Law & Ethics

Suggested Answers

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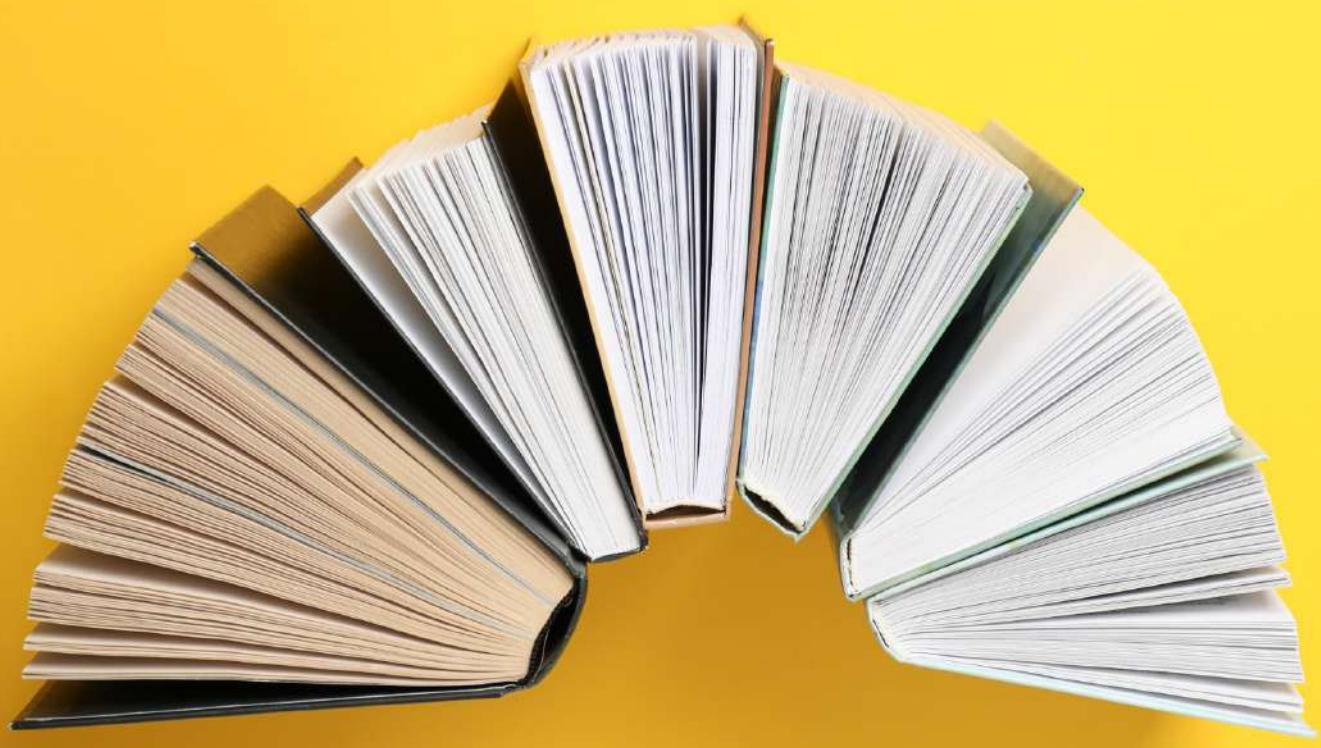

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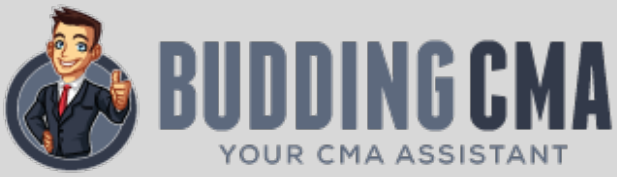

INTERMEDIATE EXAMINATION

GROUP - I

(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS

JUNE - 2017

Paper - 6: LAWS & ETHICS

Time Allowed: 3 Hours **Full Marks: 100**

The figures in the margin on the right side indicate full marks.
This question paper has two sections.
Both the sections are to be answered subject to instructions given against each.

Section - A

1. Answer all questions: 25

(a) Multiple choice questions: 10

(i) The term 'sub-agent' in the business of agency is defined as a person employed by, and acting under the control of the
- **(A) Principal**
- **(B) Original agent**
- **(C) Lawyer**
- **(D) Third person**

(ii) The first endorsement of an instrument can be made by the
- **(A) Banker**
- **(B) Payee**
- **(C) Holder in due course**
- **(D) Agent**

(iii) Which of the following is not the mode of dissolution of a firm under voluntary dissolution?
- **(A) Dissolution by agreement**
- **(B) Dissolution on the happenings of certain contingencies**
- **(C) Dissolution on becoming a partner of unsound mind**
- **(D) Compulsory dissolution**

(iv) White wash or color wash should be carried out at least once in every period of
- **(A) 14 months**
- **(B) 24 months**

(C) 48 months
(D) 60 months

(v) The term 'family' as defined in ESI Act, 1948 does not include
(A) a spouse
(B) a minor adopted child
(C) a dependent unmarried daughter
(D) an independent married sister

(vi) Which one of the following amounts to safety measure?
(A) Artificial humidification
(B) Ventilation
(C) Fencing of factory
(D) First aid appliances

(vii) If a company does not have a common seal, the share certificate shall be signed by
(A) Two Directors
(B) One Director and Company Secretary
(C) Two Directors and Company Secretary
(D) Company Secretary

(viii) In case of e-voting, notice shall be sent as attachment in
(A) PDF file
(B) Word file
(C) Excel file
(D) Access file

(ix) A Director may be elected by small shareholders upon a notice by
(A) not less than 1000 small shareholders.
(B) one tenth of the total number of shareholders.
(C) not less than 1000 small shareholders or one tenth of such shareholders, whichever is lower.
(D) one tenth of 1000 small shareholders.

(x) Meta ethics deal with the nature of _____ .
(A) external influences
(B) moral judgement
(C) material facts
(D) animal rights

(b) Fill in the blanks: 5
(i) Misrepresentation must relate to some fact which is material to the _____.
(ii) The LLP shall inform the concerned Registrar within _____ of the date of registration about the conversion and the particulars of LLP.
(iii) The term of office of a member of the standing committee, constituted under ESI Act,

shall be two years from the date on which his election is _____ .

(iv) The registered office shall be opened within 15 days from the date of _____ of the company.

(v) A company shall send copy of each of the document such as memorandum etc., to a member within _____ days of the request made by him.

(c) True or False: 5

(i) In an agreement to sale, the buyer is entitled to recover the same from the official liquidator in case of insolvency of the seller.

(ii) The term 'employed person' includes the legal representatives of a deceased employed person.

(iii) Payment of Gratuity Act, 1972 applies to every shop and establishment employing seven or more persons.

(iv) Any misstatement in the prospectus would attract the liability on the issuer.

(v) Continuous improvement or kaizen is a popular theme.

(d) Match and Pair: 5

	Column I		Column II
1.	**Presentment**	**(A)**	**Determines acceptable conduct in busines organization**
2.	**Form no. INC-23**	**(B)**	**Issue of global depository receipt**
3.	**Continuing guarantee**	**(C)**	**Bill of exchange**
4.	**Business ethics**	**(D)**	**Shifting of registered office within the same state**
5.	**Section 41 of the Companies Act**	**(E)**	**Guarantee which extends to a series of transactions**

Answer:

1. (a) (i) (b)
(ii) (b)
(iii) (c)
(iv) (a)
(v) (d)
(vi) Correct Answer would be "fencing of machinery"
(vii) (a) or (b)
(viii) (a)
(ix) (c)
(x) (b)

(b) (i) Contract
(ii) 15 days
(iii) Notified
(iv) Incorporation
(v) 7 days

(c) (i) False
(ii) True
(iii) False
(iv) True
(v) True

(d)

	Column I		Column II
1.	Presentment	(C)	Bill of exchange
2.	Form no. INC-23	(D)	Shifting of registered office within the same state
3.	Continuing guarantee	(E)	Guarantee which extends to a series of transactions
4.	Business ethics	(A)	Determines acceptable conduct in busines organization
5.	Section 41 of the Companies Act	(B)	Issue of global depository receipt

Section – B

2. Answer any five questions: 15×5 = 75

(a) Does silence amount to fraud? Explain with exceptions and types of silence amount to fraud. 9

(b) Mr. P and Mr. Q bet as to whether there would be rain on a particular day of December. Mr. P promises to pay ₹ 5,000 to Mr. Q if there is rain on that day and Mr. Q promises an equal amount to Mr. P if there is no rain on the day. Suppose, there is no rain on that specific day of December and Mr. Q filed a suit for recovery of ₹ 5,000 from Mr. P. Can Mr. Q recover the amount under Indian Contract Act, 1872? 6

Answer:

2. (a) Explanation to section 17 of the Indian Contract Act provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

Thus we can say that there is exception to the rule that mere silence does not amount to fraud. The two exception as provided in explanation to section 17 are as under:

(i) When there is a duty to speak.

(ii) Where silence is equivalent to speech.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

(i) Where there is change in circumstances - A representation may be true when made but with the passage of time or changed circumstances it may become

false. Accordingly this must be communicated to other party otherwise it amount to fraud.

(ii) When there is half-truth- Thus even when a person is not bound to disclose a fact he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

(b) In this case Mr. P bet with Mr. Q on the possibility of having rain on a specific day of December. Section 30 provides that agreement by way of wager are void and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Therefore, the agreement between Mr. P and Mr. Q is of wagering nature and hence void. Thus, despite of no rain on specific day of December, Mr. Q cannot recover the amount of ₹ 5,000 from Mr. P for the reason of entering into an agreement of a wagering nature.

3. (a) What are the rights of outgoing partners? 9

(b) A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value, Decide - (i) Whether D can sue the prior parties of the bill, (ii) Whether the prior parties other than D have any right of action intense? Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881. 6

Answer:

3. (a) Rights of outgoing partners:

Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not-

- use the firm name;.
- represent himself as carrying on the business of the firm; or
- solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option-

- to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm; or
- to interest at 6% per annum on the amount his share in the property of the firm.

Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the

deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

(b) Section 43 of the Negotiable Instruments Act. 1881 provides that an instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.

(ii) As regards to the second part of the. problem, the prior parties before D i.e., A, B and C have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

4. (a) What are the responsibilities of an occupier in a factory? 5

(b) What are the different purposes for which employees' state insurance fund may be utilized by the central government? 10

Answer:

4. (a) Responsibility of the occupier The occupier has to follow the procedure-

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling

hazardous substances and competent to supervise such handling within the factor.

(b) The section 28 of the Employee's State Insurance Act, 1948 provides that the central government may utilize the state insurance fund only for the following purposes:

(i) Payments of benefits and provision of medical treatment and attendance to insured persons and where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provision of this Act and defraying the charges and costs in connection therewith

(ii) Payment of fees and allowances to members of the corporation, the standing committee and the Medical Benefit Council, the Regional Board, Local Committees and Regional Local Medical Councils,

(iii) Establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary service for the benefit of insured persons and where the medical benefit is extended to their families,

(iv) Defraying the cost of auditing the accounts of the corporation and of the valuation of its assets and liabilities,

(v) Defraying the cost of the Employees' Insurance Courts set up under this Act,

(vi) Payment of any sums under any contract entered into for the purpose of this Act by the, corporation or the standing committee or any officer duly authorized by the corporation or the standing committee in that behalf,

(vii) Payment of any sums under any decree, order or award of any court or tribunal against the corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceedings or claim instituted or made against the corporation

(viii) Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act,

(ix) Defraying expenditure, within the limits prescribed on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured person who have been disabled or injured, and

(x) Such other purposes as may be authorized by the corporation with the previous approval of the central government.

(xi) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident fund and other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act.

(xii) Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to the insured person and where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation.

[Students may write any 10 of the above given points mentioned in the answer]

***5.* (a) What are the conditions stipulated in the Companies Act, 2013 in formation of One Person Company? 5**

(b) Discuss the procedure of alteration of memorandum of association as per the companies Act, 2013. 10

Answer:

5. (a) The following are the conditions in formation of a OPC:

No person shall be eligible to incorporate more than a OPC or become nominee in more than such company;

- Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 182 days;
- No minor shall become member or nominee of OPC or can hold share with beneficial interest;
- Such company cannot be incorporated or converted into Section 8 company;
- Such company cannot carry out Non Banking Financial investment activities including investment activities in securities of any body corporate;
- No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit of paid up share capital is increased beyond ₹ 50 lakh or its average annual turnover during the relevant period exceeds ₹ 2 crore rupees.

(b) As per the provision of section 13 of the Companies Act, 2013 the alteration of the memorandum may be taken place in the following manner:

(i) **Alteration by special resolution:** Company may alter the provisions of its memorandum with the approval of the members by a special resolution

(ii) **Name change of the company:** Any change in the name of a company shall be effected only with the approval of Central Government in writing. However no such approval is necessary where the change in the name of the company is only the deletion there from, or addition thereto of the word 'private', on the conversion of any one class of companies to another class.

(iii) **Entry in register of companies:** On any change in the name of the company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(iv) **Change in the registered office:** The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(v) **Disposal of the application of change of place of the registered office:** The Central Government shall dispose of the application of change of place of the registered office within a period of sixty days before passing of order. The central government may satisfy itself that-

(a) The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
(b) The sufficient provision has been made by the company either for the due discharge of all its debt and obligations, or
(c) Adequate security has been provided for such discharge.

(vi) **Filing with Registrar:** A company shall in relation to any alteration of its memorandum file with the Registrar -
(a) The special resolution passed by the company under sub-section (1),
(b) The approval of the central government under sub-section (2), if the alteration involves any change in the name of the company.

(vii) **Filing of the certified copy of the order with the registrar of the states:** Where an alteration of the memorandum results in the transfer of the registered office of a company from one state to another, a certified copy of the order of the central government approving the alteration shall be filed by the company with the Registrar of each of the State within such time and in such manner as may be prescribed, who shall register the same.

(viii) **Issue of fresh certificate of incorporation:** The Registrar of the State where the registered office is being shifted to shall issue afresh certificate of incorporation including the alteration.

(ix) **Change in the object of the company:** A company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and -
(a) The details in respect of such resolution shall also be published in the newspaper
(b) The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the SEBI

(x) **Registrar to certify the registration on the alteration of the objects:** The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

(xi) **Alteration to be registered:** No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(xii) **Only member have a right to participate in the divisible profits of the company:** Any alteration of the memorandum in the case of a company limited by guarantee and not having a share capital intending to give any person right to participate in the divisible profits of the company otherwise than as a member shall be void.

