

Paper 6 – Laws and Ethics

Paper 6- Laws and Ethics

Full Marks: 100

Time allowed: 3 hours

Section – A

1. Answer all questions. [25 marks]

(a) Multiple Choice Questions [10 Marks]

- (i) The breach of contract may be-
 - (a) Actual;
 - (b) Anticipatory;
 - (c) None of the above;
 - (d) **Either of (a) and (b)**

- (ii) Which one of the following is not the feature of 'agreement to sale'?
 - (a) It is an executor contract;
 - (b) **Sales takes place for existing and specific goods;**
 - (c) The seller can sue for damages only in case of breach by the buyer;
 - (d) It gives a right to the buyer against the seller to sue for damages.

- (iii) Which one of the following is not the element of draft?
 - (a) It cannot be drawn on private individual;
 - (b) It cannot be countermanded easily;
 - (c) **It is open to the person to stop payment;**
 - (d) The bank undertakes the liability which it is bound to discharge in whose favor the draft is issued;

- (iv) Who may negotiate?
 - (a) Drawer;
 - (b) Payee;
 - (c) All of the joint makers;
 - (d) **Any of (a) to (c).**

- (v) The Information Memorandum shall be deemed to be a _____.
 - (a) **Prospectus**
 - (b) Articles
 - (c) Memorandum
 - (d) None of the above.

- (vi) The Regional Director shall communicate the confirmation of shifting of registered office within _____ days of receipt of the application.
 - (a) 15
 - (b) **30**
 - (c) 45

Answer to MTP_ Intermediate _Syllabus 2016_ Jun 2017_ Set 1

- (d) 90
- (vii) The private placement shall be made, not more than _____ persons in aggregate in a financial year.
- (a) 50
(b) 100
(c) **200**
(d) 400
- (viii) If the shareholders not less than _____ of the issued shares of class did not consent to the variation or vote in favor of the special resolution for the variation, such shareholders may apply to the Tribunal to have the variation cancelled.
- (a) **10%**
(b) 15%
(c) 25%
(d) None of the above
- (ix) The company shall not issue sweat equity shares for more than _____ of the existing paid up share capital in a year.
- (a) 10%
(b) **15%**
(c) 25%
(d) None of the above
- (x) Meta ethics deal with the nature of _____.
- (a) External influences
(b) **Moral Judgement**
(c) Material Facts
(d) All of the above

(b) Fill in the Blanks

[5 Marks]

- (i) Agreements of wagers are **Void**.
- (ii) The unpaid seller has the right of **Lien** on the goods for the price while he is in possession of them.
- (iii) A cheque is a bill of exchange drawn on a specified **banker**, payable on demand.
- (iv) The Limited Liability Partnership Act does not allow the conversion from **Listed company** into LLP
- (v) The prospectus shall contain a report by a Chartered Accountant upon the profits or losses for each of **five** financial years immediately preceding the date of issue of prospectus.

(c) True or False

[5 Marks]

- (i) The buyer of the goods is not bound to accept the delivery of goods by installments unless otherwise agreed.

Answer to MTP_ Intermediate _Syllabus 2016_ Jun 2017_ Set 1

True

- (ii) A woman employee may be allowed to work between 6 p.m. and 6 a.m.

False

- (iii) The employer cannot reduce wages of the employee to avoid his liability under the Employee Provident Fund and Miscellaneous Provisions Act.

True

- (iv) Standing Committee under Employees State Insurance Act shall consist of three members of the Corporation.

True

- (v) A general meeting may be called after giving a shorter notice if consent is given in writing by not less than 50% of members entitled to vote at such meeting.

False

(d) Match and Pair

[5 Marks]

	Column I		Column II
1	Designated Partner	A	Quorum for meetings
2	Business Ethics	B	Claim for necessaries supplied to person incapable of contracting,
3	Negotiation	C	Stop malpractices
4	Section 68 of Contract Act	D	At least two
5	Section 103 of Companies Act, 2013	E	Transfer

Answer:

	Column I		Column II
1	Designated Partner	D	At least two
2	Business Ethics	C	Stop malpractices
3	Negotiation	E	Transfer
4	Section 68 of Contract Act	B	Claim for necessaries supplied to person incapable of contracting.
5	Section 103 of Companies Act, 2013	A	Quorum for meetings

Section – B

2. Answer any 5 questions:

[5×15 = 75]

- (A) (i) F, B and G jointly borrowed ₹500,000 from W. The whole amount was repaid to W by B. Decide in the light of the Indian Contract Act, 1872 whether:**

- (a) B can recover the contribution from F and G,
 - (b) Legal representatives of F are liable in case of death of F,
 - (c) B can recover the contribution from the assets, in case G becomes insolvent.
- (ii) When is presentment of an instrument not necessary under the Negotiable Instruments Act? [9+6 = 15]

Answer:

2(A)(i) Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisees, the representatives of all jointly must fulfill the promise. Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel anyone or more of the joint promisors to perform the whole of the promise. Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisors to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares. As per the provisions of above sections,

- (a) B can recover the contribution from F and G because F, B, G are joint promisors.
- (b) Legal representative of F are liable to pay the contribution to B. However, a legal representative is liable only to the extent of property of the deceased received by him.
- (c) 'B' also can recover the contribution from G's assets.

