

Paper 3 - Fundamentals of Laws and Ethics

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Full Marks :100

Time allowed: 3 hours

I. Choose the correct answer from the given four alternatives: [10 x 1 = 10]

1. Workers will be entitled to overtime wages if they have worked for more than _____.
 - (a) Forty – eight hours in any four week.
 - (b) Forty-eight hours in any three week.
 - (c) Forty-eight hours in any two week.
 - (d) **Forty-eight hours in any week.**

2. The Payment of Wages Act, 1936 came into effect from _____.
 - (a) 1st April, 1936
 - (b) 1st March, 1937
 - (c) **28th March, 1937**
 - (d) 1st May, 1937

3. Maternity benefit is payable for a period of _____ months.
 - (a) **3 Months**
 - (b) 6 Months
 - (c) 9 Months
 - (d) 12 Months

4. Day means a period of _____ hours.
 - (a) 12
 - (b) **24**
 - (c) 18
 - (d) 10

5. Ethics has evolved with evolution of _____.
 - (a) Culture
 - (b) Value
 - (c) Moral
 - (d) **Society**

6. 'X' threaten to kidnap Y's son if he does not sell his flat worth ₹50 lakh to him for ₹5 lakh. This contract is void due to _____.
 - (a) Inadequacy of consideration
 - (b) **Absence of free consent**
 - (c) Incompetence of parties
 - (d) All the three

7. The Rule laid down in Clayton's case is applied in England for _____

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- (a) **Appropriation of payment.**
(b) Discharge of contract
(c) Determination of damages.
(d) Goodwill valuation
8. Section 2(7) of the Sale of Goods Act, 1930 the term 'goods' does not include _____.
(a) Stock and Share
(b) Growing crops
(c) Grass
(d) **neither (a) nor (b) nor (c)**
9. The milk sold by 'X' contained germs of typhoid, this is a breach of _____.
(a) **Condition as to wholesomeness**
(b) Condition as to fit for a particular purpose
(c) Condition as to merchantability
(d) Free from encumbrance
10. When an instrument is drawn conditionally or for a special purpose as a collateral security and not for the purpose of transferring property therein it is called a _____.
(a) **Escrow instrument**
(b) Inchoate instrument
(c) Ambiguous instrument
(d) None of these

II. Fill in the blanks:

[10 x 2 = 20]

- The term consideration is defined in Section **Sec. 2(d)** of the Indian Contract Act, 1872
- The term Actionable Claim is defined in **Transfer of Property Act, 1882.**
- Hundi's are Indigenous Instrument written in **Vernacular** language.
- The Partnership Act, 1932 came into force with effect from **1st Oct, 1932.**
- Factory is included in List III entry No. **36.**
- No adult worker shall be required to work more than **9 (nine)** hours in a day.
- As per the Minimum Wages Act, Child means a person who has not completed the age of **14 years**
- The Employee's Share of Contribution to ESI Fund is **1.75%**
- Child Labour Technical Advisory Committee consists of one Chairman and **Not more than 10** members.
- The word Ethics is derived from Greek word **Ethike.**

III. Match the following

[5 x 1 = 5]

Column 'A'		Column 'B'	
1.	Contract	A	A partner who lends his name to the firm.

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2.	Special endorsement	B	90% of wages
3.	Nominal Partner	C	Section 2(h) of Indian Contract Act
4.	Welfare Officers	D	500 or more workers
5.	Temporary Disablement Benefit	E	Full endorsement

Answer:

Column 'A'		Column 'B'	
1.	Contract	C	Section 2(h) of Indian Contract Act
2.	Special endorsement	E	Full endorsement
3.	Nominal Partner	A	A partner who lends his name to the firm.
4.	Welfare Officers	D	500 or more workers
5.	Temporary Disablement Benefit	B	90% of wages

IV. State whether the following statement is True (or) False. [10 x 1 = 10]

- Noting is a formal notorial certificate attesting the dishonor of a bill or note.
False
- A condition is a stipulation which is subsidiary (or) collateral to the main purpose of the contract.
False
- The term fraud includes all intentional or wilful misrepresentation of facts which are material for the formation of a contract.
True
- A promises to bring moon on earth if 'B' pay him ₹ 5,100. This agreement is void due to impossibility of Act.
True
- No child is required or permitted to work between 7AM to 8 PM.
False
- Rajiv Gandhi Shramik Kalyan Yojana is a scheme of unemployment allowance.
True
- In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers.
True
- Dissolution of Partnership between all the partners of the firm is called Dissolution of the firm.
True

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9. Writing of a persons name on the face or back of an instrument or on a slip of paper attached to it is known as negotiation.