[Students may write any 10 of the above given points mentioned in the answer]

6. (a) Describe the Procedure for the resignation of Director. 9

(b) Describe the term 'independent director' as per the Companies Act, 2013. 6

Answer:

6. (a) Section 168 provides the procedure for the resignation of a director as detailed below:

- A director may resign from his office by giving a notice in writing to the company;
- He shall within 30 days from the date of resignation, forward to the Registrar a copy of his resignation along with the reasons for the resignation, in Form No. DIR - 11 along with the fee;
- A foreign director may authorize in writing a practicing Chartered Accountant or Cost Accountant in practice or Company Secretary in practice or any other resident director of the company to sign the Form No. DIR - 11 and file the same on his behalf intimating the reasons for the resignation;
- The Board shall on receipt of such notice take notice of the same;
- The company shall intimate the Registrar in Form No. DIR-12 within one month from the date of receipt of such notice;
- The said information is to be posted on the website of the company;
- The fact of the resignation shall be laid in the report of directors immediately following the general meeting by the company;
- The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later;
- The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure;

Where all directors of a company resign from their offices the promoter or, in his absence, the Central Government shall appoint the required number of directors, who shall hold the office till the directors are appointed by the company in general meeting.

(b) 'Independent director' is defined under Section 149(6) of the Companies Act as a other than a managing director or a whole time director or a nominee director -

a) Who in the opinion of the board is a person of integrity and possesses relevant expertise and experience,

b) He shall not be a promoter of the company or its holding, subsidiary or associate company,

c) He shall not relate to the promoters or directors in the company, its holding, subsidiary or associate company,

d) He shall not any pecuniary relationship with the company or their promoters or directors during two immediately preceding financial years or during the current financial year,

e) His relative shall not have any pecuniary relationship with the company or their

promoters or directors amounting to 2 % or more or more of its gross turnover or total income or ₹ 50 lakhs or such higher amounts as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year,

f) he or his relatives-
- holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company, in any of the three financial years immediately preceding the financial year;
- is or has been an employee or proprietor or partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of-
  - → a firm of auditors or company secretaries in practice or cost auditors of the company; or
  - → any legal or a consulting firm that has or had any transaction with the company, amounting to 10% or more of the gross turnover of such firm.
- holds together with his relatives 2% or more of the total voting power of the company; or
- is a Chief Executive or Director of any nonprofit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or
- who possess such other qualifications as may be prescribed.

7. (a) What are the standards of ethical conduct for practitioners fixed by the ICAI? 10
(b) Discuss the procedure for the recovery of bonus due from an employer. 5

Answer:

7. (a) The Institute has promulgated the following standards of ethical conduct for practitioners-
- maintain at all times independence of thought and action;
- not to express an opinion on cost/financial reports or statements without first assessing her or his relationship with her or his client to determine whether such Member might expect her or his opinion to be considered independent, objective and unbiased by one who has knowledge of all the facts; and
- when preparing cost / financial reports or statements or expressing an opinion on cost / financial reports or statements, disclose all material facts known to such Member in order not to make such cost / financial reports or statements misleading, acquire sufficient information to warrant an expression of opinion and report all material misstatements or departures from generally accepted accounting principles.
- not to disclose or use any confidential information concerning the affairs of such Member's employer or client unless acting in the course of his or her duties or except when such information is required to be disclosed in the course of any

defense of himself or herself or any associate or employee in any lawsuit or other legal proceeding or against alleged professional misconduct by order of lawful authority or any committee of the Society in the proper exercise of their duties but only to the extent necessary for such purpose;

- inform his or her employer or client of any business connections or interests of which such Member's employer or client would reasonably expect to be informed;
- not, in the course of exercising his or her duties on behalf of such Member's employer or client, hold, receive, bargain for or acquire any fee, remuneration or benefit without such employer's or client's knowledge and consent; and
- take all reasonable steps, in arranging any engagement as a consultant, to establish a clear understanding of the scope and objectives of the work before it is commenced and will furnish the client with an estimate of cost, preferably before the engagement is commenced, but in any event as soon as possible thereafter.
- conduct himself or herself toward other Members with courtesy and good faith;
- not to accept any engagement to review the work of another Member for the same employer except with the knowledge of that Member, or except where the connection of that Member with the work has been terminated, unless the Member reviews the work of others as a normal part of his or her responsibilities;
- not to attempt to gain an advantage over other Members by paying or accepting a commission in securing management accounting work;
- not to act maliciously or in any other way which may adversely reflect on the public or professional reputation or business of another Member;
- at all times maintain the standards of competence expressed by the Institute from time to time;
- undertake only such work as he or she is competent to perform by virtue of his or her training and experience and will, where it would be in the best interests of an employer or client, engage, or advise the employer or client to engage, other specialists;

[Students may write any 10 of the above given points mentioned in the answer]

(b) Section 21 of the Payment of Bonus Act, 1965 provides the procedure for the recovery of bonus in case the employer has not paid under a settlement or an award or agreement. In such cases either the employee himself or any other person authorized by him in writing in this behalf or in the case of death of the employee, his assignee or heirs may make an application to the appropriate government for the recovery of the money due to him. If the appropriate government, or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for that amount to the collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue.

Application for the recovery of money shall be made within one year from the date on which the money becomes due to the employee from the employer. After expiry of such one year period, an application may be entertained by the appropriate government only if it satisfied that the applicant had sufficient causes for not applying within said period.

8. Write short notes on any three of the following terms: 5×3=15

(a) E-Contracts

(b) Revocation of licence

(c) Seven principles of public life

(d) Limit of deductions from wages

Answer:

8. (a) E-Contracts: E-contracts are paperless contracts. It is in electronic form. They are conceptually very similar to traditional contracts. E-contract also require basis of contract.

The following are ingredients of the e-contracts-

- An offer is to be made;
- Offer is to be accepted;
- There shall be a lawful consideration;
- There shall an intention to create legal relations;
- The parties must be competent to contract;
- There must be free and genuine consent;
- The object of the contract must be lawful;

The main feature of this type of contract is speed, accuracy and reliability. The parties to the contract have to obtain digital. The Information Technology Act, 2000 regulates such contracts.

(b) Revocation of licence: Section 8(6) of Companies Act, 2013 provides that the Central Government, by order, revoke the licence granted to the company registered under this section-

- if the company contravenes any of the requirements of this section; or
- any of the conditions subject to which a licence is issued; or
- the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company.

The Central Government shall direct the company to convert its status and change its name to add the words 'limited' or 'private limited' to its name. No such order will not be passed without giving opportunity to the company of being heard.

A copy of such order shall be given to the Registrar. The Registrar shall, without prejudice to any action taken, on application, in the prescribed form register the company accordingly.

(c) Principles of public life as amended up to and as on 2015 are as follows-

- **Selflessness** - Holders of public office should act solely in terms of the public interest.
- **Integrity** - Holders of public office must avoid placing themselves under any obligation to people or organizations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial

or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

- **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability** - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this
- **Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty** - Holders of public office should be truthful.
- **Leadership** - Holders of public office should exhibit these principles in their own behavior. They should actively promote and robustly support the principles and be willing to challenge poor behavior wherever it occurs.

(d) Limit of deductions Section 7(3) provides up to which limit of the wage, the deductions may be made from the wages of the employees. Notwithstanding anything contained in this Act the total amount of deductions which may be made in any wage-period from the wages of any employed person shall not exceed –

- in cases where such deductions are wholly or partly made for payments to co-operative societies - 75% of such wages and
- in any other case - 50% of such wages.

Where the total deductions authorized under sub-section (2) exceed seventy five per cent or as the case may be, fifty per cent of the wages the excess may be recovered in such manner as may be prescribed.

INTERMEDIATE EXAMINATION
GROUP - I
(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS
DECEMBER - 2017

Paper - 6 : LAWS & ETHICS

Time Allowed : 3 Hours **Full Marks : 100**

The figures in the margin on the right side indicate full marks.
This question paper has two sections.
Both the sections are to be answered subject to instructions given against each.

Section - A

1. Answer all questions: **25**

(a) Multiple choice questions: **10**

(i) Which one of the following is not the discharge by operation of law?
(A) By merger
(B) By insolvency
(C) By breach of contract
(D) By the unauthorized alteration of items of a written document

(ii) Which of the following is a method of discharge from liability?
(A) By endorsement
(B) By promising
(C) By cancellation
(D) By registration

(iii) A partner may contribute to the LLP
(A) tangible or intangible property.
(B) moveable or immoveable property.
(C) money, promissory note etc.
(D) Any of the above

(iv) Gratuity is payable to an employee after he has rendered continuous service for not less than five years on his
(A) transfer
(B) daughter's marriage
(C) re-employment
(D) resignation

(v) Who will not be considered as an employee?
(A) Canteen workers
(B) Casual workers
(C) Partners
(D) Part time employee

(vi) "Individual pension account" means an account of subscriber, executed by a contract setting out the terms and conditions under the
(A) Provident fund scheme
(B) National pension system
(C) Citizen welfare system
(D) Minimum wage payment scheme

(vii) Which of the following is not a category of company?
(A) Inactive company
(B) Assistant company
(C) Dormant company

(D) Producer company

(viii) Section 92 of the Companies Act, 2013 requires a company to prepare and file annual return in form no.
(A) MGT-12
(B) INC-23
(C) MGT-7
(D) SH-10

(ix) An instrument of the proxy shall be deposited with the registered office of the company within _____ before the conduct of the meeting.
(A) 7 hours
(B) 21 hours
(C) 48 hours
(D) 60 hours

(x) A proper foundation of ethics requires a standard of _____ to which all goals and actions can be compared to.
(A) value
(B) living
(C) life
(D) speech

(b) Match and Pair: **5**

	Column I		Column II
1.	Hybrid between a company and a partnership	(A)	Existence from the time of incorporation to winding up
2.	Perpetual succession	(B)	Powers of the controlling authority
3.	Red herring prospectus	(C)	Need for business ethics
4.	Requiring the discovery and production of documents	(D)	A limited liability partnership
5.	Smooth functioning	(E)	Does not include complete particulars of the quantum or price of securities

(c) True or False: **5**

(i) The seller of the goods is not bound to deliver them until the buyer applies for the delivery.
(ii) The partners of a LLP may remove an auditor from office at any time by following the procedure as laid down in the LLP agreement.
(iii) The certificate of fitness granted by the certifying surgeon shall be valid for a period of 24 months from the date thereof.
(iv) The e-voting shall remain open for not less than 3 days and shall close at 5.00 P.M. on the date preceding the date of general meeting.
(v) The term 'ethics' derived from French word 'ethos' which means character.

(d) Match and Pair: **5**

(i) Remission means _____ of a lesser performance that what is actually due under the contract.
(ii) A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on _____ .
(iii) Where a person provides labour or service to another for remuneration which is less than the minimum wage, such labour is called _____ .
(iv) The monies received on application shall be kept in a separate bank account in a _____ bank.
(v) The seven principles of _____ were set out by Lord Nolan in 1995.

Answer:

1. (a) (i) (C)
(ii) (C)
(iii) (D)
(iv) (D)
(v) (C)
(vi) (B)
(vii) (B)
(viii) (C)
(ix) (C)
(x) (A)

(b)

	Column I		Column II
1.	Hybrid between a company and a partnership	(D)	A limited liability partnership
2.	Perpetual succession	(A)	Existence from the time of incorporation to winding up
3.	Red herring prospectus	(E)	Does not include complete particulars of the quantum or price of securities
4.	Requiring the discovery and production of documents	(B)	Powers of the controlling authority
5.	Smooth functioning	(C)	Need for business ethics

(c) (i) True
(ii) True
(iii) False
(iv) True
(v) False

(d) (i) Acceptance
(ii) Demand
(iii) Forced labour
(iv) Scheduled
(v) Public life

Section – B

Answer any five questions:

2. (a) What are the position of Minor's agreement and effect thereof?

(b) A agreed to become an assistant for five years to B who was a doctor practicing at Chennai. It was also agreed that during the term of agreement A will not practice on his own account in Chennai. At the end of one year, A left the assistantship of B and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether A could be restrained from doing so. 10+5=15

Answer:

2. (a) The position of Minor's agreement and effect thereof is under;
1. An agreement with a minor is void ab-initio.
2. The law of estoppels does not apply against a minor. *It means a minor can always plead his minority despite earlier misrepresenting to be a major*. In other words he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.

3. Doctrine of Restitution does not apply against a minor. In India the rules of restitution by minor are similar to those found in English laws. The scope of restitution of contract by minor was examined by the Privy Council in Mohiri Bibi case when it has held that the restitution of money under section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void *ab-initio*. Similarly no relief can be granted under section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void.
4. No Ratification on Attaining Majority-Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.
5. Contract beneficial to Minor - A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.
6. Minor as an agent - A minor can be appointed an agent, but he is not personally liable for any of his acts.
7. Minor's liability for necessities - If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable
8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.
9. Where a minor and an adult jointly enter into an agreement with another person the minor is not liable and the contract can be enforced against the major person.

(b) According to the provisions of the Indian Contract Act, 1872, as contained - Section 27 any agreement through which a person is restrained from exercising a lawful profession or trade/business is void.

But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade.

Therefore, 'A' cannot be restrained by an injunction from doing so.

3. (a) What do you understand by "Caveat-Emptor" under the sale of Goods Act, 1930? What are the exceptions to this rule?

(b) X, by inducing Y, obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the Bill as a holder in due course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity, the bill is dishonoured. X sues Y for recovery of money. With reference to the provisions of Negotiable Instruments Act, decide whether X will succeed in the case. 8+7=15

Answer:

3. (a) 'Caveat emptor' means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: -Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or

fitness for any particular purpose of goods supplied under a contract of sale".

The rule of caveat emptor does not apply in the following cases:

1. *Fitness for buyer's purpose:* Where the buyer, expressly or by implication, makes know to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. (Section 16(1)).

2. *Sale under a patent or trade name:* In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1)).

3. *Merchantable quality:* Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. (Section 16(2)).

4. *Usage of trade:* An implied warranty/or condition as to qualify or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3)).

5. *Consent by fraud:* Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

(b) Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, possessor or endorsee cannot receive the amount of Instrument. Hence, normally X would not be entitled to sue Y as X has obtained instrument through fraud.

However, as per section 53, a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z (who is a holder in due course), X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence, X will succeed.

4. (a) What are the different kinds of deduction that can be made from wages under the Payment of Wages Act, 1936?

