accounts reflect true position; timely returns ensure compliance."

1. FINANCIAL STATEMENTS

- Financial statements must be prepared in accordance with approved accounting standards.
- Must give a true and fair view of state of affairs, profit / loss and cash flows.
- Approved by the Board of Directors before circulation.

2. ANNUAL GENERAL MEETING (AGM)

- AGM must be held within 4 months after the end of each financial year.
- SECP may extend time for listed companies up to 1 month.
- Financial statements laid before members at AGM for approval.

AGM

3. ANNUAL RETURN – DEADLINE

- Annual return must be filed within 30 days of AGM.
- If AGM not held, must be filed within 30 days from last day of calendar year.
- Listed company may get extension up to 15 days from Registrar for special reasons.

30 DAYS

4. PARTICULARS INCLUDED IN ANNUAL RETURN

- Name, registered office and main objects.
- Share capital & its division.
- Directors, chief executive and company secretary.
- Pattern of shareholding.
- Investments in associated undertakings.
- Charges on assets.
- Any other prescribed particulars.

5. FORM & FILING

- Annual return must be filed in prescribed Form (latest format as notified by SECP).
- Filed with the Registrar in prescribed manner (physical or electronic).
- Fee is payable as per Companies (Fees on Filing of Documents) Regulations.

SUBMIT

6. REGISTERED OFFICE RECORDS

- All particulars in annual return must be previously recorded in registers kept at registered office.
- Registers must be maintained up to date.

REGISTER

7. NO CHANGE IN PARTICULARS

- Applies to single member company or private company with paid up capital not more than Rs. 3 million.
- Must inform Registrar in Form C within 30 days of AGM / year end.

FORM C

8. PENALTY FOR NON-COMPLIANCE

Any default / contravention is an offence:

- Listed company: Penalty up to Level 2 on standard scale.
- Other company: Penalty up to Level 1 on standard scale.

9. EXTENSION BY REGISTRAR

- Registrar may extend time for filing annual return for special reasons.
- Listed company: Up to 15 days.
- Other company: As may be prescribed.

10. KEY POINTS

- AGM within 4 months.
- Annual return within 30 days of AGM / year end.
- True & fair financial statements.
- No change → inform in Form C.
- Default → penalty on company & officers.

AGM & ANNUAL RETURN DEADLINES

Situation	AGM Deadline	Annual Return Filing Deadline
AGM held as scheduled	Within 4 months after financial year end	Within 30 days of AGM
AGM not held	–	Within 30 days from last day of calendar year
Extension granted (by Registrar)	Up to 1 month for listed companies	Up to 15 days extension for listed companies

LISTED vs OTHER COMPANIES

Basis	Listed Company	Other Company
AGM Extension	Up to 1 month	As may be prescribed
Annual Return Extension	Up to 15 days (by Registrar)	As may be prescribed
Penalty	Up to Level 2 on standard scale	Up to Level 1 on standard scale

EXAM FOCUS / MUST KNOW

- Understand deadlines for AGM and annual return.
- Remember particulars required in annual return.
- Know extension rules and penalties.
- Practice past papers and scenario based questions.

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VOLUME I – CHAPTER 2
OFFER, ACCEPTANCE AND REVOCATION

1. OFFER – DEFINITION

An offer is a proposal when made with the intention of creating legal relations, so as to become binding on the proposer as soon as it is accepted.

OFFER

2. ESSENTIALS OF A VALID OFFER

An offer must:

1. Be made with intention to create legal relations.
2. Be certain and definite, not vague or uncertain.
3. Relate to lawful consideration and lawful object.
4. Not be expressly or impliedly prohibited by law.
5. Be communicated to the offeree.

3. ACCEPTANCE – DEFINITION AND RULES

Acceptance is an unconditional agreement to the terms of the offer made by the proposer.

Rules of Acceptance	
Unconditional	It must be absolute and without any qualification or variation.
In agreement with offer	It must be in strict conformity with the terms of the offer.
Made in prescribed manner	It must be made in the manner prescribed or reasonable.
Within prescribed time	It must be made within the time fixed or, if no time is fixed, within a reasonable time.
Proper person	It must be made by the person to whom the offer is made.

Key Point
An acceptance not in accordance with the above rules is treated as a counter-offer and the original offer lapses.

5. COMMUNICATION OF ACCEPTANCE

Acceptance must be communicated to the proposer to become effective, unless:

- It is waived by the proposer; or
- The proposer knows of the acceptance.

6. REVOCATION OF OFFER

The proposer may revoke the offer at any time before it is accepted.

Revocation must:

- Be communicated to the offeree.
- Reach the offeree before acceptance.

REVOKED

7. TERMINATION OF OFFER

An offer comes to an end in any of the following cases:

1. When the offer is accepted.
2. When the offer is rejected.
3. When the proposer revokes the offer.
4. When the proposer lapses the offer (by express terms or by conduct).
5. When a reasonable time has elapsed without acceptance.
6. When the death or insanity of the proposer makes acceptance impossible.

8. EXAMPLE

Ali offers to sell his car to Ahmed for Rs. 1,000,000, stating that he will keep the offer open for 3 days.

- Ahmed accepts the offer on the 2nd day and communicates acceptance to Ali.
- A valid contract is formed.
- If Ahmed tries to accept on the 4th day, the offer has lapsed and no contract will be formed.

OFFER

SUMMARY

Offer is a proposal to create legal relations.	Acceptance must be absolute, in agreement and communicated.	Offer can be revoked any time before acceptance.	Offer terminates by acceptance, rejection, revocation or lapse.

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VOLUME I – CHAPTER 3

VALIDITY OF CONTRACTS AND AGREEMENTS

1. INTRODUCTION

Every agreement is not necessarily a contract. For an agreement to become a valid contract, it must fulfil certain essentials under the law. These requirements ensure that the agreement is enforceable by law.

CONTRACT

2. ESSENTIALS OF A VALID CONTRACT

A contract is valid only when the following essentials are present:

1. **Offer and Acceptance**
   There must be a lawful offer and its unconditional acceptance.
2. **Lawful Consideration**
   There must be some consideration which is lawful.
3. **Lawful Object**
   The object of the agreement must be lawful.
4. **Free Consent**
   Consent of the parties must be free and not caused by coercion, undue influence, fraud, misrepresentation or mistake.
5. **Capacity of Parties**
   Parties must be competent to contract according to law.
6. **Certain and Definite Terms**
   Terms of the contract must be certain and not vague or uncertain.
7. **Possibility of Performance**
   The agreement must be possible to perform.

3. AGREEMENTS VOID AND VOIDABLE

Void Agreements	Voidable Agreements
• An agreement which is not enforceable by law from the very beginning. • No legal rights or obligations arise from it. **Examples:** • Agreement in restraint of marriage • Agreement in restraint of trade (Section 27) • Agreement to do an illegal act • Agreement opposed to public policy	• An agreement which is enforceable at the option of one of the parties but not the other. • It is valid unless it is avoided by the party whose consent was not free or who was incompetent. **Examples:** • Agreements caused by coercion • Agreements caused by undue influence • Agreements caused by fraud, misrepresentation or mistake • Agreements with minor or unsound mind

! A void agreement cannot be ratified, but a voidable agreement can be ratified if the defect is removed (e.g., on attaining majority or on removal of undue influence).

