

Paper 6 – Laws and Ethics

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Full Marks: 100

Time allowed: 3 hours

Section – A

1. Answer all questions. [25 marks]

(a) Multiple Choice Questions [10 Marks]

- (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 one of the following is not the feature of the Contract of Guarantee?
(a) There are two parties in this contract.
(b) The liability of surety is secondary.
(c) **There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor.**
(d) The surety gives contract at the request of the principal debtor.
- (iii) 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)**
- (iv) No female child shall be allowed to work in any factory except between _____.
(a) **8 AM and 7 PM**
(b) 6 PM and 6 AM
(c) 6 AM and 7 PM
(d) 10 PM and 5 AM
- (v) The Bonus shares may be issued out of the _____
(a) Free Reserves
(b) Securities Premium Account
(c) Capital Redemption Reserve Account
(d) **Any of the above**
- (vi) An instrument of the proxy shall be deposited with the registered office of the company before _____ hours of the conduct of the meeting.
(a) 7 hours

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- (b) 21 hours
(c) **48 hours**
(d) 60 hours
- (vii) The minimum number of designated partners in an LLP shall _____
(a) 1
(b) **2**
(c) 7
(d) 15
- (viii) At every AGM, not less than _____ of the total number of directors shall retire by rotation.
(a) **One third**
(b) Two third
(c) Three fourths
(d) Half
- (ix) The minimum number of directors for a public company is _____
(a) 1
(b) 2
(c) **3**
(d) 7
- (x) This is not one of the 7 principles of public life.
(a) Integrity
(b) Honesty
(c) **Content**
(d) Accountability

(b) Fill in the Blanks

[5 Marks]

- (i) No company shall issue any debenture carrying any **Voting Rights**.
(ii) The wage period shall not exceed **One Month**.
(iii) A warranty is a stipulation **Collateral** to the main purpose of the contract.
(iv) The maximum age limit of Managing Director is **Seventy** years.
(v) The gratuity is payable to an employee after he has rendered continuous service for not less than **Five** years.

(c) True or False

[5 Marks]

- (i) Cheque is a bill of exchange.
True
- (ii) LLP is a separate legal entity.
True

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(iii) Gratuity is a lump sum payable on consideration of the past services rendered by the employee.

True

(iv) A dismissed employee, reinstated with back wages is entitled to bonus.

True

(v) Additional director shall hold office upto the date of next AGM.

True

(d) Match and Pair

[5 Marks]

	Column I		Column II
1	Active Partner	A	Latin term 'Ethos'
2	Consensus - ad - idem	B	Director Identification Number
3	OPC	C	Identity of minds
4	DIN	D	Working Partner
5	Ethics	E	One Person Company

Answer:

	Column I		Column II
1	Active Partner	D	Working Partner
2	Consensus - ad - idem	C	Identity of minds
3	OPC	E	One Person Company
4	DIN	B	Director Identification Number
5	Ethics	A	Latin term 'Ethos'

Section – B

2. Answer any 5 questions:

[5×15 = 75]

(A) (i) What is an offer and what are the points to be taken into account for a valid offer?

(ii) Mr. B (a broker) by the order of Mr. A purchases 10 Drums of oil for A from Mr. C. Afterwards Mr. A refuses to receive oil. Mr. C sues. Mr. B defends but failed. Mr. B has to pay cost, damages and incurs expense. Can B recover any amount from A?

[10+5 = 15]

Answer:

(A)(i) The term 'proposal' is otherwise called as 'offer'. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for promise, act or forbearance. Section 2(a) of the Act defines 'proposal' or offer as when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence,

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he is said to make a proposal or offer. The person making the proposal is called as 'offeror' or proposer' and the person the proposal is made is called as 'offeree'.

The following points are to be taken into account for a valid offer-

- The offer must be in clear, definite, complete and final terms. It should not be vague in terms;
- The offer must be communicated to the offeree. The offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the offer;
- The communication may be in writing or oral;
- The communication may be in expressed terms or in implied terms;
- The offer may be general or specific – if an offer is made to a specific person it is called specific offer. Such offer can be accepted by such specific person; if an offer is made to the world at large, it is a general offer. It can be accepted by any member of the general public by fulfilling the condition laid down in the offer;
- Communication of offer is complete when it comes to the knowledge of the person to whom it is made.