(b) When can a member withdraw from his National Pension Funds account? 10+5=15

Answer:

4. (a) Section 7 of the Payment of Wages Act, 1936 deals with the details of deduction from wages. Section 7(2) provides that deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act and may be of the following kinds only, viz.;

- fines;
- deductions for absence from duty;
- deductions for damage to or loss of goods expressly entrusted to the employed

person for custody or for loss of money for which he is required to account where such damage or loss is directly attributable to his neglect or default;

- deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;
- deductions for such amenities services supplied by the employer as the State Government or any officer specified by it in this behalf may by general or special order authorize;
- deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance) and the interest due in respect thereof or for adjustment of over-payments of wages;
- deductions for recovery of loans made from any fund constituted for the welfare of labor in accordance with the rules approved by the appropriate Government and the interest due in respect thereof;
- deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;
- deductions of income-tax payable by the employed person;
- deductions required to be made by order of a court or other authority competent to make such order;
- deductions for subscriptions to and for repayment of advances from any provident fund to which the Provident Funds Act 1952 applies or any recognized provident funds as defined in section 2 (38) of the Indian Income Tax Act 1961 or any provident fund approved in this behalf by the appropriate Government during the continuance of such approval;
- deductions for payments to co-operative societies approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office and
- deductions made with the written authorization of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation Act of India established under the Life Insurance Corporation 1956 or for the purchase of securities of the Government of India or of any Stale Government or for being deposited in any Post Office Saving Bank in furtherance of any savings scheme of any such government.
- deductions made with the written authorization of the employed person for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families or both and approved by the appropriate Government or any officer specified by it in this behalf during the continuance of such approval;
- deductions made with the written authorization of the employed person for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926; '
- deductions for payment of insurance premium on Fidelity Guarantee Bonds;
- deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;
- deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice to bill to collect or to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage wharfage and cranage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;
- deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such

loss is directly attributable to his neglect or default;
- deductions made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette specify;
- deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

[Note: Any ten points from above mentioned items or other as mentioned in the Act is sufficient to attract the full marks]

(b) A Member of the National Pension Fund can withdraw following situation.

(1) At any point in time before 60 years of Age (min. contribution for 10 years)
Minimum 80% of the pension wealth to be utilised for purchasing a life annuity from the empanelled ASP. Remaining 20% of the pension wealth can be withdrawn as lump sum.
If pension wealth is equal or less than ` 1 lakh, entire amount will be paid as lump sum.

(2) On attaining the Age of 60 years and up to 70 years of age
Purchasing a life annuity from the empanelled ASP, subject to maximum deferment of 3 years. Remaining 60% of the pension wealth can be withdrawn as lump sum or can be deferred and withdrawn anytime before 70 years. Subscriber can also contribute till withdrawal or 70. If pension wealth is equal or less than ` 2 lakhs, entire amount will be paid as lump sum.

(3) Death due to any cause (all citizen)
In such an unfortunate event, option will be available to the nominee to receive 100% of the NPS pension wealth in lump sum. However, if the nominee wishes to continue with the NPS, he/she shall have to subscribe to NPS individually after following due KYC procedure.

5. (a) Discuss the procedure for conducting a poll in a meeting of a company.

(b) Elucidate the circumstances in which a company cannot buy-back its own shares as per the provisions of the Companies Act, 2013. 9+6=15

Answer:

5. (a) As per the provisions of the Companies Act, 2013 where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll to report thereon to him. The Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

Rule 21 provides that the Chairman of a meeting shall, in the poll process, ensure that-
- The Scrutinizes are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies;
- The Scrutinizers are provided with all the documents received by the Company
- The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting;.
- In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio;
- The Polling shall be in Form No. MGT-12;
- The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies:

- The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over;
- In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman;
- The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded;
- The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman;
- The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same;
- The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in form No. MGT-13. The report shall be signed by the scrutinizer(s) and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.

(b) Circumstances in which a company cannot buy back its own shares As per Section 70 of the company act 2013, a company cannot buy back shares or other specified securities directly or indirectly

(a) Through any subsidiary company including its own subsidiaries; or
(b) Through investment or group of investment companies; or
(c) When the company has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank. The problem does not apply if the default has been remedied and a period of three years has elapsed after such default ceased to subsist.
(d) Company has defaulted in filing of Annual Return (section 92), declaration of dividend (section 123) or punishment for failure to distributed dividend (section 127) and financial statement (section 129)

6. (a) What are the different duties of a director in a company as per the Companies Act, 2013?

(b) Enumerate the provisions relating to Restrictions on powers of Board. 8+7=15

Answer:

6. (a) As per Section 166 of the Companies Act, 2013 a director of a company is bound to perform the following duties as mentioned below:

- A director of a company shall act in accordance with the articles of the company.
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment,
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company,
- A director of a company shall not achieve or attempt to achieve any undue gain or advantages either to himself or to his relatives, partners or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company,
- A director of a company shall not assign his office and any assignment so made shall be void,

It a director of a company contravenes the provisions of Section 166 such director

shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(b) Section 180 of the Companies Act 2013: Restrictions on powers of Board

The board can exercise the following powers only with the consent of the company by special resolution, namely -

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business;

(d) to remit, or give time for the repayment of, any debt due from a director.

The special resolution relating to borrowing money exceeding paid up capital and free reserves specify the total amount up to which the money may be borrowed by Board.

The title of buyer or the person 'who takes on lease any property, investment or undertaking on good faith cannot be affected and also in case if such sale or lease covered in the ordinary business of such company.

The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except the provisions contained in this Act.

The debt incurred by the company exceeding the paid capital and free reserves is not. Valid and effectual, unless the lender proves that the loan was advanced on good faith and also having no knowledge of limit imposed had been exceeded.

7. (a) Why business ethics is more important and immensely needed in the present business environment? Discuss.

(b) Discuss the procedure for determination of the amount of gratuity as per section 7 of the Payment of Gratuity Act, 1972. 10+5=15

Answer:

7. (a) The following points are considered as the needs and importance of business ethics in present business environment:-

(i) To stop business malpractice
(ii) To improve customers' satisfaction
(iii) For the survival of the business
(iv) To safeguard consumers" right
(v) To protect employees and shareholders
(vi) To develop good relations
(vii) For smooth functioning
(viii) Consumer movement
(ix) Consumer satisfaction
(x) Importance of labour
(xi) Healthy competition

(xii) To create good image

(b) Section 7 of the Payment of Gratuity Act. 1972 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable the employer shall whether the employee has made application or not, determine the amount of gratuity Then he is to give notice to the person to whom the gratuity is payable and also to the controlling authority, specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within stipulated period the employer is liable to pay interest at the rate of 10 % per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.

If the claim for gratuity is not found admissible, issue a notice in form 'M' to the applicant employee nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

8. Write short notes on any three of the following terms: 5×3=15

(a) Contingent Contract
(b) Director Identification Number (DIN)
(c) Business Ethics
(d) Cleanliness of factory

Answer:

8. (a) Contingent contract

Section 31 under the Indian Contract Act, 1872 defines 'contingent contract' as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. The following are the essential of contingent contract-

a) Uncertainty and futurity of the event to which it is related
b) Uncertain future event must be collateral to the contract

A contingent contract need not necessarily be independent on any external event. It may be conditional on the voluntary act or the future conduct of one of the parties or a third person. Section 32 of the Act provides that contingent contract to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

(b) Director Identification Number

Every individual, who is to be appointed as director of a company shall make an application electronically in Form No. DIR-3 to the Central Government for allotment of DIN along with the prescribed fees. The applicant can download the said from the website of Ministry of Corporate Affairs ('MCA' for short) duly filled in all respects along with photograph and signed digitally. The form shall be verified by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

On application, the system shall generate an application number. The Central Government shall process the application and decide the approval or rejection and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode within 30 days from the receipt of such application.

If any defect is found in the application the Central Government shall give intimation of such defect or incompletion to the applicant by placing it on its web site and by

email to the applicant to rectify such defects within 15 days from the date of intimation. If the same has not been rectified the Government shall reject the application directing to file a fresh application. In case of rejection or invalidation of application the fee so paid with the application shall neither be refunded nor adjusted with any other application.

The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the present Act. The DIN allotted shall be valid up to the life time of the Director. The said number shall not be allotted to any other person. Similarly a person shall be allotted only one DIN. The director, on allotment of DIN, is to intimate the company in Form No. DIR-3C within 15 days from the intimation, given to him. Every company shall, within 15 days of the receipt of intimation, furnish the same with the Registrar. If a company fails to furnish DIN the company shall be punishable with fine which shall not be less than ` 25,000/- but which may extend to ` 1/- lakh. Every officer of the company who is default shall be punishable with tine which shall not be less than ` 25,000/- but which may extend to ` 1/- lakh.

(c) Business ethics

Business ethics is the study of what constitutes right and wrong or good and bad human conduct in business context.

Thus, business ethics deals with morality in business environment. It involves moral judgment based on understanding of the society. It extends beyond the legal questions and involves goodness and badness of an act.

(1) Business ethics refers to the application of everyday moral or ethical norms to business. It requires an awareness of how the products and services of an organization and the action of its employees, can affect its stakeholders and society as a whole, either positively or negatively.

(2) Ethics in business organization relates to a corporate culture of values, leadership, programs and enforcement.

(3) It is that set of principles or reasons which governs the conduct of business at the individual or collective level by the application of ethical reasoning to specific business situations and activities.

(d) Cleanliness of factory:

As per Section I I of the Factories Act, 1948 every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular -

- Removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same,
- Cleaning of the floor of every workroom once in every week by washing with disinfectant or by some other effective method,
- Providing effective drainage for removing water to the extent possible,
- All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years,
- To ensure that interior walls and roofs etc. are kept clean the following is to be complied with -
  - White wash or color wash should be carried out at least once in every period of 14 months,
  - Where surface has been painted or varnished, repair or re-varnished should be carried out once in every 5 years, if washable then once in every period of 6 months,
  - Where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.

The dates on which such processes are carried out shall be entered in the prescribed register.

INTERMEDIATE EXAMINATION

GROUP - I

(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS

JUNE - 2018

Paper - 6: Laws and Ethics

Time Allowed: 3 Hours **Full Marks: 100**

The figures in the margin on the right side indicate full marks.
This question paper has two sections. A and B.
Both the sections are to be answered subject to instructions given against each.
Wherever necessary, candidates may make appropriate assumptions and clearly state them.

Section - A

Section A contains question No. 1. All parts of this question are compulsory.

1. Answer all the following questions:

(a) Choose the correct answer from the given alternatives (you may write only the Roman numeral and the alphabet chosen for your answer): 1x10=10

(i) The main feature of e-contract is
- **(a) Cost and acceptability**
- **(b) Purity and clarity**
- **(c) Speed, accurate and reliable**
- **(d) Perfection and attractive**

(ii) Which of the following is not an unpaid seller's right against the goods?
- **(a) The right of retention**
- **(b) The right of stoppage in transit**
- **(c) The right of seeking claim for damage**
- **(d) The right of resale**

(iii) Where the endorser does not want that the endorsee or any other holder to incur any expense on his account is called
- **(a) Restrictive endorsement**
- **(b) Sans frais endorsement**
- **(c) Conditional endorsement**
- **(d) Unwanted endorsement**

(iv) The liability of the partners will continue for the acts done before the dissolution, even after the dissolution, until

(a) Public notice is given of the dissolution

(b) Partners are getting the final payment

(c) Claim is demanded by the creditors

(d) The death of partners

(v) Every employee shall be entitled to receive bonus from his employer in an accounting year if he has worked for not less than

(a) Ten working days

(b) Twenty working days

(c) Thirty working days

(d) Forty working days

(vi) Under Employee's State Insurance Act, 1948, the term of the office of the members of Medical Benefit Council shall be

(a) 2 Years

(b) 4 Years

(c) 5 Years

(d) 10 Years

(vii)Which one cannot be transacted through postal ballot?

(a) Appointment of auditor

(b) Election of a Director

(c) Buy back of shares by a company

(d) Change in place of registered office outside the local limits of any city, town or village

(viii) The appointment of an independent director shall be approved by the

(a) Board meeting

(b) General meeting

(c) Registrar of Companies

(d) Central Government

(ix) The sweat equity shares shall be locked in for a period of _____ years from the date of allotment.

(a) One

(b) Two

(c) Three

(d) Four

(x) The following is the disadvantage of business ethics:

(a) Through increasing morale and trust business can increase their market share

(b) Publicity due to well and ethical performance

(c) Acceptance of products of the company by the public

(d) Diversity in achievements

(b) Match the statement in column 1 with the most appropriate statement in Column II: **1x5=5**

	Column I		Column II
1.	Legal Representative of the contractor	(A)	Welfare measures taken in a factory.
2.	Where the seller makes a false representation and buyer relies on it.	(B)	Certificate of incorporation.
3.	Creches	(C)	Extract of the annual return of a company.
4.	MGT-9	(D)	Exception to the Doctrine of Caveat Emptor.
5.	Form No. INC-11	(E)	He who is not the Principal Employer.

(c) State whether the following statements are True or False (you may write only the Roman numeral and whether True or False without copying the statements into the answer books): **1x5=5**

(i) Gratuitous bailment continues even after the death of either of the bailor or bailee.

(ii) A holder is not having right to duplicate of lost bill, before it is overdue.

(iii) Fine may be recovered from the employed person by installments

(iv) Share certificate is a negotiable instrument.

(v) The businessmen who do not follow business ethics will have short term success, but they will fail in the long run.

(d) Fill in the blanks suitably (you may write only the Roman numeral and the content filling the blanks): **1x5=5**

(i) The liability of surety arises only when the principal debtor fails to pay the debt to the _____.

(ii) Goods to be manufactured or produced or acquired by the seller after making of the contract of sale is called _____ good.

(iii) If there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the _____.

(iv) The time limit for registration of charge is _____days from the date of creation of charge.

(v) The ethical operation of a company is directly related to_____ in both short and long term.

Answer:

1. (a) (i) (c)
(ii) (c)
(iii) (b)

(iv) (a)
(v) (c)
(vi) (b)
(vii) (a)
(viii) (b)
(ix) (c)
(x) (d)

(b)

	Column I		Column II
1.	Legal Representative of the contractor	(E)	He who is not the Principal Employer.
2.	Where the seller makes a false representation and buyer relies on it.	(D)	Exception to the Doctrine of Caveat Emptor.
3.	Creches	(A)	Welfare measures taken in a factory.
4.	MGT-9	(C)	Extract of the annual return of a company.
5.	Form No. INC-11	(B)	Certificate of incorporation.

(c) (i) False
(ii) False
(iii) False
(iv) False
(v) True

(d) (i) creditor
(ii) Future
(iii) Controlling Authority
(iv) 30
(v) Profitability

Section – B

Answer any five questions from question numbers 2 to 8
Each question carries 15 marks.