4. FREE CONSENT – KEY POINTS

Consent is not free when it is caused by:

- **Coercion** – Committing or threatening to commit an act forbidden by law to the injury of the other party.
- **Undue Influence** – Taking unfair advantage of a position of domination to obtain consent.
- **Fraud** – Intentional deception to induce consent.
- **Misrepresentation** – False statement of fact which induces consent.
- **Mistake** – Mistake as to a fact essential to the agreement.

5. CAPACITY OF PARTIES

Person	Capacity to Contract
Major	A major person is competent to contract.
Minor	A minor is incompetent to contract. Agreement with a minor is voidable at the option of the minor.
Unsound Mind	A person of unsound mind is incompetent to contract. Agreement is voidable at his option on regaining sound mind.
Disqualified Person	A person disqualified by any law (e.g., undischarged insolvent) cannot contract except for necessaries.
Company	A company can contract through its authorized persons within the scope of its capacity.

6. EXAMPLES

1. Ali agrees to sell his bike to Ahmed for Rs. 80,000. Ahmed agrees and pays an advance. This is a valid contract as all essentials are present.
2. A agrees to pay B Rs. 50,000 to do an illegal act. This agreement is void as the object is unlawful.
3. C, a minor of 16 years, purchases a laptop on credit. He may avoid the contract on attaining majority.

7. KEY TAKEAWAYS

- All essentials must exist for an agreement to be a valid contract.
- Free consent and lawful object are most important for validity.
- Void agreements are invalid from the beginning.
- Voidable agreements are valid unless avoided by the aggrieved party.
- Validity of contract ensures legal enforceability of rights and obligations.

Remember: Not every agreement is a contract.

SUMMARY

All essentials must be present for a valid contract. → Consent must be free and object must be lawful. → Parties must be competent to contract. → Void agreements are invalid, voidable can be avoided or ratified.

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VOLUME I – CHAPTER 4

FREE CONSENT AND VOID AGREEMENTS

1. INTRODUCTION

- For a valid contract, consent of parties must be:
  - Real and voluntary
  - Not caused by: coercion, undue influence, fraud, misrepresentation or mistake (with certain exceptions).

AGREEMENT

2. COERCION

Definition [Section 15]

Coercion is committing, or threatening to commit, any act forbidden by the Pakistan 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.

Essentials of Coercion

1. There must be committing or threatening to commit an act
2. The act must be unlawful (forbidden by law)
3. It must be intended to cause the other party to enter into agreement
4. It must actually cause the other party's consent

Examples

- A threatens to kill B if B does not sell his land to A.
- A unlawfully detains B's goods and keeps them until B agrees to a contract.
- Government threatens to cancel licence of a trader unless he agrees to pay certain amount.

Agreement caused by coercion is voidable at the option of the aggrieved party.

3. UNDUE INFLUENCE

Definition [Section 16]

Undue influence is when one party is in a position to dominate the will of another and uses that position to obtain an unfair advantage in a contract.

When does it exist?

- Real and apparent authority
- Fiduciary relationship (e.g., trustee–beneficiary, guardian–ward)
- Dominant position and the other party's dependence
- Unfair advantage obtained

Examples

- A, being a doctor, persuades his poor patient B to sell his property cheaply.
- A, a guardian, takes money from his minor ward at a very low price.

Agreement caused by undue influence is voidable at the option of the aggrieved party.

4. FRAUD

Definition [Section 17]

Fraud is any of the acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract.

Examples

- A falsely represents that a machine is new when it is old.
- A conceals material facts about goods sold.

Agreement caused by fraud is voidable at the option of the aggrieved party.

5. MISREPRESENTATION

Definition [Section 18]

Misrepresentation is when any positive assertion, not warranted by information of the party making it, is made by him to another party, inducing him to enter into the contract.

Examples

- A represents a watch to be of Swiss brand when it is not.
- A states the quantity of goods to be 100 when it is actually 80.

Agreement caused by misrepresentation is voidable at the option of the aggrieved party.

6. MISTAKE

Definition [Section 20]

Mistake is an erroneous belief at the time of making the contract, regarding a fact essential to the agreement.

Types of Mistake	Effect
• Mistake of fact • Mistake of law	Agreement caused by mistake is voidable, subject to certain exceptions provided in Sections 21 to 24.

7. VOID AND VOIDABLE AGREEMENTS

Void Agreements	Voidable Agreements
• No legal effect from the beginning. • Cannot be enforced by either party. **Examples:** ○ Agreement without consent (no agreement at all) ○ Agreement with unlawful object or consideration ○ Agreement in restraint of marriage (except absolute restraint till majority)	• Valid and enforceable till avoided by the aggrieved party. • Becomes void upon avoidance. • Includes: ○ Agreements caused by coercion undue influence, fraud, misrepresentation or mistake

Only the aggrieved party can avoid a voidable agreement.

SUMMARY

Consent must be free and voluntary. → It must not be caused by coercion, undue influence, fraud, misrepresentation or mistake. → Agreements caused by these factors are voidable. → Agreements void are invalid from the beginning.

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VOLUME I – CHAPTER 5

CONTINGENT CONTRACTS

1. INTRODUCTION

A contract to do or not to do something, if such act is contingent on the happening or non-happening of a future uncertain event, is called a **Contingent Contract.**

CONTRACT

2. ESSENTIALS OF CONTINGENT CONTRACT

For a contract to be contingent, the following essentials must be present:

1. **Promise to do or not to do**
   There must be a promise to do or not to do something.
2. **Event must be uncertain**
   The happening or non-happening of the event must be uncertain.
3. **Event must be future**
   The event must be future, not past or present.
4. **Event must be beyond the control of the promisor**
   The event must be beyond the control of the promisor.
5. **Contract must depend on the event**
   The performance of the contract must depend upon the happening or non-happening of such event.

3. TYPES OF CONTINGENT CONTRACTS

Contingent contracts are of two types:

A. Contingent Contracts to Do Something	B. Contingent Contracts not to Do Something
In this type, the promisor agrees to do something if the uncertain event happens.	In this type, the promisor agrees not to do something if the uncertain event happens.
Example: A agrees to pay Rs. 100,000 to B if A wins the lottery.	**Example:** A agrees not to sell his house if B gets a government job.

If the event becomes certain, the contract becomes absolute.

4. EFFECT OF CONTINGENT CONTRACT

The contingent contract becomes enforceable only when:

Event Happens
If the uncertain event happens, the contract becomes absolute and enforceable.

Event Does Not Happen
If the uncertain event does not happen, the contract becomes void and unenforceable.