(ii) According to Section 76 of the Negotiable Instruments Act 1881, no presentment to payment is necessary in any one of the following cases:

- i) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
- ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
- iii) if the instrument being payable at some other specified place, neither he nor any other person authorised to pay it attends at such place during the usual business hours, or
- iv) if the instrument not being payable at any specified place, if he (i.e. maker etc) cannot after due search be found;
- v) as against any party sought to be charged therewith, if he (i.e maker, etc.) has engaged to pay notwithstanding non-presentment;
- vi) as against any party if after maturity, with knowledge that the instrument has not been presented —he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in

Answer to MTP_ Intermediate _Syllabus 2016_ Jun 2017_ Set 1

presentment for payment; as against the drawer, if the drawer could not suffer damage from want the of such presentment.

- (B) (i) State the circumstances where under an agent is personally liable to a third party for the acts during the course of agency?**
- (ii) K the owner of a Fiat car wants to sell his car. For this purpose he hands over the car to M, a mercantile agent for sale at a price not less than ₹100, 000. The agent sells the car for ₹75, 000 to B, who buys the car in good faith and without notice of any fraud. M misappropriated the money also. K sues B to recover the car. Decide given reasons whether K would succeed. [9+6 = 15]**

Answer:

2(B)(i) Under the following circumstances an agent is personally liable.

- i) When he represents that he has authority to act on behalf of his principal, but who does not actually possess such authority or who has exceeded that authority and the alleged employer does not ratify his acts. Any loss sustained by a third party by the acts of such a person (agent) and who relies upon the representation is to be made good by such an agent.
 - ii) Where a contract is entered into by a person apparently in the character of agent, but in reality on his own account, he is not entitled to required performance of it.
 - iii) Where the contract expressly provides for the personal liability of the agent.
 - iv) When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
 - v) Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.
 - vi) Where the agent works for a foreign principal.
 - vii) Where a Government Servant enters into a contract on behalf of the Union of India in disregard of Article 299 (1) of the Constitution of India, In such a case the suit against the agent can be instituted by the third party only and not by the principal (Chatturbhuj v. Moheshwar).
 - viii) Where according to the usage of trade in certain kinds of business, agents are personally liable.
 - ix) Where his authority is coupled with interest, he can be sued only to the extent of his interest in the subject matter.
- (ii)** The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied :
- (a) The agent should be in possession of the goods or documents of title to the

goods with the consent of the owner.

- (b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- (c) The buyer should act in good faith.
- (d) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, M, the agent, was in the possession of the car with K's consent for the purpose of sale. B, the buyer, therefore obtained a good title to the car. Hence, K in this case, cannot recover the car from B. A similar decision, in analogous circumstances, was taken in *Folkes v. King*.

(C) (i) Who is an employee as per Payment of Bonus Act, 1965.

(ii) State the limits for deductions permissible and the procedure for imposition of fine as per Payment of Wages Act, 1936. [5+10 = 15]

Answer:

2(C)(i) Section 2(13) defines the term 'employee' as any person employed on a salary or wage not exceeding ₹21,000/- per mensem (with effect from 01.04.2014) in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. Apprentice will not be treated as an employee.

The following case laws illustrate the eligibility of type of employees eligible for bonus-

- A temporary workman is entitled to bonus on the basis of the total number of days worked by him – '*Cooper Allen & Co. Limited V. Their Workmen*' – 1951 (2) LLJ 576;
- A part time employee as a sweeper engaged on regular basis is entitled to bonus – '*Automobile Karmachari Sangh V. Industrial Tribunal*' – 1970 (38) FJR 268;
- A dismissed employee, reinstated with back wages, is entitled to bonus – '*Gannon India Limited V. Niranjan Das*'- 1984 (40 LLJ 223;
- A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period – '*Bank of Madura Limited V. Bank of Madura Employees' Union*' – 1961 (1) LLJ 720
- A piece rated worked is entitled to bonus – '*Malabar Tile Works V. Industrial Tribunal*' – 1970 (I) LLJ 79.

2(C)(ii) 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 –

Answer to MTP_ Intermediate _Syllabus 2016_ Jun 2017_ Set 1

- 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

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.

The procedure of imposition of fine is detailed as below:

- No fine shall be imposed on any employed person who is under the age of fifteen years;
- No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of the prescribed authority, may have specified by notice;
- A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.
- No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period.
- No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of 90 days from the day on which it was imposed.
- Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- All fines and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority

(D) (i) State the features of Section 8 Companies.