15×5 = 75

2. (a) Mr. X, a businessman has been fighting a long drawn litigation with Mr. Y, another businessman. To support his legal campaign Mr. X enlists the services of Mr. Z, a legal expert, stating that an amount of ₹ 10 lakhs would be paid, if Mr. Z does not take up the brief of Mr. Y. Mr. Z agrees, but at the end of the litigation Mr. X refuses to pay. Decide whether Mr. Z can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872.

(b) State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of the principal? 5+10=15

Answer:

2. (a) The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either illegal or void. Further Contract Act specifies that any agreements in restraint of trade, marriage, legal proceedings etc. are void agreements.

Thus Mr, Z cannot recover the amount of ₹ 10 lakhs promised by Mr. X because it is an illegal agreement and cannot be enforced by law.

(b) The general rule of the Indian Contracts Act, 1872 states that:

(i) Only the principal can enforce and can be held liable on a contract entered into by an agent.

(ii) The agent is not personally liable on a contract entered into by him on behalf of the principal.

The following are the exceptions to the above rule:

1. **Foreign Principal:** When agent acts for sale or purchase of goods for a principal resident abroad i.e., foreign principal.
2. **Personal liability by agreement:** Where it is expressly provided in the contract that the agent shall be personally liable.
3. **Undisclosed principal:** Where agent does not disclose the name/identity of the principal.
4. **Principal cannot be sued:** Where the principal is disclosed but cannot be sued, e.g., foreign sovereigns, ambassadors etc.
5. **Non-existence of Principal:** When the principal is not in existence at the time when the act was done, i.e., the agent acted for a non-existent principal.
6. **Agent's liability:** When the agent exceeds his authority or commits a breach of warranty of authority.
7. **Pretended Agent:** When he acts as a pretended agent.
8. **Mistake or Fraud:** When he receives or pays money by mistake or fraud.
9. **Agent sign an agreement without mentioning that he is an agent:** Where an agent signs a negotiable instrument without mentioning that he is signing as an agent.
10. **Trade or customs:** Where the usage of trade or custom makes an agent personally liable.

3. (a) M/s. Tea Enterprises agreed to supply 2,200 Kgs. of Tea to M/s. Gopal Enterprises at ₹ 1,200/- per Kg. by 30th April, 2018. On 1st March, 2018 M/s. Tea Enterprises informs Gopal Enterprises that they are not willing to supply the Tea as the price of Tea increased to ₹ 1,400/- per Kg. Examine the right of M/s. Gopal Enterprises.

(b) Anil draws a bill of exchange payable to himself on Sushil, who accepts the bill without consideration just to accommodate Anil. Anil transfers the bill to Ajay for good consideration.

State the rights of Anil and Ajay. Would your answer be different if Anil transferred the bill to Ajay after maturity? 8+7=15

Answer:

3. (a) In terms of the provisions of Section 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:

(1) To have delivery of the goods as per contract. (Sec. 31 & 32);
(2) To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;
(3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57);
(4) To sue the seller for specific performance;
(5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59);
(6) To sue the seller the damages for anticipatory breach of contract (Sec 60)

In the instant case M/s. Gopal Enterprises can exercise any of his rights discussed above.

(b) Section 43 of the Negotiable Instrument Act, 1881 states the following:-

(i) Liability of parties if there is no consideration - A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.
(ii) Rights of holder for consideration - but if any such party has transferred the instrument to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.
(iii) No right of accommodating party to recover from accommodating party - No party for whose accommodation a negotiable instrument has been made, drawn, accepted, endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

In the given case, Anil is not entitled to sue Sushil, since there is no consideration between Anil and Sushil and hence there is no obligation to pay.

Again Ajay is entitled to sue Anil and Sushil, since Ajay is a holder for consideration. Ajay

is entitled to sue the transferor for consideration and every other party prior to him.

According to Sec 59, in the case of accommodation bills, a defect in the title of the transferor does not affect the title of the holder acquiring after maturity. Hence, even if Ajay has acquired the bill for consideration after maturity, he is entitled to sue.

4. (a) Critically examine the duties of certified surgeon under the Factories Act, 1948.

(b) Enumerate the Central Record Keeping Agency under Pension Fund Regulatory and Development Act 2013? 8+7=15

Answer:

4. (a) Section 10 under Factories Act, 1948 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. The duties of certified surgeons are as follows-

- the examination and certification of young persons;
- the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;
- the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where -
  - ✓ cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
  - ✓ by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
  - ✓ young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

(b) Section 21 of Pension Fund Regulatory and Development Act, 2013 deals with Central Record keeping Agency

(1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central record keeping agency:
Provided that the Authority may, in public interest, appoint more than one central record keeping agency.

(2) The central record keeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central record keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central record keeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central record keeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

5. (a) Discuss the procedure for conversion of private company into One Person Company.

(b) What are the procedures of sending notice through electronic mode under the Companies Act, 2013? 7+8=15

Answer:

5. (a) Conversion of private company into a OPC

Rule 7 provides the procedure for conversion of private company into OPC. Rule 7(1) provides that a private company other than Section 8 company, having paid up share capital of ₹ 50 lakh or less and average annual turnover during the relevant period is ₹ 2 crores or less may convert itself into OPC by passing a special resolution in the general meeting. Before passing such resolution the company shall obtain 'No Objection Certificate' in writing from the members and creditors. The OPC shall file copy of the resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT-14.

The company shall file an application in Form No. INC-6 for its conversion into OPC along with fees. The following documents are to be attached:

- the directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital of the company is ₹ 50 lakhs or less or average annual turnover is less than ₹ 2 crores, as the case may be;
- the list of members and creditors;
- the latest Audited Balance sheet arid the Profit and Loss Account;
- the copy of No objection letter of secured creditors.

On being satisfied and complied with the requirements the Registrar shall issue the certificate.

(b) The procedure of sending notice through electronic mode under the Companies Act, 2013 is discussed as detailed below:

- A notice may be sent through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice;
- The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
- The subject shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled;
- The attachment shall in a PDF or in a non editable format together with a link or instructions for recipient for downloading relevant version of the software;
- The company should ensure that it uses a system which produces confirmation of the total number of recipients emailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained or on behalf of the company as 'proof of sending';
- The company is not responsible for the failure in transmission beyond its control;
- If a member fails to provide or update relevant email address to the company or to the depository participant, the company shall not be in default for not delivering notice via email;
- The company may send email through in house facility or its registrar and transfer agent or authorize any third party agency providing bulk email facility;
- The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government.

6. (a) Discuss the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director.

(b) "Directors are agents of the company." — Discuss. 10+5=15

Answer:

6. (a) Section 164 of the Companies Act, 2013 details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if -

(i) he is of unsound mind and stands so declared by a competent court;

(ii) he is an undischarged insolvent;

(iii) he has applied to be adjudicated as an insolvent and his application is pending;

(iv) he has been convicted by a Court of any offence, whether involving moral

turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the Sentence;

(v) if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;

(vi) an order disqualifying him for appointment as a director has been passed by the Court Or Tribunal and the Order is in force;

(vii) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(viii) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(ix) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications.

The disqualifications in (iv), (v), (vi) and (viii) shall not take effect -

- for 30 days from the date of conviction or order of disqualification;
- where an appeal or petition is preferred within 30 days against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of;
- where any further appeal or petition is preferred against order or sentence within 7 days until such further appeal of petition is disposed of.

(b) The company can act only through Directors, and so the relationship between the company and the Director is that of Principal and Agent. Contract entered into by a person as a Director of a company, will be binding on the Company. However, Directors are not Agents of Members of the company.

Directors have personal liability. They would be personally liable under the following circumstances:

- Director acts in his own name,
- Director enters into an agreement/ contract which does not state clearly as to whether the Director signing in his personal capacity or in his representative capacity as an Agent of the Company.

Rights of the Company:

- Contract executed by the Director in excess of his authority, is binding on the Company. However, the Company may claim damages from the Director for breach of implied warranty of authority.
- When Directors act properly on behalf of the Company, they do not incur personal liability; they do not exceed their powers.

7. (a) What are the areas in business ethics? Write a note of the same.

(b) Kelson Limited has two separate units at Delhi and Mumbai in India. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. Delhi unit is incurring continuous losses and hence bonus is not paid to the employees of this unit.
Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment? 10+5=15

Answer:

7. (a) Areas in business ethics

- Corporate Social Responsibility;
- Fiduciary responsibility to stake holders;
- Industrial espionage.

Ethical behavior and corporate social responsibility can bring significant benefits to a business.
For example, they may:

- attract customers to the firm's products, which means boosting sales and profits
- make employees want to stay with the business, reduce labour turnover and therefore increase productivity
- attract more employees wanting to work for the business, reduce recruitment costs and enable the company to get the most talented employees
- attract investors and keep the company's share price high, thereby protecting the business from takeover.

Knowing that the company, they deal with, has stated their morals and made a promise to work in an ethical and responsible manner allows investors' peace of mind that their money is being used in a way that arranges with their own moral standing. When working for a company with strong business ethics, employees are comfortable in the knowledge that they are not by their own action allowing unethical practices to continue. Customers are at ease buying products or services from a company they know to source their materials and labor in an ethical and responsible way.

A company which sets out to work within its own ethical guidelines is also less at risk of being fined for poor behavior, and less likely to find themselves in breach of one of a large number of laws concerning required behavior. Reputation is one of a company's most important assets, and one of the most difficult to rebuild should not be lost. Maintaining the promises it has made is crucial to maintaining that reputation. Businesses not following any kind of ethical code or carrying out their social responsibility leads to wider consequences. Unethical behavior may damage a firm's reputation and make it less appealing to stakeholders. This means that profits could fall as a result. The natural world can be affected by a lack of business ethics. For example, a business which does not show care for where it disposes its waste products, or fails to take a long-term view when

buying up land for development, is damaging the world in which every human being lives, and damaging the future prospects of all companies.

(b) All the two units shall be treated as two separate establishments since all the two units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses:

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;
- are entitled to minimum bonus as per the provisions of Sec. 10,12,13 and 14 of the Payment of Bonus Act,1965, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).

However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the two units taken together.

8. Write short notes on any three of the following terms: 5×3=15

(a) Undue Influence

(b) Alteration of Share Capital

(c) Consumer movement and Ethics

(d) Manufacturing process under the Factories Act, 1948.

Answer:

8. (a) Undue Influence

Under Section 16 of the Indian Contract Act defines undue influence as under:

(i) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(ii) In particular and without prejudice to the generality of the forgoing principle, a person is deemed to be in a position to dominate the will of another—

(a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(iii) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

(b) Alteration of share capital

Section 61 provides that a limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting-

- increase its authorized share capital by such amount as it thinks expedient;
- consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
- convert all or any of is fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination;
- sub division of shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation shall not be deemed to reduction of share capital.

(c) Consumer movement

Business ethics is gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous business by their false propaganda and false claims, unfair trade practices. Today, the consumers are aware of their rights and well informed as well as well organized. Now they are more organized and hence cannot be cheated easily. They take actions against those businessmen who indulge in bad business practices. They boycott poor quality, harmful, high priced and counterfeit goods. Therefore, the only way to survive in business is to be honest and fair. Consumer forum and consumer associations are more active and vocal now.

(d) Manufacturing process

Under Section 2(k) of Factories Act 1948 define 'manufacturing process' as under any process for-

- making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- pumping oil, water, sewage or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage.

In 'M/s Qazi Noorul Hasan Hamid Hussain Petrol Pump V. Deputy Director, Employees' State Insurance Corporation' - 2003 LLR 476 it was held that the definition 'manufacturing process' does not depend upon and is not correlated with any end product being manufactured out of a manufacturing process. It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport, delivery or disposal. It cannot be restricted an activity which may result into manufacturing something or production of a commercially different article. The 'manufacturing process' cannot be interpreted in a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.

INTERMEDIATE EXAMINATION

GROUP I

(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2018

Paper- 6: LAWS & ETHICS

Time Allowed: 3 Hours **Full Marks :100**

The figures in the margin on the right side indicate the full marks.

This question paper has two sections, A and B.

Both the sections are to be answered subject to instructions given against each.

Wherever necessary, candidates may make appropriate assumptions and clearly state them.

SECTION – A

Section A contains Question No. 1. All parts of this questions are compulsory.

1. Answer all the following questions:

Choose the correct answer from the given alternatives (you may write only the Roman numeraland the alphabet chosen for your answer): 1×10=10

(a) Multiple Choice Questions:

(i) A proposal may be revoked at any time before

- **(A) the communication of acceptance**
- **(B) the payment of consideration**
- **(C) signing the agreement**
- **(D) execution of the proposal**

(ii) Which of the following is not to be taken care while admitting a new partner?

- **(A) Computation of new profit sharing ratio and sacrifice ratio**
- **(B) Accounting treatment of goodwill**
- **(C) Professional qualification of admitting partner**
- **(D) Revaluation of assets and liabilities**

(iii) Where goods are delivered to the buyer and he refuses to accept them, the buyer is not bound to

- **(A) retain them with him.**
- **(B) look-after the goods.**
- **(C) return them to the seller.**
- **(D) store them in his godown.**

(iv) No child shall be allowed to work in a factory unless he has completed his

(A) 12th year

(B) 14th year

(C) 16th year

(D) 18th year

(v) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than

(A) three years

(B) five years

(C) seven years

(D) ten years

(vi) The Employees' State Insurance Corporation is

(A) Hindu Undivided Family

(B) Local Authority

(C) Charitable Institution

(D) Body Corporate

(vii) The annual return of an OPC shall be signed by the company secretary or where there is no company secretary, by the

(A) Senior executive of the company

(B) Auditor of the company

(C) Director of the company

(D) Advocate of the company

(viii)If there is any mis-statement in the prospectus then it would attract the liability on

(A) The printer

(B) The issuer

(C) The publisher

(D) The proof-reader

(ix) Every company limited by shares shall keep and maintain the Register of Members in Form No.

(A) MGT-1

(B) MGT-3

(C) MGT-7

(D) MGT-12

(x) Ethics are the set of moral principles that guide a person's

(A) Behaviour

(B) Philosophy

(C) Religion

(D) Profession

(b) Match and Pair: 1×5=5

	Column I		Column II
(1)	Wagering contract	(A)	Voting through electronics means
(2)	Coercion	(B)	War,animal rights and capital punishment
(3)	Consensus ad-idem	(C)	Committing any act forbidden by

			the Indian Penal Code
(4)	**Section 108 of Companies Act, 2013**	**(D)**	**Identity of minds**
(5)	**Applied ethics**	**(E)**	**Promise to pay `1,000 if it rains today**

(c) State whether the following statements are True or False: 1×5=5

(i) Goods to be manufactured or produced or acquired by the seller after making of the contract of sale are called future goods.