5. EXAMPLES

1. A agrees to give B Rs. 50,000 if rain falls in Lahore tomorrow.
   ➔ This is a contingent contract to do something.
2. A agrees not to open a new shop if C passes the CA Final exam.
   ➔ This is a contingent contract not to do something.
3. A agrees to sell his car to B if England wins the Cricket World Cup.
   ➔ If England wins, contract becomes enforceable; if not, contract becomes void.

6. IMPORTANT POINTS

- The uncertain event must not be impossible.
- If the event is impossible, such contracts are void.
- Contingent contracts cannot be enforced until the event happens.
- After the event happens, the contract is treated as an ordinary contract.
- Consideration must be present in contingent contracts.

SUMMARY

Promise depends on an uncertain future event. ➔ Two types: to do something or not to do something. ➔ Becomes enforceable only when the event happens. ➔ If event does not happen, contract becomes void and unenforceable.

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CAF 4 – BUSINESS LAW DYNAMICS

TOPIC 1 – COMPANY: INTRODUCTION, TYPES & REGISTRATION

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1 COMPANY – MEANING

- An artificial legal person created by law
- Formed by incorporation under the Companies Act
- Has perpetual succession and common identity separate from members

2 SEPARATE LEGAL ENTITY

- Company is distinct from its shareholders and directors
- Company owns its own assets and incurs its own liabilities
- Members are generally not owners of company property

3 MAJOR TYPES OF COMPANIES

- Private company
- Single member company
- Public company (listed / unlisted)
- Company limited by shares
- Company limited by guarantee
- Unlimited company

4 PRIVATE VS PUBLIC COMPANY

- Private company restricts transfer of shares
- Private company limits number of members as prescribed by law
- Public company may invite public subscription subject to law
- Public company has stricter disclosure and governance requirements

5 FORMATION / REGISTRATION STEPS

1. Select suitable type of company
2. Choose and reserve company name
3. Prepare required incorporation documents
4. File application with registrar / SECP
5. Pay prescribed fee
6. Obtain certificate of incorporation

6 KEY INCORPORATION DOCUMENTS

- Memorandum of association
- Articles of association
- CNIC / identification details of subscribers and directors
- Address of registered office
- Consent of directors / chief executive where required
- Declaration of compliance

7 CERTIFICATE OF INCORPORATION

- Conclusive evidence of due incorporation
- Company comes into existence from date of incorporation
- Registration defects generally cannot invalidate corporate existence

8 COMMENCEMENT OF BUSINESS

- Incorporation creates the company
- Certain companies may need additional compliance before commencing business or borrowing
- Distinguish incorporation from commencement requirements

9 EXAM FOCUS / GOLDEN EXAMINER TIPS

- Learn definitions and classifications clearly
- Write registration procedure in correct sequence
- Differentiate separate legal entity from limited liability
- Quote certificate of incorporation as conclusive evidence
- Use short headings and legal keywords in scenario answers
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QUICK RECALL

1. Company = separate legal person
2. Incorporation = birth of company
3. Certificate = conclusive evidence
4. Registration procedure must be written stepwise

Understand the concept. Remember the sequence. Write with clarity. Score with confidence.

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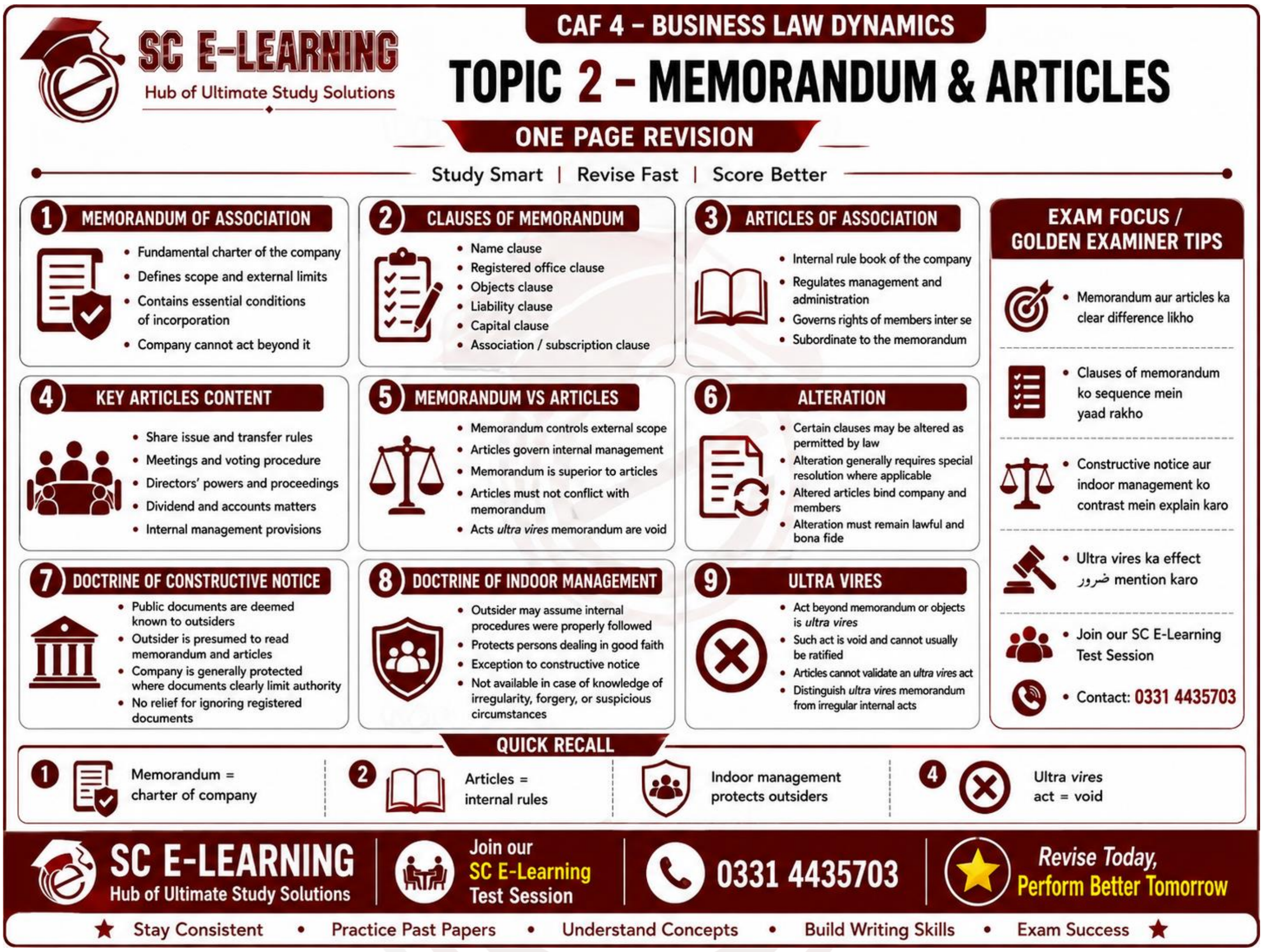
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TOPIC 2 – MEMORANDUM & ARTICLES
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1 MEMORANDUM OF ASSOCIATION
• Fundamental charter of the company
• Defines scope and external limits
• Contains essential conditions of incorporation
• Company cannot act beyond it
2 CLAUSES OF MEMORANDUM
• Name clause
• Registered office clause
• Objects clause
• Liability clause
• Capital clause
• Association / subscription clause
3 ARTICLES OF ASSOCIATION
• Internal rule book of the company
• Regulates management and administration
• Governs rights of members inter se
• Subordinate to the memorandum
EXAM FOCUS / GOLDEN EXAMINER TIPS
• Memorandum aur articles ka clear difference likho
• Clauses of memorandum ko sequence mein yaad rakho
• Constructive notice aur indoor management ko contrast mein explain karo
• Ultra vires ka effect ضرور mention karo
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4 KEY ARTICLES CONTENT
• Share issue and transfer rules
• Meetings and voting procedure
• Directors' powers and proceedings
• Dividend and accounts matters
• Internal management provisions
5 MEMORANDUM VS ARTICLES
• Memorandum controls external scope
• Articles govern internal management
• Memorandum is superior to articles
• Articles must not conflict with memorandum
• Acts ultra vires memorandum are void
6 ALTERATION
• Certain clauses may be altered as permitted by law
• Alteration generally requires special resolution where applicable
• Altered articles bind company and members
• Alteration must remain lawful and bona fide
7 DOCTRINE OF CONSTRUCTIVE NOTICE
• Public documents are deemed known to outsiders
• Outsider is presumed to read memorandum and articles
• Company is generally protected where documents clearly limit authority
• No relief for ignoring registered documents
8 DOCTRINE OF INDOOR MANAGEMENT
• Outsider may assume internal procedures were properly followed
• Protects persons dealing in good faith
• Exception to constructive notice
• Not available in case of knowledge of irregularity, forgery, or suspicious circumstances
9 ULTRA VIRES
• Act beyond memorandum or objects is ultra vires
• Such act is void and cannot usually be ratified
• Articles cannot validate an ultra vires act
• Distinguish ultra vires memorandum from irregular internal acts
QUICK RECALL
1 Memorandum = charter of company
2 Articles = internal rules
Indoor management protects outsiders
4 Ultra vires act = void
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CAF 4 – BUSINESS LAW DYNAMICS