False

10. An agreement and contract are one and the same thing.

False

V. Define any Five of the following:

[5 x 3 = 15]

1. Valid Contract.

An agreement enforceable by law is a valid contract. In other words it satisfies all the requirements of a valid contract as laid down in section 10.

2. 'Price' under Sale of Goods Act, 1930.

The 'price' in a contract of sale means the money consideration for sale of goods. [Sec. 2(10)]. Unless goods are sold for some price there cannot be sale. In a contract of sale 'price' is the consideration for sale of goods and is expressed in terms of money.

3. Cheque

A cheque is a bill of exchange drawn on a specified banker payable on demand [Sec. 6]. Further the expression includes the electronic image of a truncated cheque or a cheque in electronic form. All cheques are bills of exchange but all bills of exchange are not cheques. A cheque is required to possess all essential features of a bill of exchange.

4. Adult

"Adult" means a persons who has completed his eighteenth year of age. - Sec 2(a) of Factories Act, 1948.

5. Free Consent

Free consent [Sec.14]

Consent is said to be free when it is not caused by:

- (a) Coercion – Sec. 15
- (b) Under Influence – Sec.16
- (c) Fraud – Sec.17
- (d) Misrepresentation – Sec. 18
- (e) Mistake – Sec. 20, 21 and 22

6. Child' under Child Labor (Prohibition and Regulation) Act, 1986:

"Child" means a person who has not completed his fourteenth year of age." - Sec. 2(ii) of Child Labour (Prohibition and Regulation) Act, 1986.

7. Value-free Ethics:

It would seem that business is an ethically neutral or value – free activity. In other words, the only value business is concerned with is the monetary value. It is not in the interest of business to mix ethical values. An ancient Arabic wisdom states, 'Live together like brothers and do business like strangers'. Business should be kept free from other social relationships and obligations. The only successful relationship that exists in business is that of a vendor and a customer.

8. Appropriate Government:

According to Employees State Insurance Act, 1948 "Appropriate Government" means, in respect of establishments under the control of the Central Government or [a railway administration] or a major port or a mine or oil field the Central Government and in all other cases, the State Government.

VI. Answer any four of the following questions.

[4 x 10 = 40]

1. Define Contract. Explain the essential elements of a valid contract.

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Answer:

'Contract' is derived from the Latin term "Contractum" which means 'drawn together'. It is an agreement to do or not to do an act. It comes into existence from the action of the parties. It creates legal rights and obligations. It is enforceable by law. An agreement which can be enforced through the court of law is called a "contract".

"An agreement creating and defining obligations between the parties" - Salmond

"An agreement enforceable by law" – Sec. 2(h) of the Indian Contract Act, 1872

Essential elements of a valid contract:

"All agreements are contracts if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void" - Sec.10 of the Indian Contract Act, 1972

The following are the essential elements of a valid contract. They are:

(i) Offer and Acceptance/Agreement:

In order to constitute a contract, there must be an agreement. An agreement in turn is composed of two elements - offer and acceptance. Thus there must be at least two parties - one making the offer and another accepting it.

(ii) Intention to create legal relationship:

The parties must intend to create a legal relationship. Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts.

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(iii) Lawful consideration:

The agreement must be supported by a lawful consideration. Consideration means 'something in return.' 'Something in return' may be an act or abstinence.

(iv) Capacity of Parties:

The parties to an agreement must be capable of entering into a contract. A person is considered competent if he is.

(a) Major

(b) Of sound mind

(c) Not disqualified from contracting by any law to which he is subject to

(v) Legality of object: -

The object of agreement must be lawful. The object will be unlawful if it is forbidden by law, is deceptive, or causes injury to the person or property of another person or is immoral or opposed to public policy.