(ii) The first endorsement of an instrument can be made by the Banker.

(iii) Payment of Gratuity Act, 1972 applies to every shop and establishment employing seven or more persons.

(iv) In case of e-voting, notice shall be sent as attachment in word file.

(v) Ethics is a requirement for human life.

(d) Fill in the blanks: 1×5=5

(i) The dishonor of the instrument may be due to Non-acceptance and_____ .

(ii) The term of the office of the representative members of Medical Benefit Council shall be _____ years from the date on which the appointment is notified.

(iii) The company shall have the_____ to specify the lock-in-period for the shares issued in pursuant to exercise such option.

(iv) A director may resign from his office by giving a notice in writing to the _____.

(v) The Seven Principles of Public Life were set out by_____ for the first time in the year 1995.

Answer: 1(a)

(i) (a) The communication of acceptance
(ii) (c) Professional qualification of admitting partner
(iii) (c) Return them to the seller
(iv) (b) 14th year
(v) (b) Five years
(vi) (d) Body Corporate
(vii) (c) Director of the company
(viii) (b) The issuer
(ix) (a)MGT – 1
(x) (a) Behaviour

Answer: 1(b)

	Column I		Column II
(1)	Wagering contract	(E)	Promise to pay `1,000 if it rains today
(2)	Coercion	(C)	Committing any act forbidden by the Indian Penal Code
(3)	Consensus ad-idem	(D)	Identity of minds
(4)	Section 108 of Companies Act, 2013	(A)	Voting through electronics means
(5)	Applied ethics	(B)	War, animal rights and capital punishment

Answer: 1(c)

(i) True
(ii) False
(iii) False
(iv) False

(v) True

Answer: 1(d)

(i) Non payment
(ii) Four
(iii) Freedom
(iv) Company
(v) Lord Nolan

SECTION - B

Answer *any five* questions from question numbers 2 to 8.
Each question carries 15 marks.

15×5=75

2. (a) Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi-contracts by the Indian Contract Act, 1872.

(b) C is the wife of A. She purchased some sarees on credit from B. B demanded the amount from A. A refused. B filed a suit against A for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether B would succeed. 10+5=15

Answer: 2(a)

Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. **These are known as – quasi contracts** as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: **Firstly,** such a right is always a right to money and generally, though not always, to a liquidated sum of money; **Secondly**, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; **Thirdly**, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

Circumstances identified as quasi-contracts:

1. Sec-68--Claim for necessaries supplied to persons incapable of contracting: Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.

2. Sec-69-Right to recover money paid for another person: A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.

3. Sec-70-Obligation of person enjoying benefits of non-gratuitous act: Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.

4. Sec-71-Responsibility of finder of goods: A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.

5. Sec-72- Liability for money paid or thing delivered by mistake or by coercion: A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

In all the above cases contractual liability arises without any agreement between the parties.

Answer: 2(b)

Problem as asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be

created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied married agent, of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessaries.

But the legal presumption can be rebutted in the following cases:

(i) Where the goods purchased on credit are not necessaries.
(ii) Where the wife is given sufficient money for purchasing necessaries.
(iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.
(iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessaries. This legal presumption can be rebutted only in cases (iii) and (iv).

Applying the above conditions in the given case 'B' will succeed. He can recover the said amount from 'A' if sarees purchased by 'C' are necessaries for her.

3. (a) A limited liability partnership wants to shift its registered office from Mumbai in the State of Maharashtra to Kolkata in the State of West Bengal. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008?

(b) Rahul draws a cheque payable to 'sell or order'. Before he could encash the cheque, one of his creditors, Samrat approaches him for payment. Rahul endorses the same cheque in Samrat's favour. The banker refuses payment to Samrat on account of insufficiency of funds in the account. Can Rahul be made liable to penalties for dishonor of cheque due to insufficiency of funds in the account under section 138 of Negotiable Instruments Act, 1881? 8+7=15

Answer: 3(a)

Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Alternate Answer:

Change of LLP Office from one State to another (in the given problem, it is from Mumbai, Maharashtra to Kolkata, West Bengal)

Resolution for Change of Address: It should be done as per LLP Agreement. If where the Limited LLP doesn't provide for any such procedure, consent of all partners shall be

required for changing the place of Registered Office of Limited LLP to another place.

Secured Creditors: Consent of Secured Creditors required for such change of address.

Form to be filed: Form- 15 to be filed with Registrar from where (here it is Mumbai) the LLP proposes to shift its registered office with a copy thereof for the information to the Registrar under whose jurisdiction (Kolkata) the registered office is proposed to be shifted within 30 days of such change.

Public Notice: Publish a general notice, not less than 21 days before filing any notice with Registrar, in a daily newspaper published in English and in the principal language of the district in which the registered office of the LLP is situated (**Mumbai, Maharashtra)**and circulated in that district giving notice of change of registered office.

From when to be filed: Within 30 days of publishing of notice.

Failure to comply with these provisions, the LLP and its every partner is liable to punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Answer: 3(b)

Section 138 of Negotiable Instrument Act, 1881, creates statutory offence in the matter of dishonour of cheques on the ground of insufficiency of funds in the account maintained by a person with the banker.

Section 138 of the Act can be said to be falling either in the acts which are not criminal offense in real sense, but are acts which in public interest are prohibited under the penalty or those where although the proceeding may be in criminal form, they are really only a summary mode of enforcing a civil right. Normally in criminal law existence of guilty intent is an essential ingredient of a crime.

However the Legislature can always create an offence of absolute liability or strict where 'mens rea' is not at all necessary.

No, Rahul cannot be made liable to penalties for dishonour of cheque due to insufficiency of funds in the account since the cheque was not originally drawn payable to another person.

A cheque drawn payable to self and later endorsed in favour of another person does not seem to fall within the purview of the provisions of **Section 138** which lay down that the cheque should have been drawn for payment to another person.

4. (a) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, 1948.

(b) Mention the benefits that are entitled to the insured persons under the Employees' StateInsurance Act, 1948. 9+6=15

Answer: 4(a)

Procedure for Fixing and revising Minimum Wages (Sec 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(b) Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely

to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1) (b)].

After considering the advice of the committee or committees [under Sec. 5(1) (a)] or all representations received by it before the date specified in the notification [under Sec 5(1) (b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec 5(2)]. The power of the Government under Sec. 5(2) to issue notification revising minimum wages includes power to give retrospective effect to notification.

Answer: 4(b)

Section 46 of the Employees State Insurance Act, 1948 provides that the insured persons, their dependents shall be entitled to the following benefits

1. Periodical payments to any insured person in case of his sickness ;
2. Periodical payments to an insured woman in case of confinement or mis-carriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage;
3. Periodical payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee;
4. Periodical payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee ;
5. Medical treatment for and attendance on insured persons ;
6. Payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.

   The amount of such payment shall not exceed such amount as may be prescribed by the Central Government. The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.

5. (a) What are the features of companies registered under section 8 of the Companies Act, 2013?

(b) Discuss the provisions of the Companies Act, 2013 regarding issue of bonus shares.

7+8=15

Answer: 5(a)

Section 8 of companies Act 2013 These companies intend to promote art, commerce, sports, safety, science, research, healthcare, social welfare, religion, protection of the environment etc.

The following are the features of companies registered under Section 8 of the Companies Act, 2013;

1. has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
2. intends to apply its profit, if any, or other income in promoting its objects; and
3. intends to prohibit the payment of any dividend to its members;
4. the company registered under this Section shall enjoy all the privileges and be subject to all the obligations of the limited company;
5. a firm may be a member of the company registered under this section ;

6. a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government.
7. a company registered under this section may convert itself into a company of any other kind only after complying with such conditions as may be prescribed.

Answer: 5(b)

Section 63 of the Companies Act, 2013 provides for the issue of bonus shares. Section 63(1) provides that a company issue fully paid up bonus shares to its members out of its

- free reserves ;
- the securities premium account ; or
- the capital redemption reserve account

No bonus shares shall be made by capitalizing reserves created by revaluation of assets.
Section 63(2) provides that no company shall capitalize its profits or reserves for the purpose of issuing fully paid up shares unless –

- it is authorized by its articles ;
- it has, on the recommendation of the Board, been authorized in the general meeting of the company ;
- it has no defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it ;
- it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus ;
- the partly paid up shares, if any outstanding on the date of allotment are made fully paid up ;
- it complies with such conditions as may be prescribed ;

Section 63(3) provides that the bonus shares shall not be issued in lieu of dividend.
Rule 14 provides that the company which once announced the decision of the Board recommending a Bonus issue shall not subsequently withdraw the same.

6. (a) Discuss the powers of the Board of Directors of a company as per the Companies Act, 2013.

(b) Enumerate the provisions of the Companies Act, 2013 relating to women director in a company. 10+5=15

Answer: 6(a)

Section 179 of the Companies Act, 2013 deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting.
The following section 179(3) read with Rule 8 of Companies (Management & Administration) Rules, 2014 powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely : -

(1) to make calls on shareholders in respect of money unpaid on their shares ;

(2) to authorise buy-back of securities under section 68 ;

(3) to issue securities, including debentures, whether in or outside India ;

(4) to borrow monies ;

(5) to invest the funds of the company ;

(6) to grant loans or give guarantee or provide security in respect of loans ;

(7) to approve financial statement and the Board's report ;

(8) to diversify the business of the company ;

(9) to approve amalgamation, merger or reconstruction ;

(10) to take over a company or acquire a controlling or substantial stake in another company;

(11) to make political contributions ;

(12) to appoint or remove key managerial personnel (KMP) ;

(13) to appoint internal auditors and secretarial auditor ;

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify.

The banking company is not covered under the purview of this section. The company may impose restriction and conditions on the powers of the Board.

However, unless specifically restricted under the act or Article of Association, Board has all the powers to manage the affairs of the company

Answer: 6(b)

Second proviso to Section 149(1) of the Companies Act, 2013 read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following classes of companies shall appoint at least one woman director

- every listed company ;
- every other public company having
  - paid up share capital ` 100 crores or more; or
  - turnover of ` 300 crores or more.

For this purpose the paid capital or turnover as on the last date of latest audited financial statements shall be taken into account. A company incorporated under the Companies Act shall comply with such appointment of woman director within a period of six months from the date of its incorporation. Any intermittent vacancy of a woman director shall be filed up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

7.(a) Discuss the nature and relevance of Ethics to the Business.

(b) Mr. Gill, an employee of M/s Sonabheel Tea Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Mr. Gill. Examine the decision taken by the company to forfeit the amount ofgratuity in the light of the Payment of Gratuity Act, 1972. 10+5=15

Answer: 7(a)

Ethics – Nature and relevance to the business

Several factors play a role in the success of a company that is beyond the scope of financial statements alone. Organizational culture, management philosophy and ethics in business each have an impact on how well a business performs in the long term. No matter the size, industry or level or profitability of an organization, business ethics are one of the most important aspects of long-term success

The management team sets the tone for how the entire company runs on a day-to-day basis. When the prevailing management philosophy is based on ethical practices and behaviour, leaders within an organization can direct employees by example and guide

them in making decisions that are not only beneficial to them as individuals, but also to the organization as a whole. Building on a foundation of ethical behaviour helps create long lasting positive effects for a company, including the ability to attract and retain highly talented individuals and building and maintaining a positive reputation within the community. Running a business in an ethical manner from the top down builds a stronger bond between individuals on the management team, further creating stability within the company.

When management is leading an organization in an ethical manner, employees follow in those footsteps. Employees make better decisions in less time with business ethics as a guiding principle; this increases productivity and overall employee morale. When employees complete work in a way that is based on honesty and integrity, the whole organization benefits. Employees who work for a corporation that demands a high standard of business ethics in all facets of operations are more likely to perform their job duties at a higher level and are also more inclined to stay loyal to that organization.

The importance of business ethics reaches far beyond employee loyalty and morale or the strength of a management team bond. As with all business initiatives, the ethical operation of a company is directly related to profitability in both the short and long term. The reputation of a business from the surrounding community, other businesses and individual investors is paramount in determining whether a company is a worthwhile investment. If a company's reputation is less than perfect based on the perception that it does not operate ethically, investors are less inclined to buy stock or otherwise support its operations. With consistent ethical behaviour comes increasingly positive public image, and there are few other considerations as important to potential investors and current shareholders. To retain a positive image, businesses must be committed to operating on an ethical foundation as it relates to treatment of employees, respect to the surrounding environment and fair market practices in terms of price and consumer treatment.

Answer: 7(b)

The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused.

The gratuity payable to an employee may be wholly or partially forfeited:

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Mr. Gill is entitled to receive the balance gratuity.

8. Write short notes on any three of the following terms: 5×3=15

(a) E-Contracts

(b) Small Companies

(c) Improving ethical behaviour in business

(d) 'Overtime' under Minimum Wages Act, 1948

Answer: 8(a)

E-Contracts: E-contracts are paperless contracts. It is in electronic form. They are

conceptually very similar to traditional contracts. E-contract also require basis of contract. The following are ingredients of the e-contracts –

- An offer is to be made;
- Offer is to be accepted;
- There shall be a lawful consideration;
- There shall an intention to create legal relations;
- The parties must be competent to contract;
- There must be free and genuine consent;
- The object of the contract must be lawful;

The main feature of this type of contract is speed, accuracy and reliability. The parties to the contract have to obtain digital certificate from competent authority. The Information Technology Act, 2000 regulates such contracts. Contract is signed through E-Mail is valid & enforceable.

Answer: 8(b)

Small Companies:

Section 2(85) of the Companies Act, 2013 defines 'small company' as a company, other than a public company –

(i) paid up share capital of which does not exceed ` 50 lakh or such higher amount as may be prescribed which shall not be more than ` 10 crore; and

(ii) turnover which is as per its last profit and loss account does not exceed ` 2 crores or such higher amount as may be prescribed which shall not be more than ` 100 crores.

This definition shall not apply to the following companies –

- A holding company or subsidiary company;
- A company registered under Section 8; or
- A company or a body corporate governed by any special act.

Answer: 8(c)

Improving ethical behaviour in business

Understanding how people make ethical choices and what prompts a person to act unethically may reverse the current trend toward unethical behaviour in business. Ethical decisions in an organization are influenced by three key factors: individual moral standards, the influence of managers and co-workers, and the opportunity to engage in misconduct. It is difficult for employees to determine what conduct is acceptable within a company if the firm does not have ethics policies and standards.