CHAPTER 5: SHARE CAPITAL AND COMMENCEMENT OF BUSINESS

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> Share capital is the lifeblood of a company. Compliance in issuance and commencement builds credibility and trust.

1. SHARE CAPITAL – INTRODUCTION

- Share capital is the aggregate of the amounts received or receivable by a company in respect of shares.
- It is divided into authorized, issued, subscribed and paid-up capital.
- A company may have different classes of shares with different rights and privileges as per its constitution.

2. ISSUE OF SHARES

- Shares may be issued for consideration or otherwise.
- Issue of shares must be authorized by the directors.
- Company must comply with its constitution and any pre-emptive rights.
- Allottees must be informed of the allotment within 30 days.

3. ALLOTMENT OF SHARES

- Shares are allotted by the Board to successful applicants.
- Allotment must be in accordance with offer terms.
- A return of allotment must be filed with the registrar within 30 days.
- Money must be received before allotment unless otherwise provided.

4. SHARE CERTIFICATE

- Company must issue share certificate within 2 months of allotment.
- Certificate must specify number, class, face value and distinctive numbers.
- If company fails, member may issue specified notice to the company.
- Certificate may be in physical or electronic form.

5. TRANSFER OF SHARES

- Shares may be transferred by an instrument of transfer.
- Company may refuse registration on valid grounds.
- If not registered within 2 months, transferor may serve notice.
- Transmission: On death, shares are transmitted to legal representatives.

6. VARIATION OF SHARE RIGHTS

- Company may vary the rights attached to a class of shares with the approval of the class.
- Special resolution is required.
- Variation must not adversely affect preference rights without consent.
- Notice of variation must be sent to all affected members.

7. COMMENCEMENT OF BUSINESS

- No public company having share capital may commence business until:
  - ✓ A statement in lieu of prospectus is filed with the registrar; and
  - ✓ All requirements of the Act are complied.
- Private company may commence as per its constitution and filing requirements.

8. BORROWING POWERS RESTRICTION

- Public company cannot exercise borrowing powers until:
  - ✓ Statement in lieu of prospectus is filed; and
  - ✓ Other legal requirements are met.
- Applies even if company has sufficient paid-up capital.

9. KEY POINTS TO REMEMBER

- ★ Authorized ≠ Issued ≠ Subscribed ≠ Paid-up.
- ★ Share certificate must be issued within 2 months.
- ★ Transfer must be registered within 2 months.
- ★ Variation requires class approval + special resolution.
- ★ Public company must file statement in lieu before commencement.
- ★ No borrowing power until compliance.
- ★ Always follow constitution and Act requirements.

10. SHARE CAPITAL – TYPES

Type	Key Features
Authorized Capital	Maximum capital company is authorized to issue.
Issued Capital	Amount of capital represented by shares issued to members.
Subscribed Capital	Amount promised by applicants to take up shares.
Paid-up Capital	Amount actually received from members on shares.
Reserve Capital	Capital set aside for a specific purpose by the company.
Uncalled Capital	Amount not yet called for by the company on issued shares.

11. EXAM FOCUS / MUST KNOW

- Understand difference between issue, allotment and subscription.
- Procedures and timelines for certificates and transfers.
- Pre-emptive rights and variation of share rights.
- Conditions for commencement of business and borrowing.
- Application-based questions are most important.

FOCUS

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CAF 4 – BUSINESS LAW DYNAMICS

CHAPTER 4: CHIEF EXECUTIVE AND OTHER OFFICERS

ONE PAGE REVISION | COMPANIES ACT, 2017 – UPDATED 2025

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1. CHIEF EXECUTIVE – APPOINTMENT

- Appointed by the Board of Directors.
- Terms and conditions determined by the Board.
- Must be an individual and ordinarily resident in Pakistan.
- A natural person only can be chief executive.
- Term of office as approved by the Board.
- Company cannot appoint more than one chief executive.

2. DISQUALIFICATIONS OF CHIEF EXECUTIVE

A person shall not be eligible to be appointed as chief executive if:

#	Ground of Disqualification
1	He is a minor.
2	He is of unsound mind.
3	He has applied to be adjudicated as an insolvent and his application is pending.
4	He has been convicted by a court of law for an offence involving moral turpitude.
5	He has been removed or dismissed from the office of chief executive or any other office by a court or a regulator and a period of five years has not elapsed from such removal or dismissal.
6	He is unfit to hold the office of chief executive in terms of any order of the Commission.

3. OTHER KEY OFFICERS

- **Company Secretary** – appointed by the Board. Must be a member of a recognized body of professional accountants or a law graduate.
- **Chief Financial Officer** – appointed by the Board. Must be a member of a recognized body of professional accountants or a person holding a Master's degree in finance or commerce.
- **Other officers** – such as head of internal audit, head of HR, compliance officer etc. as required by the company.