(vi) Free consent: -

The consent of the parties must be free and genuine i. e. not induced by coercion, under influence, fraud or misrepresentation. Consent implies agreeing upon the same thing in the same sense and free consent implies which is not vitiated by coercion, undue influence, fraud, mistake or misrepresentation.

(vii) Certainty of terms: -

The terms of agreement must be certain and capable of performance. The meaning of the agreements must be certain or capable of being made certain otherwise the agreement will not be enforceable by law.

(viii) Possibility of performance: -

The agreement must be capable of being performed. An agreement to do an impossible thing or act cannot be enforced.

(ix) Agreements not expressly declared to be void: -

Enforceability of an agreement also depends upon whether it is expressly declared void by any law in force in the country or not. There are certain agreements which have been expressly declared void under various sections of the Indian Contract Act, like agreement in restraint of marriage, trade or legal proceedings, wagering agreement etc.

(x) Legal Formalities: -

Where nature of agreement is such that it requires compliance of certain formalities, such requirements should be fulfilled.

2. Explain the differences between Sale and Agreement to Sell.

10

Answer:

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Sale	Agreement to sell
(1) Sale is an executed contract. Property in the goods passes from seller to buyer	(1) It is an executor contract transfer of property in goods is to take place at a future date subject to fulfillment of certain conditions.
(2) If goods are destroyed the loss will be borne by the buyer even though they may be in the possession of the seller.	(2) The loss will be borne by the seller even through the goods may be in possession of the buyer.
(3) A sale gives right to the buyer to enjoy the goods against the whole world including the seller.	(3) The buyer can sue the seller for damages only.
(4) In case of sale, the buyer can be sued for price of goods.	(4) The buyer can be used only for damages.
(5) If buyer becomes insolvent before payment is made, the seller has to deliver the goods to the official receiver unless he has lien on them.	(5) Seller may refuse to deliver the goods to the official receiver.
(6) If the seller becomes insolvent after payment of price, the buyer can claim receiver.	(6) The buyer cannot claim the goods. He can only claim ratable dividend for the amount paid by him.
(7) The seller cannot resale the goods	(7) In this cause, if the subsequent buyer takes in good faith and for consideration, he gets a good title. The original buyer may only sue the seller for damages.

3. (a) Define Negotiable Instrument. Explain the essentials of Negotiable Instrument. **6**
(b) Explain the effect of Non Registration of a firm. **4**

Answer:

- (a) Sec. 13 of the Negotiable Instruments Act, 1881 defines a Negotiable Instrument as 'a promissory note, bill of exchange or cheque payable either to order or to bearer.'

Thus, a Negotiable Instrument means an instrument, the property in which is acquired by anyone who takes a bona fide and for value, notwithstanding any defect in the title of the Transferor. It need not necessarily be a promissory note, bill of exchange or a cheque.

Characteristics of Negotiable Instrument

The following are the characteristics of a Negotiable Instrument.

- (i) Free and Innumerable transfers:-

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A Negotiable instrument may be transferred by (i) Delivery or (ii) by endorsement and Delivery.

Negotiable instruments can be transferred ad infinitum i.e., transferred any number of times till its satisfaction.

- (ii) Holders title is free from all defects:
A transferee taking an instrument bonafide and for value gets the instrument free from all defects in the title of the previous holder. The transferee is known as the holder in due course.
- (iii) The holder in due course can sue on the instrument in his own name and for this purpose notice of transfer need not be given. What is a holder in due course will be discussed in the subsequent subject sections.
- (iv) A negotiable instrument is subject to certain presumptions which are discussed as under.
 - (a) Date
 - (b) Consideration
 - (c) Time of acceptance
 - (d) Time of transfer
 - (e) Order of endorsement
 - (f) Holder in due course
 - (g) Instrument was duly stamped

(b) The consequences of non registration of a firm are as under:

- (1) No suit to enforce a right arising from a contract or conferred by this act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the register of firms as a partner in the firm.
- (2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (3) The provisions of sub- sections (1) and (2) shall apply also to claim of set – off or other proceeding to enforce a right arising from contract, but shall not affect –
 - a) The enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or
 - b) The powers of an official assignee, receiver or court under the Presidency Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920 to realise the property of an insolvent partner.