And without such policies and standards, employees may base decisions on how their peers and superiors behave. Professional codes of ethics are formalized rules and standards that describe what a company expects of its employees. Codes of ethics, policies on ethics, and ethics training programs advance ethical behaviour because they prescribe which activities are acceptable and which are not, and they limit the opportunity for misconduct by providing punishments for violations of the rules and standards. The enforcement of such codes and policies through rewards and punishments increases the acceptance of ethical standards by employees.

Answer: 8(d)

Overtime

Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate

government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to overtime wages.

In case of employment in agriculture – one and a half times the ordinary rate of wages;

in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no overtime wage is paid for a particular month a NIL entry in register should be made.

Section 14(2) provides that this Act shall not prejudice the operation of the provisions of Section 59 of the Factories Act in any case where those provisions are applicable.

INTERMEDIATE EXAMINATION

GROUP - I

(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS

JUNE - 2019

Paper - 6 : LAWS & ETHICS

Time Allowed : 3 Hours **Full Marks : 100**

The figures in the margin on the right side indicate full marks.
This question paper has two Sections A and B.
Both the Sections are to be answered subject to instructions given against each.
Wherever necessary, candidates may make appropriate assumptions and clearly state them.
Please : (1)Answer all bits of a question at one place.
(2) Open a new page for answer to a new question.

SECTION – A

Section - A contains Question No. 1.
All parts of this question are compulsory.

1. Answer all the following questions:

(a) Choose the correct answer from the given alternatives (you may write only the Roman numeral and the alphabet chosen for your answer): 1x10=10

(i) Anu threaten to kidnap Binu's daughter if she does not sell her house worth ₹ 90 Lakh to her for ₹ 20 Lakh. This Contract is void due to—
(A) inadequacy of Consideration
(B) absence of Free Consent
(C) incompetence of Parties
(D) None of the above

(ii) The Latin Maxim "Nemo Dat Quod non Habet" means
(A) no man can pass a better title than he has
(B) let the Buyer beware
(C) no consideration – No contract
(D) ignorance of law is no excuse

(iii) As per the RBI Act, which of the following negotiable Instruments can be payable to the bearer on demand?
(A) Cheque
(B) Hundi
(C) Bank Draft
(D) Promissory Note

(iv) When a partnership firm is continued even after the expiry of fixed term, it is called

(A) Partnership at Will

(B) Perpetual Partnership

(C) Fixed Partnership

(D) Particular Partnership

(v) The amount of gratuity payable to an employee shall not exceed

(A) Ten months' pay

(B) Twelve months' pay

(C) Twenty months' pay

(D) Twenty-five months' pay

(vi) No female child shall be allowed to work in any factory except between

(A) 8 AM to 7 PM

(B) 6 AM to 6 PM

(C) 6 AM to 7 PM

(D) 10 AM to 5 PM

(vii)In case of a private company, mention the number of members personally present to form the quorum of a meeting of the company.

(A) One member

(B) Two members

(C) Three members

(D) Four members

(viii)Which of the following is not a valid medium of sending notice to all shareholders?

(A) By registered post or speed post

(B) Through public advertisement

(C) Through registered email-id

(D) Through courier service

(ix) If any default is made in filing refund of money, the company and every officer, who is in default shall be liable to a penalty maximum up to

(A) ₹ 50,000

(B) ₹ 75,000

(C) ₹ 1,00,000

(D) ₹ 1,25,000

(x) Value chain as a strategic framework for analysis of competitive advantaged was promoted by

(A) Peter Drucker

(B) F. W. Taylor

(C) Michael Porter

(D) Tom Peters

(b) Match and pair: **1x5=5**

	Column I		Column II
1.	Occupier	(A)	P purchases goods from S, he has no intention of paying for it.
2.	Section 92 of the Companies Act, 2013	(B)	Annual Return.
3.	Meta ethics	(C)	Person having ultimate control
4.	Fraud	(D)	Control of at least 20 per cent of total share capital
5.	Significant influence	(E)	Nature of moral judgement

(c) State whether the following statements are True or False: **1x5=5**

(i) An agreement which is impossible is void.
(ii) In case of expulsion of a partner, the provisions of retired partners will be applicable to such expelled partner.
(iii) Sickness benefit is paid up to a maximum day of 60 days in a year.
(iv) A director in the whole time employment of the Company is called Whole Time Director.
(v) Contribution to pension scheme is recoverable when employee crosses 58 year of age.

(d) Fill in the blanks: **1x5=5**

(i) When the consent is caused by _____, the agreement is voidable at the option of the party whose consent was so caused.
(ii) All payments of wages shall be made on a _____ day.
(iii) Whenever a company makes any allotment of securities, it shall file a return of allotment with the Registrar within _____ days of allotment.
(iv) The application for the purpose of Alteration of Articles is to be filed in Form No. _____.
(v) Business ethics must safeguard different rights of the _____.

Answer:

1. (a)
(i) (B) Absence of free consent
(ii) (A) No man can pass a better title than he has
(iii) (A) Cheque
(iv) (A) Partnership at will
(v) (C) Twenty months' pay
(vi) (A) 8 AM to 7 PM
(vii) (B) Two members
(viii) (B) Through public advertisement
(ix) (C) ₹ 1,00,000
(x) (C) Michael Porter

(b)

	Column I		Column II
1.	Occupier	(C)	Person having ultimate control
2.	Section 92 of the Companies Act, 2013	(B)	Annual Return
3.	Meta ethics	(E)	Nature of moral judgement
4.	Fraud	(A)	P purchases goods from S, he has no intention of paying for it.
5.	Significant influence	(D)	Control of at least 20 per cent of total share capital

(c) (i) True
(ii) True
(iii) False
(iv) True
(v) False

(d) (i) under influence
(ii) working
(iii) 30
(iv) INC - 27
(v) consumers

SECTION – B

Answer any five questions from question numbers 2 to 8
Each question carries 15 marks.

2. (a) Sunil, aged 16 years, was studying in a Medical College. On 1st March, 2017 he took a loan of ₹ 3 lakhs from Anil for the payment of his college fee and agreed to pay by 31st May, 2018. Sunil possesses assets worth ₹ 15 lakhs. On due date Sunil fails to pay back the loan to Anil. Anil now wants to recover the loan from Sunil out of his assets. Whether Anil would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.

(b) State the essential elements of a contract of bailment. Distinguish between the contract of bailment and contract of pledge. 6+9=15

Answer:

2. (a) According to Section 11 of the Indian Contract Act, 1872, a person who is of the age of majority to the law to which he is subject is competent to enter into any contract. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus Sunil who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmodas Ghose 1903, 30 Cal, 539 (PC)].

Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity. Thus, according to the above provision, Anil will be entitled to recover the amount of loan given to Sunil for payment of the college fees from the property of the minor.

(b) Essential elements of a contract of bailment:

1. **CONTRACT** – The first condition is that there must be a contract between the two parties for the delivery of goods. Such contract may be express or implied written or oral.
2. **DELIVERY OF GOODS** – This contract is for the delivery of some movable goods from one person (bailor) to another person (bailee) or to his authorized agent. If the goods are immovable the contract will not be a contract of bailment.
3. **CHANGE OF POSSESSION** – The possession of goods must be affected by such contract. Mere custody without possession is not a contract of bailment.
4. **PURPOSE OF DELIVERY** – The delivery of the goods is for temporary purposes. It may be for safe-custody, repair, carriage or for gratuitous use by the bailee.
5. **NUMBER OF PARTIES** – There is two parties tender such contract e.g., the bailor and bailee. The person delivering the goods is called the bailor and the person to whom the goods are bailed is called the bailee.
6. **RIGHT OF OWNERSHIP** – In a contract of bailment, the right of ownership remains with an owner (bailor) and is not changed. If the ownership is transferred, the contract will be a contract of sale and is not of bailment.
7. **CHANGE OF FORM** – If the goods bailed are altered in form by the bailee, such as cloth is converted into a shirt still, the contract is one of bailment.
8. **GOODS IN POSSESSION OF BAILEE** – The delivery of the goods is not essential if the goods are already in the possession of the person who enters into the contract as bailee.
9. **REDELIVERY OF GOODS** – Under such contract, the goods are redelivered to the bailor or according to his directions upon the fulfillment of the purpose by the bailee.
10. **RIGHT OF REWARD** – In a contract of bailment, both the parties bailor and the bailee can get a reward but it depends on the nature of the transaction.

(b) Difference between contract of bailment and contract of pledge:-

1. Right of sale - In case of pledge, the pawnee (pledgee) can sell the goods and recover his debt, if pawnor (pledger) does not pay while in bailment the bailee can retain the goods and sue for damages, but he has no authority to sell the goods.
2. Purpose - Pledge is specifically for securing a debt, while bailment may be for any purpose e.g. for repairs, safe custody etc.,
3. Right to use the goods - In case of pledge, pawnee cannot use the goods pledged but bailee can use the bailed goods if contract so provides.

3. (a) Himadri sells 400 Kgs. of tea to Rahul and sends 200 Kgs. by lorry and 200 Kgs. By Railway. Rahul receives delivery of 200 Kgs. sent by lorry, but before he receives the delivery of the tea sent by railway, he becomes bankrupt. Himadri being still unpaid, stops the goods in transit. The official receiver, on Rahul's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

(b) Ajay draws a bill on Anoop. Anoop accepts the bill without any consideration. The bill is transferred to Udit without consideration. Udit transferred it to Vicky for value.
Decide-
(i) Whether Vicky can sue the prior parties of the bill?
(ii) Whether the prior parties other than Vicky have any right of action intense? 7+8=15

Answer:

3. (a) Section 50, of Sale of Goods Act, states that, subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in course of transit and retain them until payment of tender of the price.

Stoppage in transit (Sections 50-52)

The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment or tender of the price.

The right to stop goods is available to an unpaid seller

(i) when the buyer becomes insolvent; and

(ii) the goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:

(i) If the buyer obtains delivery before the arrival of the goods at their destination;

(ii) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;

(iii) If the carrier wrongfully refuses to deliver the goods to the buyer.

Applying the above provisions in the given case, we may conclude that Himadri being unpaid, can stop the 200 Kgs. of tea sent by railway as these goods are still in transit and Rahul has become insolvent.

(b) Section 43 of Negotiable Instrument Act,1881, provides that an instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails,

creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(i) In the problem, as asked in the question, Ajay has drawn a bill on Anoop and Anoop accepted the bill without consideration and transferred it to Udit without consideration. Later on in the next transfer by Udit to Vicky is for value. According to provisions of the aforesaid Section 43, the bill ultimately has been transferred to Vicky with consideration. Therefore, Vicky can sue any of the parties i.e. Ajay, Anoop or Udit, as Vicky arrived a good title on it being taken with consideration.

(ii) As regards to the second part of the problem, the prior parties before Vicky i.e. Ajay, Anoop and Udit have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

4. (a) Describe the procedures for an employee to claim the short payment of wages or non-payment of wages under Minimum Wages Act, 1948.

(b) What are the basic features of the national pension system as contained in the Pension Fund Regulatory and Development Authority Act, 2013? 7+8=15

Answer:

4. (a) If there is any short payment of wages or wages at the over time etc., may be claimed by the employee himself or through any legal practitioner or any official of a registered trade union authorized by him or any Inspector or any person acting with the permission of the Authority by applying to the concerned authority. For this purpose the appropriate Government may appoint any commissioner for workmen's Compensation; or any Officer of the central Government exercising functions as a Labour Commissioner for any region; or any Officer of the State Government not below the rank of Labor Commissioner; or any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area for all claims.

The claim shall be presented to the authority by the employee within six months from the date on which the minimum wages or other amount became payable. The Authority may a claim beyond the six months if he is satisfied that the applicant had sufficient cause for not making the application within the prescribed period. Rule 27 provides that a single application in respect of a number of employees may be field before the authority. The application shall be made in duplicate in Forms VI, VIA or VII, one copy of which shall bear the prescribed court fee. The authorization shall be given in Form VIII.

The Authority shall serve the copy of the application to the employer by registered post a notice in Form IX to appear before him on a specified date. He shall hear the applicant and the employer and after such further inquiry, if any, as it may consider necessary may, without prejudice of any other penalty to the employer, direct the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with

compensation as the authority may think fit, not exceeding 10 times the amount of such excess; in any other case, the payment of the amount together with the payment of such compensation as the Authority may think fit, not exceeding Rs.10.

If the employer fails to appear on the specified date the Authority may hear and determine the application ex-parte. If the applicant fails to appear on the specified date the application will be dismissed. Any such order may be set aside on sufficient cause being shown by the defaulting party within one month of the date of the said order and the application shall be re-heard.
If the Authority finds the application is a vexatious one he may impose penalty on the employees not exceeding Rs.50/- to the employer.
The amount due may be recovered as if it were a fine imposed by the Authority as a Magistrate. Every direction of the Authority shall be final.

(b) The National Pension System shall have the following basic features, namely:--

- every subscriber shall have an individual pension account under the National Pension System;
- withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the condition's, such as purpose, frequency and limits, as may be specified by the regulations;
- the functions of record keeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;
- there shall be a choice of multiple pension funds and multiple schemes: Provided that—

  (a) the subscriber shall have an option of investing up to hundred per cent of his funds in Government Securities; and

  (b) the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the Authority;

  (c) there shall be portability of individual pension accounts in case of change of employment;

  (d) collection and transmission of contributions and instructions shall be through points of presence to the central record keeping agency

  (e) there shall not be any implicit or explicit assurance of benefits except market-based guarantee mechanism to be purchased by the subscriber;

  (f) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and

  (g) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

5. (a) What is meant by Lifting of Corporate Veil? In which circumstances the corporate veil can be lifted by court?

(b) State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013. 8+7=15

Answer:

5. (a) The separate personality or a company is a statutory privilege and it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle/doctrine of what is called as "lifting of or piercing the corporate veil". The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

In the following circumstances, different courts found it necessary to lift the corporate veil and punish the actual persons who did wrong or unlawful acts under the name of the company

Protection of Revenue: The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax invasion or circumventing tax obligation.

Determination of enemy character of the Company: Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy. This is due to the reason that though a company enjoys Separate Legal Entity but its affairs are run by individuals.

Prevention of fraud: Where a Company is used for committing frauds or improper conduct, the Court may lift the corporate veil and look at the realities of the situation.

Protection of public policy: The Court shall lift the Corporate Veil without any hesitation to protect the public policy and prevent transaction opposed to public policy.

Company mere sham or cloak: Where the Company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the Court shall lift the Corporate Veil.

Where a Company acts as an agent of its shareholders: If there is an arrangement between the shareholders and a Company to the effect that the Company will act as agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability.