4. REMOVAL OF CHIEF EXECUTIVE

- May be removed by a resolution of the Board.
- For removal before expiry of term:
  - At least three-fourths of the total number of directors must vote in favour.
- The chief executive is entitled to be heard before removal.
- The company is liable to pay compensation to the removed chief executive.
- The Board must record reasons for removal in writing.

5. RESTRICTIONS ON EMPLOYMENT

The chief executive and other key officers shall not be appointed if they or their spouse or minor child:

- Have, either directly or indirectly, interest in a competing business.
- Have, either directly or indirectly, interest in any proposed contract or arrangement with the company.
- Are employed by, or are directors of, a company competing with the company.

6. DUTIES OF CHIEF EXECUTIVE

- Manage the day-to-day operations of the company.
- Implement policies and decisions of the Board.
- Ensure compliance with laws, regulations and internal policies.
- Submit periodic reports to the Board.
- Protect the company's assets and act in the best interest of the company.

7. RESIGNATION AND RETIREMENT

- Chief executive may resign by giving written notice to the Board.
- Resignation takes effect from the date specified or, if none, from the date the notice is received.
- On retirement or resignation, the Board may settle his dues including any compensation as per terms.

8. KEY POINTS TO REMEMBER

- Chief executive is appointed by the Board, not by shareholders.
- Disqualifications ensure integrity and competence.
- Removal before term expiry requires 3/4th approval of the total directors.
- Restrictions prevent conflict of interest.
- Company secretary and CFO must meet the prescribed qualification requirements.

9. QUICK FACTS / EXAM FOCUS

Topic	Key Rule
Appointment	By Board; only one chief executive.
Disqualifications	Minor, unsound mind, insolvent, moral turpitude, removed by court/regulator (5 years), unfit by Commission order.
Removal	3/4th of total directors; prior hearing; compensation payable.
Restrictions	No interest in competing business or in company contracts; no competing employment.
Other Officers	Company Secretary & CFO must have prescribed qualifications.

EXAM TIPS

- Write the legal provision first, then apply it to the facts.
- Diagrams and tables in answers improve clarity and marks.
- Focus on disqualifications, removal and restrictions.
- Always give a clear conclusion in the last line.

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CHAPTER 4: CHIEF EXECUTIVE AND OTHER OFFICERS

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1. CHIEF EXECUTIVE – APPOINTMENT

- Appointed by the board of directors.
- Whole-time employee of the company.
- Must be a natural person and ordinarily resident in Pakistan.
- A contract of employment is entered into specifying terms, conditions, remuneration and period.
- If the company has a policy for selection and appointment of CEO, it must be followed.

2. CHIEF EXECUTIVE – DISQUALIFICATIONS

A person is not eligible to be appointed as CEO if he:

- Has been convicted for an offence involving moral turpitude.
- Has been declared as a defaulter under any law.
- Has been removed from the office of CEO under the Act.
- Is of unsound mind.
- Is prohibited from holding such office under any law.
- Has acquired the age of 70 years.

3. REMOVAL OF CHIEF EXECUTIVE

- The board may remove the CEO on 14 days' written notice or at shorter notice.
- Where the contract provides for removal by the company, the board may remove the CEO by passing a resolution supported by at least three-fourths of the total number of directors.
- Removal does not affect any other liability of the CEO.

4. CHAIRMAN OF THE BOARD

- The board must elect one of its directors as chairman within 14 days of the election of directors.
- In a listed company, the chairman must be a non-executive director. He may be an independent director.
- Executive director or CEO cannot be the chairman.
- If no election is made, the directors may elect a chairman among themselves.

5. OTHER KEY OFFICERS

Officer	Key Points
Company Secretary	• Appointed by the board. • Must be a natural person, ordinarily resident in Pakistan and a member of a recognized body of professional accountants or, if not, a graduate and holding prescribed qualification.
Chief Financial Officer	• Whole-time employee. • Person of integrity and with relevant financial expertise.
Head of Internal Audit	• Person of integrity and with relevant expertise. • Reports functionally to the audit committee.
Compliance Officer	• Responsible for ensuring compliance with laws, regulations, company policies and best practices. • Reports to the board through audit committee.

6. CEO'S DUTIES AND RESPONSIBILITIES

- To manage the day-to-day affairs of the company.
- To implement policies and decisions of the board.
- To ensure the company's compliance with the Act, rules, regulations and policies.
- To prepare budgets, business plans and reports for the board.
- To perform any other duties assigned by the board.

7. CEO'S REMUNERATION

- Determined by the board in accordance with the policy.
- May include salary, allowances, bonuses, perquisites and other benefits.
- Where the company has a remuneration committee, the committee recommends and the board approves the remuneration.
- CEO is not disqualified by reason of receiving remuneration.

8. RELATIONSHIP BETWEEN CEO & BOARD

- CEO is accountable to the board.
- CEO may participate in board meetings but does not enjoy the right to vote unless he is also a director.
- CEO must provide the board with complete, adequate and timely information.
- Board evaluates CEO's performance periodically.

9. VACANCY IN THE OFFICE OF CEO

- The board must fill the vacancy as soon as possible.
- During vacancy, the board may appoint a person as acting CEO for a specified period.

10. KEY COMPLIANCE POINTS

- CEO must give a declaration of eligibility and non-disqualification.
- Any change in the CEO must be reported to the registrar within the specified time.
- The company must maintain a record of contracts and policies relating to the CEO and other officers.

QUICK FORMULA / FACTS

CEO Removal (General)	14 days' written notice or shorter notice.
CEO Removal (With Contract)	3/4 of total number of directors.
Chairman Election	Within 14 days of directors' election.
CEO Disqualification – Age	70 years and above.
Company Secretary	Member of professional body or graduate + prescribed qualification.

EXAM FOCUS

- Disqualifications of CEO – learn all six.
- Removal – general rule vs contractual removal.
- Difference between Chairman and CEO.
- Powers and duties of CEO.
- Appointment and role of Company Secretary, CFO, Head of Internal Audit & Compliance Officer.
- Remuneration policy and compliance.

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CAF 4
BUSINESS LAW DYNAMICS

VOLUME I – CHAPTER 7
PERFORMANCE OF CONTRACTS – II

1. INTRODUCTION

CONTRACT

- After making a contract, it is the duty of each party to perform his promise.
- This chapter deals with the rules when a contract to do something has been breached or not performed.

2. WHEN PERFORMANCE IS DUE

Situation	Rule
Time fixed for performance	Performance must be made at the time fixed.
No time fixed	Performance must be made within a reasonable time.
Time essence of the contract	Contract becomes void if performance is not made at the time fixed.
Installments	If one installment is not paid, the whole contract may be treated as breached.

3. WHEN PROMISEE MAY REFUSE PERFORMANCE

The promisee may refuse to perform his part when:

1. The promisor refuses or neglects to perform his promise.
2. The promisor prevents performance.
3. The promisor makes it impossible to perform.
4. The promisor does any act which shows he will not perform.
5. The promisor fails to perform a condition precedent.
6. The promisor becomes insolvent.