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4. (a) Who is an Occupier under the Factories Act, 1948. 4
(b) Explain the permissible deductions under the Payment of Wages Act? 6

Answer:

(a) Occupier: - [Sec. 2(n)]

Occupier of a factory means the person who has ultimate control over the affairs of the factory.

Provided that: -

- (i) In the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier.
- (ii) In the case of a company, any one of the directors shall be deemed to be the occupier.
- (iii) In the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

(b) Deductions which may be made from wages: [Sec. 7]

- (i) Fines
- (ii) Deductions for absence from duty.
- (iii) 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.
- (iv) Deductions for house – accommodation supplied by the employer or by Government or any housing board set up under any law.
- (v) Deductions for such amenities, services supplied by the employer as the Appropriate Government or any officer specified by it.
- (vi) Deductions for recovery of advances of whatever nature and the interest due in respect thereof or for adjustment of over – payment of wages.
- (vii) Deductions for recovery of loans made from any fund constituted for the welfare of labour.
- (viii) Deductions for recovery of loans granted for house – building.
- (ix) Deductions of income –tax payable by the employed person.
- (x) Deductions required to be made by order of a court or other authority competent to make such order.
- (xi) Deductions for subscriptions to and for repayment of advances from any provident fund.
- (xii) Deductions for payments to Co- operative societies approved by the Appropriate Government or any officer.

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5. (a) What is the punishment for false statement under the Employees State Insurance Act. 5
- (b) State the penalties for contravention of provisions under Child Labor (Prohibition and Regulation) Act, 1986. 5

Answer:

(a) Punishment for false statement: [Sec. 84]

This section deals with penalties for making wrong/ false statements made by the insured persons with a view to take any benefit which is not admissible to him under the Act. Such Act is an offence punishable under Act with imprisonment for a term which may extent to six months or with fine which may extend to two thousand rupees or with both.

It is also provided under this section that if an insured person is convicted by the court for an offence committed by him under this section, he shall not be entitled to any cash benefits available under the Act for such a period as may be prescribed by the Central Government.

(b) Penalties: [Sec.14]

- (i) Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than, three months but which may extend to one year or with fine which shall not be less than ten thousand and rupees but which may extend to twenty thousand rupees or with both.
- (ii) Whoever, having been convicted of an offence under Sec. 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.
- (iii) Whoever –
- a) Fails to give notice as required by Sec. 9 or
 - b) Fails to maintain a register as required by Sec. 11 or makes any false entry in any such register, or
 - c) Fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or
 - d) Fails to comply with or contravenes any other provisions of this Act or the rules made thereunder shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

In order to prosecute an employer under Section 14 of the act, the age of the child must be proved to be less than 14 years of age and the ones live upon the prosecution.

6. Explain the need for business ethics.

10

Answer:

Need for Business Ethics: -

- (i) Business malpractices have the potential to inflict enormous harm on individuals, communities and the environment. Thus, through helping us to understand more about the consequences of such malpractices, business ethics seeks to improve the human conduct and condition.
- (ii) Secondly, the demands placed on business to be ethical by its various stakeholders are constantly becoming more complex and challenging. Business ethics provides the means to appreciate and understand these challenges more clearly, so that firms can meet such ethical expectations more effectively
- (iii) Thirdly, ethical infractions are a common occurrence in business. Business ethics provides us with the ability to assess the benefits and problems associated with different ways of managing ethics in organizations.
- (iv) Fourthly, knowledge of business ethics can provide managers with the necessary tools to improve their ethical decision- making ability and allowing them to correctly indentify, diagnose, analyze and provide solutions to the ethical problems and dilemmas, they are confronted with.
- (v) Fifthly, business ethics equips managers to identify preferred values associated with total quality management, strategic planning etc. and ensuring that behavior in organizations are aligned with such values.
- (vi) Finally, business ethics can also be extremely rewarding to study, since it helps in promoting a strong and positive image to the public that helps in building a strong brand equity, goodwill and reputation for the organizations practicing it.