Avoidance of Welfare Legislation: Where a Company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture.

To punish for contempt of Court: Company being an artificial person cannot disobey the orders of the Court. Therefore, the persons at fault should be identified.

(b) The steps involved in changing the registered office from one state to another state:

1. Call for a board meeting to decide on the change in the domicile clause.
2. In the board meeting fix up the date, time, place of the general meeting and approve the notices for this purpose, send the notices, hold the meeting and pass special resolutions.
3. After taking the approval of the members, file a certified copy of the special resolution along with the explanatory statement in **Form 23** with ROC.
4. Publish a general notice in at least one regional language newspaper and one English language newspaper circulated in the area in which registered office of the company is situated clearly stating the substance of the petition.
5. Send individual notices to all creditors/debenture holders of the company.
6. After a gap of one month from the date of sending notices as above, file petition with the Company Law Board (CLB) pursuant to the CLB Regulations, 1991. The petition has to be filed with the Regional Bench of the CLB at which the existing registered office is situated.
7. Serve a copy of the petition on the ROC.
8. Serve a copy of the notice along with a petition to the **Chief Secretary to the Government of the State** where the registered office of the company is situated or to the **Administrator / Lt. Governor of the Union Territory** where the registered office is situated in the Union Territory.
9. A hearing may take place at the CLB office at which creditors, if any, and the representatives of the company are heard before making any order.
10. After receiving the CLB order for shifting the registered office, the company is required to file certified copy of the order with the ROC along with **Form No. 21** within 3 months of receipt of certified copy along with the printed copy of the memorandum of association.
11. A certified copy of the order from the ROC **within one month** of the date of filing must be obtained.
12. The certified copy of the order should be filed with the ROC of the new state within one month of the date of the filing along with the certified copy of the memorandum of association.
13. The ROC of the new state i.e. at which registered office will be shifted will issue a fresh certificate of incorporation which will be conclusive evidence of the shift of registered office.
14. File Form No. 18 with the new ROC for the situation of the registered office.
15. Necessary changes are required to be made in the letter heads, books, records etc. of the company.
16. Arrange to adopt new common seal of the company.

6. (a) Describe the procedure for the resignation of Director under the Companies Act, 2013.

(b) Discuss the rules of appointment of director elected by small shareholders in a company. 10+5=15

Answer:

6. (a) Resignation of Director

Section 168 of the Companies Act 2013, provides the procedure for the resignation of a director as detailed below:

- A director may resign from his office by giving a notice in writing to the company;
- He shall within 30 days from the date of resignation, forward to the Registrar a copy of his resignation along with the reasons for the resignation, in Form No. DIR - 11 along with the fee;
- A foreign director may authorize in writing a practicing Chartered Accountant or Cost Accountant in practice or Company Secretary in practice or any other resident director of the company to sign the Form No. DIR - 11 and file the same on his behalf intimating the reasons for the resignation;
- The Board shall on receipt of such notice take notice of the same;
- The company shall intimate the Registrar in Form No. DIR-12 within one month from the date of receipt of such notice;
- The said information is to be posted on the website of the company;
- The fact of the resignation shall be included in the report of directors laid in immediately following general meeting by the company;
- The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later;
- The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure;

Where all directors of a company resign from their offices the promoter or, in his absence, the Central Government shall appoint the required number of directors, who shall hold the office till the directors are appointed by the company in general meeting.

(b) Process of appointment of director elected by small shareholders:

'Small shareholder' means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed. A listed company may have one director elected by small shareholders.

Rules 7 requires that a listed company, may upon notice of not less than 1000 small shareholders or one tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by small shareholders.

Such director shall not be liable to retire by rotation. The tenure shall not exceed a period of three consecutive years and on the expiry of the tenure such director shall not be eligible for reappointment. A disqualified person for the appointment of director shall not be eligible for such appointment. No person shall hold the position of small shareholder's director in more, than two companies at the same time. A small shareholders' director shall not, for a period of 3 years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity either directly or indirectly.

7. (a) "Ethics is the first line of defence against corruption, while law enforcement is remedial and reactive. However, both fail to achieve the desired aim in the Indian

set-up." Do you agree? Give reasons in support of your answer.

(b) Deepak is employed in Assam Coffee Estate Ltd., a seasonal establishment. The factory was in operation for four months only during the financial year 2018-19. Deepak was not in continuous service during this period. However, he has worked only 60 days. Referring to the provisions of The Payment of Gratuity Act, 1972, decide whether Deepak is entitled to gratuity payable under the Act. Would your answer be the same in case Deepak works for 100 days? 10+5=15

Answer:

7. (a) It is, absolutely correct to say that ethics is the first line of defense against corruption. What prevents corruption in the first place is ethics. The enforcement of law is a reaction to the occurrence of the corruption.

While the law can only lay down the do's and don'ts and the consequences of doing or not doing something.

The compliance to law in letter and spirit can be achieved only through ethical practices being followed.

An act may be perfectly legal but totally unethical. Therefore, the statement law enforcement is remedial and reactive is also true.

However, ethics is not absolute and is open to the influence of time, place and situation. Certain unethical practice on account of the fact that is widely prevalent is apparently justified.

The following are some of the factors that have contributed to the prevalence of corruption in India:

(i) Cultural ethos: Putting a premium on materialism, profiteering, power play and casual attitude for ethical values …. Myopic concern overriding long-term considerations and values.

(ii) Institutional failures: Procedural formalities in-built obstacles, bureaucratic red-tapism etc.

(iii) Poor enforcement of law: delay injustice.

(iv) Erosion of values in politicians, entrepreneurs political lobbying etc.

(b) For entitlement of gratuity one must work for at least 75% of the days on which the establishment was open and in operation. The factory was in operation for 120 days.

One must work for 75% of 120 i.e. 90 days to claim gratuity. Deepak is not entitled to gratuity, since he has actually worked for less than 75% of the number of days on which the establishment was in operation during such period.

If Deepak had worked for 100 days, then he would have been entitled to gratuity since the number of days on which he would have worked, in that case, would have been 75% or more of the number of days on which the establishment was in operation.

8. Write short notes on any three of the following terms: 5×3=15

(a) Agreement without consideration

(b) Red herring prospectus

(c) Importance of ethics

(d) Annual Leave under the Factories Act, 1948

Answer:

8. (a) Agreement without consideration

Section 25 provides that an agreement made without consideration is void unless-

(1) it is in writing and registered - It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) if is a promise to compensate for something done - It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) it is a promise to pay a debt, barred by limitation law - It is a promise, made in writing and signed by the person to be charged herewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

(b) Red herring prospectus

The Explanation to Section 32 defines the term 'red herring prospectus' as a prospectus which does not include complete particulars of the quantum or price of the securities included therein,

Section 32 provides that a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus. The same shall be filed with the Registrar at least three day prior to the opening of the subscription list and the offer. It shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

At the time of closing of the offer, the prospectus stating the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other detail as are not included in the red herring prospectus shall be filed with the Registrar and the SEBI.

(c) Importance of Ethics

Ethics is a requirement for human life. It is our means of deciding a course of action. Without it, our actions would be random and aimless. There would be no way to work towards a goal because there would be no way to pick between a limitless numbers of goals. Even with an ethical standard, we may be unable to pursue our goals with the possibility of success. To the degree which a rational ethical standard is taken, we are able to correctly organize our goals and actions to accomplish our most important values. Any flaw in our ethics will reduce our ability to be successful in our endeavours.

A proper foundation of ethics requires a standard of value to which all goals and actions can be compared to. This standard is our own lives, and the happiness which makes them liveable. This is our ultimate standard of value, the goal in which an ethical man must always aim. It is arrived at by an examination of man's nature, and recognizing his peculiar needs. A system of ethics must further consist of not only emergency situations, but the

day to day choices we make constantly. It must include our relations to others, and recognize their importance not only to our physical survival, but to our well - being and happiness. It must recognize that our lives are an end in themselves, and that sacrifice is not only not necessary, but destructive.

(d) Annual leave

Section 79 of The Factories Act, 1948 provides that every worker who has worked for a period 240 days or more in a factory during a calendar year shall be allowed leave with wages for a number lays calculated at the rate of-

if an adult, one day for every 20 days of work performed by him during the previous calendar rear;

if a child, one day for every 15 days of work performed by him during the previous calendar year.

The following shall be deemed to be days on which the worker has worked for the purpose of computation of the period of 240 days or more-
any days of lay off, by agreement or contract or as permissible under the standing orders;

in the case of a female worker, maternity leave for any number of days not exceeding 12 weeks;

and the leave earned in the year prior to that in which the leave is enjoyed

But the above shall not be entitled for a worker to earn leave. The leave admissible shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

In calculating the leave fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

INTERMEDIATE EXAMINATION

GROUP - I

(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER - 2019

Paper - 6 : LAWS & ETHICS

Time Allowed : 3 Hours **Full Marks : 100**

The figures in the margin on the right side indicate full marks.
This question paper has two Sections A and B.
Both the Sections are to be answered subject to instructions given against each.
Wherever necessary, candidates may make appropriate assumptions and clearly state them.
Please : (1) Answer all bits of a question at one place.
(2) Open a new page for answer to a new question.

SECTION – A

Section - A contains Question No. 1. All parts of this question are compulsory.

1. Answer all the following questions:

(a) Choose the correct answer from the given alternatives (you may write only the Roman numeral and the alphabet chosen for your answer): 1x10=10

(i) A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of
- **(A) listening it**
- **(B) hearing it**
- **(C) understanding it**
- **(D) interpreting it**

(ii) Ankit agrees to pay Bina ₹1500 if it rains today, otherwise Bina pays Ankit ₹ 2000. This is a
- **(A) Gambling**
- **(B) Wagering agreement**
- **(C) Valid agreement**
- **(D) Speculation**

(iii) Writing of a person's name on the face or back of an instrument or on a slip of paper attached to it is known as
- **(A) Endorsement**
- **(B) Transfer**
- **(C) Negotiation**
- **(D) Transmission**

(iv) Anusua and Shrita formed a partnership to undertake a construction of a shopping complex in New Delhi. This partnership is called

(A) Partnership at will

(B) Particular partnership

(C) Unlimited partnership

(D) Partnership with undefined mission

(v) As per the Minimum Wages Act 1948, Adolescent means a person who has completed the age of 14 years but not completed the age of

(A) 15

(B) 14

(C) 21

(D) 18

(vi) Every employee shall be entitled to receive bonus from his employer in

(A) a financial year

(B) an accounting year

(C) a calendar year

(D) a manufacturing year

(vii)The annual return of an OPC shall be signed by

(A) the company secretary

(B) the director

(C) the chief accountant

(D) the auditor

(viii)The minimum age limit for appointment of managing director and the whole time director is

(A) 18 years

(B) 21 years

(C) 25 years

(D) 30 years

(ix) A company cannot remove a director appointed

(A) at the annual general meeting

(B) at the extra ordinary general meeting

(C) by the promoter

(D) by the tribunal

(x) Moral management requires ethical

(A) producer

(B) leadership

(C) market

(D) customer

(b) Match and pair: **1x5=5**

	Column I		Column II
1.	Right of lien	(A)	Industrial Establishment
2.	Certificate of Incorporation	(B)	Minimum rates of wages have been fixed
3.	Lord Nolan	(C)	Keep the goods in his possession
4.	Plantation	(D)	Seven principles of public life
5.	Cost of living index number	(E)	Form No. INC-11

(c) State whether the following statements are True or False: **1x5=5**

(i) A promise in return for promise means Cross promises.

(ii) Section 65 provides that the Central Government shall appoint one or more Inspectors to investigate the affairs of a LLP.

(iii) The information Memorandum shall be deemed to be a Red herring prospectus.

(iv) A holder of depository receipts may become a member of the company.

(v) Value chain as a strategic framework for analysis of competitive advantage was promoted by Peter Drucker.

(d) Fill in the blanks: **1x5=5**

(i) Section 92 of the Companies Act provides that every company shall prepare an Annual Return in Form No. _____ .

(ii) No fine shall be imposed on any employed person who is under the age of _____.

(iii) The ESI Act, 1948 is the first major legislation on _____ security for the employees in India.

(iv) A company whose principal business is the acquisition of shares, debentures or other securities is termed as _____ company.

(v) _____ is the principles and standards that determine acceptable conduct in business organizations.

Answer:

1. (a)
(i) (C) understanding it
(ii) (B) Wagering agreement
(iii) (A) Endorsement
(iv) (B) Particular Partnership
(v) (D) 18
(vi) (B) an accounting year
(vii) (A) the company secretary
(viii) (B) 21 years
(ix) (D) by the tribunal
(x) (B) leadership

(b)

	Column I		Column II
1.	Right of lien	(C)	Keep the goods in his possession
2.	Certificate of Incorporation	(E)	Form No. INC-11
3.	Lord Nolan	(D)	Seven principles of public life
4.	Plantation	(A)	Industrial Establishment
5.	Cost of living index number	(B)	Minimum rates of wages have been fixed

(c) (i) False
(ii) False
(iii) False
(iv) True
(v) False

(d) (i) MGT - 7
(ii) 15 years
(iii) Social
(iv) Investment
(v) Business Ethics

SECTION – B

Answer any five questions from question numbers 2 to 8
Each question carries 15 marks.

2. (a) Discuss the different modes of terminating contractual relationship between the parties.

(b) Anita and Sonali are friends, Sonali treats Anita during Anita's illness.
Sonali does not accept payment from Anita for treatment and Anita promises Sonali's daughter Tania to pay her ₹ 75,000. Anita being in poor circumstances is unable to pay.
Tania sues Anita for the money. Can Tania recover?
Offer your views based on provisions of the Indian Contracts Act, 1872. 10+5=15.

Answer:

2. (a) When the rights and obligations created by a contract comes to an end, the contract is said to be discharged or terminated. Discharge of contract means termination of contractual relationship between the parties. The following are the various modes or methods by which a contract is discharged:

1. Discharge by performance:
Performance is the usual mode of discharge of a contract. Performance may be (a) actual performance (b) attempted performance. Actual performance is the fulfillment of the obligations arising from a contract by the parties to it, in

accordance with the terms of the contract. Offer of performance is also known as attempted performance or tender of performance. A valid tender of performance is equivalent to performance.