STOP

In such cases, the promisee may either treat the contract as breached or suspend his own performance.

4. Breach – Actual and Anticipatory

Actual Breach	Anticipatory Breach
When one party fails to perform his promise after the time fixed or if no time is fixed, within a reasonable time.	When before the time fixed for performance, one party clearly shows that he will not perform his promise.
Example: A agrees to deliver goods to B on 1 July but does not deliver.	**Example:** A tells B on 20 June that he will not deliver the goods on 1 July.

In both cases, the other party has the right to treat the contract as repudiated and claim damages.

5. Right of Aggrieved Party

When a contract is breached, the aggrieved party may:

- Claim compensation for any loss or damage.
- Sue for specific performance in appropriate cases.
- Rescind the contract (if breach is fundamental).
- Claim interest on delayed payment.

6. EXAMPLES

1. A agrees to paint B's house by 1st August but does not start the work. B can claim damages for breach of contract.
2. A agrees to supply machines to B in June and tells B in May that he will not be able to supply. B can treat this as anticipatory breach.
3. A agrees to pay Rs. 100,000 to B in two installments of Rs. 50,000 each. A does not pay the first installment. B may treat the whole contract as breached.

SUMMARY

Performance is the duty of each party under a contract. → It must be made at the time, in the manner and place agreed. → Breach (actual or anticipatory) gives the other party rights. → Aggrieved party can claim damages, specific performance or rescind the contract.

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VOLUME I – CHAPTER 8

CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

1. INTRODUCTION

In some cases, the law creates certain obligations that are similar to those created by contracts. These obligations are called **"Quasi Contracts"** or **"Constructive Contracts"**.

2. MAIN CASES UNDER THIS CHAPTER

Sr. No.	Case	Section	What it Means
	Gratuitous Care and Assistance	68	If a person voluntarily does something for another, he is not entitled to compensation.
	Compulsion by Law	69	If a person does something under legal compulsion, he is not entitled to compensation.
	Compulsion by Circumstances	70	If a person does something to protect himself or others from harm, he is entitled to compensation from the person who caused that harm.
	Person Enjoying Benefit of Non-Gratuitous Act	71	If a person enjoys the benefit of another's non-gratuitous act, he must compensate the person who did it.
	Finder of Lost Goods	72	A finder of lost goods must take reasonable steps to find the true owner but is not entitled to compensation.

3. EXPLANATION OF MAIN CASES

- **Gratuitous Care and Assistance (Sec. 68):**
  Example: A helps B to lift his car out of a ditch voluntarily. A cannot claim any payment.
- **Compulsion by Law (Sec. 69):**
  Example: A, a police officer, arrests B as per law. A cannot claim payment.
- **Compulsion by Circumstances (Sec. 70):**
  Example: A breaks into B's house during a fire to save B's life. A can claim compensation from B.
- **Person Enjoying Benefit (Sec. 71):**
  Example: A paints B's house without B's request to save it from rain and B enjoys the benefit. B must pay A reasonable charges.
- **Finder of Lost Goods (Sec. 72):**
  Example: A finds B's wallet and takes reasonable steps to return it. A cannot claim any reward.

4. KEY POINTS TO REMEMBER

- These relations are not based on contract but impose similar obligations to prevent injustice.
- The law implies a promise to pay in some cases to do justice.
- Compensation is allowed only where the law says so.
- Good intention alone does not give a right to compensation.
- Reasonableness of expenses is the key in such cases.

Remember: No unjust enrichment is allowed by law.

5. DIFFERENCE BETWEEN CONTRACT AND QUASI CONTRACT

Contract	Quasi Contract
Based on agreement	Not based on agreement
Created by parties	Created by law
Rights & duties arise from promise	Obligations arise from justice and equity
Consideration is essential	No consideration
Example: Sale of goods	Example: Saving a person's life in emergency

6. EXAMINATION FOCUS

- Identify which section applies in a given situation.
- Distinguish between gratuitous act and act under compulsion.
- Apply the rules to factual scenarios.
- Calculate reasonable compensation where applicable.

EXAM-STYLE QUESTION IDEA

Q: A spends Rs. 50,000 on repairing B's roof without B's request to save it from rain. B later refuses to pay. Discuss A's rights.

Answer Approach:
- **Identify:** Sec. 71 – Person enjoying benefit.
- **Rule:** B must pay reasonable compensation.
- **Conclusion:** A can recover reasonable amount.

SUMMARY

Law creates certain obligations similar to contracts. → Five main cases: Secs. 68 to 72. → Compensation allowed only in specific circumstances. → Purpose is to prevent unjust enrichment and do justice.

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VOLUME II – CHAPTER 1
COMPANY: INTRODUCTION, TYPES AND REGISTRATION

1 WHAT IS A COMPANY?

- A company is an artificial person created by law.
- It is a separate legal entity having perpetual succession.
- It can own property, enter into contracts, sue and be sued in its own name.

2 TYPES OF COMPANIES (UNDER COMPANIES ACT, 2017)

Type	Key Feature
Private Company	Minimum 2 members Maximum 200 members Shares cannot be offered to the public
Public Company	Minimum 7 members Shares can be offered to the public
Single Member Company	One member only Limited liability applies
Foreign Company	Incorporated outside Pakistan but has a place of business in Pakistan
Not for Profit Company	Incorporated for promoting commerce, art, science, religion, charity, etc. Profits cannot be distributed.

3 ADVANTAGES OF A COMPANY

- Separate legal entity
- Limited liability of members
- Perpetual succession
- Easy transferability of shares
- Capacity to raise capital from large number of people
- Professional management and continuity

4 INCORPORATION (REGISTRATION) OF A COMPANY

A company comes into existence after registration with the Securities and Exchange Commission of Pakistan (SECP).

Key Steps:

- **1. Name Reservation**
  Apply to SECP for reservation of company name.
  Name must be unique and not similar to existing names.
- **2. Preparation of Documents**
  Memorandum and Articles of Association are prepared as per requirements.
- **3. Filing with SECP**
  Submit required documents with prescribed fee.
- **4. Certificate of Incorporation**
  SECP issues Certificate of Incorporation after satisfaction.
- **5. Post Incorporation Compliances**
  Obtain NTN, register with relevant authorities and hold first board meeting.

A company is deemed to have been incorporated on the date mentioned in the Certificate of Incorporation.

5 MEMORANDUM OF ASSOCIATION – KEY POINTS

- It defines the constitution of the company.
- It contains the company name, registered office, objectives, liability clause, share capital and association clause.
- Any change in Memorandum requires a special resolution passed in general meeting and approval of SECP.

6 ARTICLES OF ASSOCIATION – KEY POINTS

- It contains the internal rules and regulations.
- It governs the management, meetings, powers of directors, transfer of shares, etc.
- It can be altered by ordinary resolution unless otherwise provided in the Articles.