(ii) Write a note on 'Small Company'.

[9+6 = 15]

Answer:

2(D)(i) Section 8 Companies, as per Companies Act, 2013 are companies formed with Charitable objects. Their features are as follows:

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

- 2(D)(ii)** Section 2(85) defines 'Small Company' as a company, other than a public company-
- (i) paid up share capital of which does not exceed ₹50 lakh rupees or such higher amount as may be prescribed which shall not be more than ₹5 crore; and
 - (ii) turnover which is as per its last profit and loss account does not exceed ₹20 crores or such higher amount as may be prescribed which shall not be more than ₹20 crores.

This definition shall not apply to-

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

(E) (i) Discuss briefly about the benefits of a one person company

(ii) What do you understand by the term 'Red-Herring Prospectus'

[8+7 = 15]

Answer:

2(E)(i) The benefits of a one person company may be enumerated as below:

- The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection available to companies.
- Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery. Earlier they were working as artisans and weavers on their own, so they did not have a legal entity of a company. But now the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure.

- Further, the amount of compliance by a one person company is much lesser in terms of filing returns, balance sheets, audit etc. Also, rather than the middlemen usurping profits, the one person company will have direct access to the market and the wholesale retailers. The new concept would also boost the confidence of small entrepreneurs.

2(E)(ii) 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 securities. 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 highlight 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.

- (F) (i) State the importance of ethics on human life and benefits of following principles of business ethics.**
- (ii) Aswani who was an employee of Sun Televisions Limited, retired on 1st January, 2013 after 30 years of continuous service. The company did not pay the amount of gratuity to Aswani till the end of December, 2013. Now, Aswani claims the amount of gratuity along with interest. Decide, under the Payment of Gratuity Act, 1972 whether Aswani will succeed in his claim? [9+6 = 15]**

Answer:

2(F)(i) Importance of ethics on Human life

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 endeavors.

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 livable. 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.

The following are the **advantages 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;

2(F)(ii) If the employer fails to pay the gratuity within the prescribed time (i.e., within 30 days of termination of employment), the controlling authority is empowered to issue a certificate, known as the recovery certificate to the collector to recover the amount of gratuity. Before issue of such certificate, the controlling authority shall give the employer a reasonable opportunity of being heard.

The employer shall also be liable to pay compound interest at such rate as may be notified by CG from time to time. The interest shall be paid starting from the date of expiry of prescribed period for payment of gratuity and ending with the actual date of payment of gratuity. However, the interest payable shall not exceed the amount of gratuity payable.

The gratuity shall be recovered by the collector in the same manner as if it were arrears of land revenue. The gratuity so recovered shall be paid to the person entitled to payment of gratuity.

Hence Aswani may follow the above rules for settlement of his claim.

(G) Write a note on: (Any Three)

[5 × 3 = 15]

- (i) Forfeiture of Gratuity**
- (ii) Restrictions on the implied authority of the partner**
- (iii) Issue of Securities by a public company**
- (iv) Improving ethical behavior in business**

Answer:

2(G)(i) Forfeiture of Gratuity

Section 4(6) provides that notwithstanding anything contained in sub-section (1),-

- 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, shall be forfeited to the extent of the damage or loss so caused;
- the gratuity payable to an employee may be wholly or partially forfeited,-
 - 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
 - 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.

2(G)(ii) Restrictions on the implied authority of the partner

The authority of a partner to bind the firm, conferred by Section 22 of Indian Partnership Act, is called his 'implied authority'. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- submit a dispute relating to the business of the firm to arbitration;
- open a banking account on behalf of the firm in his own name;
- compromise or relinquish any claim or portion of a claim by the firm;
- withdraw a suit or proceeding filed on behalf of the firm;
- admit any liability in a suit or proceeding against the firm;
- acquire immovable property on behalf of the firm;
- transfer immovable property belonging to the firm; or
- enter into partnership on behalf of the firm.

2(G)(iii) Issue of Securities by a public company

Section 23(1) provides that a public company may issue securities-

- to public through prospectus by complying with the provisions of Part I of Chapter III of this Act;
- through private placement by complying with the provisions of Part II of Chapter III of this Act;
- through a rights issue or a bonus issue in case of listed company or a company intends to get its securities listed with SEBI and the rules and regulations made there under.

Section 23(2) lays down that a private company may issue securities—

- (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or
- (b) through private placement by complying with the provisions of Part II of this Chapter.

As per explanation to section 23, for the purposes of Chapter III, "public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus

2(G)(iv) Improving ethical behavior in business

Understanding how people make ethical choices and what prompts a person to act unethically may reverse the current trend toward unethical behavior 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 behavior 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.