2. **Discharge by agreement:**

The parties may agree to terminate the existence of the contract by any of the following ways: (a) Novation, (b) Alteration (c) Rescission (d) Remission (e) Waiver

a. Novation: Substitution of a new contract in place of the existing contract is known as "Novation of Contract". It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties. Example: A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.
b. Alteration: Alteration means change in one or more of the terms of the contract. In case of novation there may be a change of the parties, while in the case of alteration, the parties remain the same. But there is a change in the terms of the contract.
c. Rescission: Rescission means "cancellation". All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract. Example: A promises to deliver certain goods to B at a certain date. Before the date of performance A and B mutually agree that the contract need not be performed. The contract stands discharged by rescission.
d. Remission: Remission means acceptance of a lesser performance that what is actually due under the contract. There is no need of any consideration for remission. Example: A has borrowed ₹ 500 from B. A agrees to accept ₹ 250 from B in satisfaction of the whole debt. The whole debt is discharged.
e. Waiver: Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged. Example: A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

3. **Discharge by lapse of time:**

Every contract must be performed within a fixed or reasonable period. Lapse of time discharges the contract. The Indian Limitation Act has prescribed the period within which the existing rights can be enforced in courts of law. Example: If a creditor does not file a suit within three years of debt, the debt becomes time-barred. He is deprived of his legal remedy.

4. **Discharge by operation of law:**

A contract may be discharged by operation of law in the following cases, (a) Death (b) Insolvency (c) Unauthorized material alteration, (d) Merger a. Death: In contracts involving personal skill or ability, death terminates the contracts. In other cases, the rights and liabilities of the deceased person will pass en to his legal representatives, b. Insolvency: The insolvency of the promisor discharges the contract. The promisor is discharged from all liabilities incurred prior to his

adjudication, c. Unauthorized material alteration: Material alteration in the terms of the contract without the consent of the other party discharges the contract. Change in the amount of money to be paid, date of payment, place of payment etc. are examples of material alteration, d. Merger: When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end. Example: Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part time lectureship.

5. **Discharge by impossibility of performance:**
   Impossibility of performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible things.

6. **Discharge by breach:**
   Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract. Example: A and B wanted to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.

Termination of Contract:

The proper way, in which the agreement could have been terminated by issuing of a notice to the plaintiff, calling upon to complete the transaction within a particular time, failing which the contract will be treated as cancelled. That this is the proper way of terminating the contract is cleared from what has been observed in "Narayana Swami Pillai V. Dhanakodi Ammal' - (1971) 1 Mys. L.J., 245 that when the contract is for the sale of immovable property the vendor must given reasonable notice requiring the performance within a definite time.

(b) No, Tania cannot recover the money from Anita. The agreement between Tania and Anita is not a contract in the absence of consideration. In this case, Tania's mother Sonali, voluntarily treats Anita during her illness. Apparently it is not a valid consideration because it is voluntary whereas consideration to be valid must be given at the desire of the promisor-void Section 2(d).

The question now is whether this case is covered by the exception given in Section 25(2) which inter-alia provides.

"If it is a promise to compensate a person who has already voluntarily done something for the promisor...."

Thus as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor.

As Sonali's daughter, Tania to whom the promise was made, did nothing for Anita, so Anita's promise is not enforceable even under the exception.

3. (a) Discuss the procedure of conversion from private limited company into limited liability partnership.

(b) Mr. S. K drew a cheque in favour of Mr. P. K who was seventeen years old. Mr. P. K settled his rental due by endorsing the cheque in favour of Mrs. R. K the owner of the house in which he stayed. The cheque was dishonoured when Mrs. R. K presented it for payment on the grounds of inadequacy of funds. Advice to Mrs. R. K how she can proceed to collect her dues. 9+6=15

Answer:

3. (a) The procedure of conversion from private limited company into Limited Liability Partnership (LLP) is discussed as under:

Para 1(b) of the third schedule defines the term 'convert' in relation to a private company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP in accordance with the third schedule.

A company may apply to convert itself into a LLP if and only if -

- there is no security interest in its assets subsisting or in force at the time of application; and
- the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.

Upon the conversion of a private company into an LLP, the company and its shareholders, the LLP and the partners of the LLP shall be bound by the provisions of this schedule that are applicable to them.

The company has to apply with the Registrar by filing the following documents:

- A statement by all its shareholders in Form No. 18 and fees containing the following particulars
  - The name and registration number of the company;
  - The date on which the company was incorporated; and
- incorporation document and statement; On the receipt of the above said documents, the Registrar shall register the documents subject to the provisions of the Act and the rules made there under. The Registrar may require the documents to be verified as he considers fit. The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate.

The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and of the particulars of LLP in Form along with the fees.

If the Registrar is not satisfied with the particulars or other information furnished the Registrar may refused to register. Against this order appeal may be made before the Tribunal.

(b) Section 26 of Negotiable Instrument Act 1881,provides that every person capable of contracting may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. However A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

As per the facts given in the question, Mr. S.K drew a cheque in favour of Mr P.K a minor. Mr. P. K endorses the same in favour of Mrs. R. K. to settled his rental dues. The cheque was dishonoured when it was presented by Mrs. R. K. to the bank on the grounds of inadequacy of funds. Here in this case, Mr. P. K. being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, Mr. P. K is not liable. Mrs. R. K can thus, proceed against Mr. S. K to collect her dues.

4. (a) Discuss the welfare measures to be taken in a factory for the workmen employed therein as per the Factories Act, 1948.

(b) Mention any seven purposes for which the ESI fund may be expended. 8+7=15

Answer:

4. (a) The following are the welfare measures prescribed in the Factories Act, 1948 to be provided by the factory to their workmen:

Washing facilities:
Section 42 provides that in every factory adequate and suitable facilities for washing shall be provided and maintained for the use of the workers. Separate and adequately screened facilities shall be provided for the use of male and female workers. The washing facility shall be conveniently accessible and shall be kept clean.

Facilities for storing and drying clothing:
Section 43 provides that the State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

Facilities for sitting:
Section 44 provides that suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they make take advantage of any opportunities for rest which may occur in the course of their work.

First aid appliances:
Section 45 provides that first aid appliances shall be provided and maintained so as to be readily accessible during all working hours or cupboards equipped with the prescribed contents and the number of such boxes or cupboards to be provided and maintained shall not be less than for every 150 workers at any one time in the factory. Each first aid box or cupboard shall be kept in charge of a separate reasonable

person who holds a certificate in the first aid treatment recognized by the State Government and he should always be readily available during the working hours of the factor. In a factory where more than 500 workers are employed an ambulance of the prescribed size containing the prescribed equipment, nursing staff etc., shall be provided and made readily available at all times.

Canteens:

Section 46 provides that if more than 250 workers are employed in a factory a canteen or canteens shall be provided and maintained by the occupier for the user of the workers. The items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs shall be borne by the employer.

Shelters, rest rooms and lunch rooms:

Section 47 provides that if more than 150 workers are employed adequate and suitable shelters or rest rooms and a suitable lunch room with provision for drinking water shall be provided and maintained for the use of the workers. The same shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

Creches:

Section 48 provides that if more than 30 women workers are employed there shall be provided and maintained a suitable room for the use of children under the age of 6 years of such women. The same shall be adequately ventilated and shall be maintained in clear and sanitary conditions and under the charge of women trained in the care of children and infants.

Welfare Officers:

Section 49 provides that if 500 or more than workers are employed in a factory, the occupier shall employ in the factory such number of welfare officers as may be prescribed. In 'Shyam Vinyals Limited V. T. Prasad' - (1993) 83 FJR 18 (SC) it was held that an Assistant Personnel Officer cannot be held that he was in fact appointed as a Labor Welfare Officer simply because as a Assistant and Personnel Officer he was looking after the problems of the laborers and the welfare of the laborers.

(b) Section 28 of the Employees State Insurance Act, 1948 provides the Central Government may utilize the State Insurance Fund only for the following purposes:

- payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;
- payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

- payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;
- establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;
- payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
- defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
- defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;
- payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;
- payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;
- defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- such other purposes as may be authorized by the Corporation with the previous approval of the Central Government.

5. (a) Sweat equity shares are issued to directors or employees at a discount or for consideration other than cash. Discuss under the provisions of the Companies Act, 2013.

(b) XYZ Ltd. issued Notice for holding of its Annual General Meeting on 30th September 2019. The notice was posted to the members on 7th September 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act. Referring to the provisions of the Act, decide.

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

(iii) Can the delay in giving notice be condoned? 8+7=15

Answer:

5. (a) Section 2(88) defines the expression 'sweat equity shares' as such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

For this purpose the term 'employee' means-

- a permanent employee of the company who has been working in India or outside India; or
- a director of the company, whether a whole time director or not; or
- an employee or a director as defined above of a subsidiary, in India or outside India, or of holding company of the company.

The expression 'value additions' means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of employee.

Section 54 provides that a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled:

- the issue is authorized by a special resolution passed by the company;
- the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by SEBI in this behalf. If they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

Rule 8(1) provides that a company other than a listed company shall not issue sweat equity shares to its directors or employees at a discount or for consideration other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions unless the issue is authorized by a special resolution passed by the company in general meeting.

(b) According to the Section 101(1) of the Companies Act, 2013, annual general Meeting of a company may be called by giving not less than clear twenty-one days notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that clear 21 days notice mean that date of which notice is served and the date of meeting are excluded for sending the notice. Further, Rule 35(6) of the Company (incorporation Rules,2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of the notice of meeting, at the expiration of forty eight hours after the letter containing the same is posted. Hence, in the given question:

(i) A 21 days clear notice must be given. In the given question, only 20 days notice is served (after excluding 48 hours from the time of its posting and day of sending

and date of meeting).Therefore, the meeting was not validly called.

(ii) As explained in (i) above, notice falls short by 1 day.

(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence the delay in giving the notice calling the meeting cannot be condoned.

6. (a) What are the different duties of a director in a company as per the Companies Act, 2013?

(b) What are the disqualifications of a person for the appointment as a director under the Companies Act, 2013? 7+8=15

Answer:

6. (a) As per Section 166 of the Companies Act, 2013 a director of a company is bound to perform the following duties as mentioned below:

- A director of a company shall act in accordance with the articles of the company.
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment,
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company,
- A director of a company shall not achieve or attempt to achieve any undue gain or advantages either to himself or to his relatives, partners or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company,
- A director of a company shall not assign his office and any assignment so made shall be void,

If a director of a company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(b) Section 164 of the Companies Act, 2013 details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undercharged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence; If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be

appointed as a director in any company.

(e) an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(h) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications. The disqualifications in (d), (e), and (g) above shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

7. (a) What is Value Chain? What are the new themes and challenges that managers face currently?

(b) Discuss the procedure for recovery of bonus in case the employer has not paid under a settlement. 9+6=15

Answer:

7. (a) Value chain is a visualization of complete business as a sequence of activities in which usefulness is added to the products or services produced and sold by an organization. Management accountants provide decision support for managers in each activity of value chain.

The design of management accounting system has to take into consideration the decision needs of the managers. Also it has to take into consideration the new themes and challenges that managers face currently.

- **Customer focus:** The challenge for managers it invest sufficient resources to enhance customer satisfaction. But every action of the organization has to result enhanced profitability or maintained profitability for the organization.
- **Key Success Factors:** These are nonfinancial factors which have an effect on the economic viability of the organization. Cost, quality, time and innovation are important key success factors. Management accounting systems need to have provisions for tracking the performance of the organization and its divisions as well as competitors on these success factors.
- **Continuous improvement:** Continuous improvement or kaizen is a popular theme. Innovation related to this area in costing is kaizen costing.
- **Value Chain and Supply Chain Analysis:** Value chain as a strategic framework for analysis of competitive advantage was promoted by Michael Porter. Management accountants have to become familiar with the framework and provide information to implement the framework by strategic planners.

(b) Section 21 of the Payment of Bonus Act, 1965 provides the procedure for the recovery of bonus in case the employer has not paid under a settlement or an award

or agreement. In such cases-

- the employee himself; or
- any other person authorized by him in writing in this behalf; or
- in the case of death of the employee, his assignee or heirs

may make an application to the appropriate Government for the recovery of the money due to him. If the appropriate Government or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for that amount to the Collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue.

It may be noted that every such application shall be made within one year from the date on which the money become due to the employee from the employer. As such application may be entertained after the expiry of the said period of one years; if the Appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

8. Write short notes on any three of the following terms: 5×3=15

(a) Misrepresentation

(b) Director Identification Number

(c) Advantages of Business Ethics

(d) Dependent

Answer:

8. (a) MISREPRESENTATION: [Sec. 18]

A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation when wrongly made either innocently or unintentionally is a misrepresentation. When it is made innocently or unintentionally, it is misrepresentation and when made intentionally or willfully it is fraud. Misrepresentation has been defined in section 18 of the Indian Contract Act 1872 as under:

"Misrepresentation" means and includes—

1) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
2) Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him ;
3) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

(b) Director Identification Number (DIN)

Director Identification Number is allotted by the central government to every

individual who is to be appointed as director of a company after receiving the application form in prescribed Form No. DIR-3 along with the fees for the same. The form shall be attested by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice. The central government shall process the application form within 30 days of receiving the same and allot the Director Identification Number to the applicant after approving the application or give intimation of rejection of the application. The DIN once allotted shall remain valid for the life time of the director and it will not be allotted to any other person. The director on allotment of DIN is to intimate the company in Form No. DIR-3C within 15 days from the intimation given to him. Every company shall within 15 days of the receipt of intimation furnish the same with the Registrar. If company fails to furnish DIN the company shall punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1 lakh. Every officer of the company who is default shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1 lakh.

(c) Advantages of Business Ethics:

Business ethics deals with morality in the business. It is a system of moral principles and values applied to business activities. This means the business activities should be conducted according to ethics or moral standard. Business ethics is an art or science of maintaining harmonious relationship with society, its various groups and institution as well as reorganizing for right or wrong of business conduct. The following are the advances for following the principles of business ethics

- It offers a company a competitive advantage;
- Goodwill of the firm hikes depending on its responds towards its ethical issues;
- Productivity through rigid, firm and sincere workers as well as other business chain members;
- Through increasing morale and trust business can increase their market share;
- Publicity due to well and ethical performance;
- Acceptance of products of the company by the public;

(d) Section 2(6A) of The Employees' State Insurance Act, 1948, defines the term 'dependent' as any of the following of a deceased insured person:

- a widow, a legitimate or adopted son who has not attained the age of 25 years, an unmarried legitimate or adopted daughter;
- a widowed mother;
- if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;
- if wholly or in part dependent on the earnings of the insured person at the time of his death-
- a parent other a widowed mother;
- a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor;
- a minor brother or an unmarried sister or a widowed sister if a minor;
- a widowed daughter-in-law;

- a minor child of a pre-deceased son;
- a minor child of a pre-deceased daughter where no parent of the child is alive; or
- a paternal grand-parent if no parent of the insured person is alive.

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