SUMMARY

A company is a separate legal entity created by law. → Different types of companies have different features. → Incorporation is done by registration with SECP. → Memorandum defines constitution; Articles define rules. → Compliance with law ensures legal existence and smooth operations.

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VOLUME II – CHAPTER 2

MEMORANDUM AND ARTICLES

1. INTRODUCTION

COMPANY DOCUMENTS

- Memorandum and Articles are the two fundamental documents of a company.
- They act as the **Constitution** of the company.

2. MEMORANDUM OF ASSOCIATION – KEY POINTS

MEMORANDUM OF ASSOCIATION

- It defines the constitution of the company.
- It contains the name, registered office, objectives, liability clause, share capital and association clause.
- It is the basis on which the company is formed.
- It cannot be changed except in accordance with the law.

MAIN CLAUSES OF MEMORANDUM

Name Clause	States the name of the company.
Registered Office Clause	States the registered office of the company.
Object Clause	States the main objectives for which the company is formed.
Liability Clause	States the liability of the members.
Capital Clause	States the maximum amount of **share capital** with which the company is registered.
Association Clause	States that the company is formed by the association of persons who agree to become members.

3. RELATION BETWEEN MEMORANDUM AND ARTICLES

Memorandum (of Association)	External document; Defines relationship with outsiders; Cannot be altered easily
Articles (of Association)	Internal document; Regulates relationship among members and management; Can be altered by ordinary resolution

☆ Memorandum is primary; Articles are secondary.

4. ALTERATION OF MEMORANDUM AND ARTICLES

They can be altered only in the manner provided in the Companies Act, 2017.

Document	Manner of Alteration
Memorandum (of Association)	Special resolution passed by the company. Approved by SECP. In case of name change, advertisement in newspapers is required.
Articles (of Association)	Ordinary resolution passed by the company. No approval from SECP is required.

No alteration shall be made which is inconsistent with the provisions of the Companies Act, 2017.

5. EFFECT OF ULTRA VIRES IN MEMORANDUM

- Any act beyond the objects clause (ultra vires) is void.
- The company cannot enforce such acts.
- Members may be personally liable if the act is beyond the company's objects.

6. ARTICLES OF ASSOCIATION – KEY POINTS

- It contains the internal rules and regulations.
- It governs the management, meetings, share transfer, powers of directors, etc.
- It can be changed by ordinary resolution.
- It must not be inconsistent with the Memorandum and the Companies Act.

ARTICLES OF ASSOCIATION

7. EXAMPLES

1. A company changes its objectives beyond what is stated in its Memorandum without following legal procedure. This change is void.
2. A company decides to increase the maximum number of directors by a simple majority in meeting. This is valid as it relates to Articles.
3. If Articles provide for 7 days' notice for a meeting, but only 3 days' notice is given, the meeting can still be held if all members consent.

SUMMARY

Memorandum is the constitution of the company. → Articles contain internal rules and regulations. → Alteration of Memorandum requires special resolution and SECP approval. → Alteration of Articles requires ordinary resolution. → Both must comply with the Companies Act, 2017.

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VOLUME II – CHAPTER 2

MEMORANDUM AND ARTICLES OF ASSOCIATION

1.MEMORANDUM OF ASSOCIATION (MOA)

The Memorandum of Association is the constitution of the company. It defines the scope of the company's operations and states the relationship of the company with outsiders.

MEMORANDUM OF ASSOCIATION

2. MAIN CLAUSES OF MOA (SECTION 4)

Clause	What it Defines	Key Points
Name Clause	Name of the company	• Must end with "Limited". • Must be unique.
Registered Office Clause	Situation of the registered office	• Must be in Pakistan. • Can be changed as per procedure.
Objects Clause	Main objects for which the company is established	• Can be main objects or objects incidental or ancillary to main objects. • Determines the scope of company's powers.
Liability Clause	Liability of the members	• Usaillly limited by shares.
Capital Clause	Authorised share capital of the company	• Total capital the company is authorised to issue. • Divided into shares.
Association Clause	Subscription by promoters	• Names, addresses, descriptions and number of shares taken by subscribers.

3.ALTERATION OF MEMORANDUM (SECTION 16)

MOA can be altered only with:

Special Resolution passed in a general meeting → Approval of SECP → If SECP refuses, then approval of Court → Filing of altered MOA with SECP

No alteration can be made which is against the provisions of the Companies Act, Islamic Principles or public policy.

4.ARTICLES OF ASSOCIATION (AOA)

Articles of Association contain the internal rules and regulations for the management of the company. It is a contract between the company and its members.

ARTICLES OF ASSOCIATION

5.CONTENTS OF AOA

- Regulation of share capital and variation of shareholders' rights.
- Issue and transfer of shares.
- Forfeiture and re-issue of shares.
- Calling of meetings, proceedings and powers.
- Appointment, powers, duties and removal of directors.
- Proceedings of directors.
- Appointment and duties of auditors.
- Notices and seals.
- Indemnity and insurance.
- Any other matter for the management of the company.

6.ALTERATION OF ARTICLES (SECTION 21)

Special Resolution passed in general meeting → Approval of SECP → Filing of altered AOA with SECP

Alteration should not be inconsistent with the Memorandum or prejudicial to any member.

7.DIFFERENCE BETWEEN MOA AND AOA

Basis	Memorandum of Association (MOA)	Articles of Association (AOA)
Nature	Constitution of the company	Rules for internal management
Scope	Defines relationship with outsiders	Defines relationship among members and company
Alteration	Difficult – requires SECP & Court approval	Relatively easier – only SECP approval
Purpose	Defines what the company can do	Defines how the company will do
Effect	Cannot be inconsistent with law	Cannot be inconsistent with MOA
Clause/Content	7 main clauses as per Section 4	Wide range of internal rules

SUMMARY

MOA is the constitution of the company with 7 main clauses. → AOA contains internal rules for management and administration. → Alteration of MOA requires SECP + Court approval. → Alteration of AOA requires SECP approval only. → Both documents work together for smooth company operations.

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VOLUME II – CHAPTER 2

MEMORANDUM AND ARTICLES OF ASSOCIATION

1. INTRODUCTION

Every company must have:

- Memorandum of Association (MOA)
- Articles of Association (AOA)

These two documents are its constitutional documents.

MEMORANDUM OF ASSOCIATION

ARTICLES OF ASSOCIATION

2. MEMORANDUM OF ASSOCIATION (MOA)

It is the charter or constitution of the company.
It defines the scope of the company's activities.

It contains the following clauses:

Clause	What it Defines
Name Clause	Name of the company with the word "Limited".
Registered Office Clause	Address of the registered office of the company.
Objects Clause	Main objects for which the company is formed.
Liability Clause	Liability of members is limited to the extent of unpaid amount on shares.
Capital Clause	Authorized share capital of the company.
Association Clause	Names, addresses, and occupations of the subscribers.

MOA cannot be altered except with the approval of SECP and by a special resolution.

3. ARTICLES OF ASSOCIATION (AOA)

- It contains the internal rules and regulations for the management of the company.
- It is made by the company itself.
- It regulates the relationship between the company, its members and directors.
- It can be altered by ordinary resolution of the company.

Main Matters Covered in AOA

Share certificate and transfer	Appointment and removal of auditors
Board of Directors – powers and meetings	Borrowing powers of the company
General meetings – notice, quorum, proceedings	Dividend and reserves
Accounts and audit	Seal and execution of documents

AOA must not contain any provision inconsistent with the companies Act, 2017 or with the MOA.

4. DIFFERENCE BETWEEN MOA AND AOA

Memorandum of Association (MOA)	Articles of Association (AOA)
Defines the scope and objects	Defines the internal management rules
Constitutional document	Regulatory document
Prepared by the subscribers	Prepared by the company
Altered by special resolution with SECP approval	Altered by ordinary resolution
Deals with external relationship	Deals with internal relationship

5. IMPORTANT POINTS

- MOA is the charter of the company; AOA is the rule book.
- If any provision of AOA is against the Act or MOA, it is void.
- A company is bound by its MOA even if it does not commence business.
- Members are deemed to have accepted AOA by becoming members.

6. EXAM-STYLE QUESTION IDEA

Q: Differentiate between Memorandum of Association and Articles of Association. Also explain any four main clauses of Memorandum of Association.

Answer Approach:

- Define MOA and AOA.
- Give key differences in points.
- Explain any four main clauses of MOA with brief explanation.

SUMMARY

Company must have MOA and AOA. → MOA defines objects, liability, capital and subscribers. → AOA contains internal rules for management and operations. → MOA altered by special resolution + SECP approval; AOA by ordinary resolution. → Both documents ensure smooth and legal functioning of company.

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VOLUME I – CHAPTER 10
APPOINTMENT AND AUTHORITY OF AGENTS

1. INTRODUCTION

POWER OF ATTORNEY

- An agent is a person appointed to do any act for another, or to represent another in dealings with third persons.
- The person appointing the agent is called the **principal.**
- The relationship between the agent and the principal is called **agency.**

2. MODES OF CREATING AN AGENCY [SECTION 182]

An agency may be created in the following ways:

(i) Express Agency	(ii) Implied Agency	(iii) Agency in Emergency	(iv) Agency by Holding Out	(v) Agency by Estoppel
Created by express words spoken or written.	Created by the conduct of the parties or by circumstances.	Created to do acts necessary to protect the interests of the principal.	Created when a person represents another as his agent.	Created when a person is prevented from denying agency by his conduct.

3. ESSENTIAL ELEMENTS OF AGENCY

01 **Consent:** The agent must be appointed with the consent of both the principal and the agent.

02 **Lawful Object:** The object of agency must be lawful.

03 **Capacity:** Both the principal and the agent must be capable of contracting.

04 **Consideration:** Not essential, except when the agent agrees to act gratuitously.

05 **Act on Behalf of Principal:** The agent acts on behalf of and for the benefit of the principal.

4. KINDS OF AGENTS

Type of Agent	Meaning	Example
General Agent	Authorised to conduct a series of transactions involving continuity of service.	A manager of a shop.
Special Agent	Authorised to conduct a single transaction or a series of transactions not involving continuity of service.	Authorised to sell a specific car.
Sub-Agent	An agent appointed by the original agent with the consent (express or implied) of the principal.	A shipping agent appoints a clearing agent.

5. AUTHORITY OF AGENT [SECTION 185]

An agent has the authority to do all such acts:

- As are expressly authorised by the principal.
- As are necessarily implied to carry out the express authority.
- As are usual and necessary to carry out the business entrusted to him.
- As the principal subsequently ratifies.

6. TERMINATION OF AGENCY [SECTION 201]

An agency is terminated by:

- Agreement
- Revocation
- Completion of business
- Insolvency of principal
- Death of principal (in case of personal agency)
- Death or insanity of agent (in case of personal agency)
- Notice in certain cases
- Operation of law
- Bankruptcy of agent

EXAMPLE

Asif gives Basheer a power of attorney to manage his house. This is an example of **express agency**.

IMPORTANT POINT

A minor cannot be an agent, and agreements made by a minor as an agent are **void** [Section 11]. However, if the contract is with a third party in good faith, the principal is bound by it.

SUMMARY

Agency is the relationship where one person (agent) acts for another (principal). → It can be created in five ways under Section 182. → Agent's authority comes from the principal and is governed by Section 185. → Agency can be terminated in several ways under Section 201.

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VOLUME I – CHAPTER 10

APPOINTMENT AND AUTHORITY OF AGENTS

1 INTRODUCTION

An **agent** is a person employed to do any act for another or to represent another in dealings with third persons.

AGENT — Person employed to act for another or represent another.

PRINCIPAL — Person for whom such act is done or who is represented.

Whatever a person competent to contract may do himself, he may do through an agent.

Consideration is not necessary in agency relationship, i.e. contract between principal and agent.

2 CREATION OF AGENCY

An agency relationship may be created by:

- Agreement
- Conduct of the parties
- Ratification

Example

P allows A to sell his goods on his behalf. A sells the goods. This relation of A with P is that of agent and principal.

3 TYPES OF AGENTS

Agents are of following types:

General Agent
Authorized to conduct all business of the principal of a particular nature or in a particular place.

Special Agent
Authorized to do some particular act or acts.

Universal Agent
Authorized to conduct business of the principal of all kinds.

Sub-Agent
Appointed by the principal's agent to assist him in performing his authority.

4 AUTHORITY OF AN AGENT

Authority means the capacity of an agent to bind the principal.

ACTUAL AUTHORITY

Authority conferred on agent by the principal. It may be:

- **Express Authority** (given in words, orally or in writing)
- **Implied Authority** (not expressed but inferred from conduct of parties or circumstances of case)
- **Incidental Authority** (necessary to carry out express authority)

OSTENSIBLE (APPARENT) AUTHORITY

Authority which the principal holds the agent out to the world as having, or allows him to assume, so that third parties believe he has such authority.

Important Point
If a third party deals with an agent in good faith, the principal is bound by the acts of the agent done within his apparent authority.

5. TERMINATION OF AGENCY

An agency relationship is terminated by:

- Revocation by the principal
- Renunciation by the agent
- Expiry of the time for which agency was created
- Completion of the purpose for which it was created
- Death or insolvency of either principal or agent
- By operation of law

6. DUTIES OF AN AGENT

- Duty to obey lawful orders of the principal
- Duty to act within authority
- Duty to act with due care and diligence
- Duty to account for all profits
- Duty to avoid conflict of interest
- Duty to maintain confidentiality

7. LIABILITIES OF AN AGENT

An agent is liable to the principal for:

- Breach of duty
- Acting without authority
- Negligence or misconduct
- Accounting for profits made in breach of duty
- Damages caused by his wrongful acts

SUMMARY

Agent acts for the principal. → Authority may be actual or ostensible. → Principal is bound by acts of agent within authority. → Agency may be terminated by various acts or by operation of law.

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