An offer which has been communicated properly continues as such until it lapses or revoked by the offeror or rejected or accepted by the offeree.

- (ii) In this case 'A' is liable to 'B' for such damages, costs and expenses because the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the Authorities conferred upon him. 'B' acted on the instruction of 'A'. Hence 'A' should indemnify 'B' for such damages, costs and expenses.

(B) (i) Explain the differences between Sale and Agreement to Sell.

(ii) State the rules of partnership by holding out, as per Indian Partnership Act, 1932.

[10 + 5 = 15]

Answer:

(B)(i) Differences between Sale and Agreement to Sell

Basis	Sale	Agreement to sell
Transfer of property	The property in the goods passes from buyer to seller	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled
Type of Contract	It is an executed contract	It is an executor contract
Types of goods	Sales take place only for existing and specific goods	Future and contingent goods
Risk of Loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in possession of the seller	If the goods are destroyed, the loss falls on the seller despite the goods are in possession of the buyer.

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Breach of contract	The seller can sue the buyer for the price and for damages in case of breach by the buyer	The seller can sue for damages only, in case of breach by the buyer
General and Particular property	It gives the buyer a right to enjoy the goods as against the world at large including the seller.	It gives a right to the buyer against seller to sue for damages
Insolvency of the buyer	In absence of lien over the goods the seller is to return the goods to the official receiver or the assignee. He is entitled to get the dividend declared by the official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of seller	The buyer becoming the owner is entitled to recover the same from the official receiver or assignee.	The buyer cannot claim the goods but may receive the dividend declared by the official receiver or assignee.

(ii) As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.
2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

(C) (i) Describe the term, 'Manufacturing Process' as per Factories Act, 1948 and also cite an example.

(ii) How is overtime Wages fixed as per Minimum Wages Act, 1948. [8+7 = 15]

Answer:

(C)(i) Section 2(k) defines the expression 'manufacturing process' as 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

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- 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.

- (C)(ii)** 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 over time wage is paid for a particular month a NIL entry 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.

In 'Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules.

- (D) (i) Discuss the procedure for conversion of a One Person Company into a Public Company or a Private Company.**
- (ii) Can a director be removed? If so, give the procedure in details. [6+9 = 15]**

Answer:

- (D)(i) Conversion of OPC to convert into a Public Company or a private company**

Rule 6 provides that where the paid up share capital of an OPC exceeds ₹50 lakhs and its average annual turnover during the relevant period exceeds ₹2 crores, it shall cease to be entitled to continue as OPC. Such company is mandatorily to be required to convert within six months into either a public limited company with at least 7 members or a private company with minimum two members.

The OPC has to alter its memorandum and articles by passing a resolution according to Section 122(3) to give effect to the conversion and to make necessary changes incidental thereto.

The OPC shall within a period of 60 days from the date of the applicability give a notice to the Registrar in Form No. INC-5 informing that it has ceased to be a OPC and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover having exceeded the threshold limit laid for OPC.

(D)(ii) Section 169 of Companies Act, 2013 deals with the procedure of removal of directors. A company may remove a director by passing ordinary resolution. A company cannot remove a director appointed by the Tribunal. The following is the procedure to remove a director and to appoint another director in the place of removed director:

- A special notice of any resolution, shall be sent for a meeting in which the director is to be removed to the company;
- On receipt of notice of a resolution to remove a director, the company shall send a copy of it to the director concerned;
- The director, whether he is a member or not, is entitled to be heard on the resolution at the meeting;
- The director concerned may make his representation in writing to the company;
- The director may request the company to send his representation to the members of the company;
- The Company, if the time permits it to do so-
 - in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representation of the company.

If a copy of the representation is not sent due to insufficient time or for the company's default, the director may required that the representation shall be read out at the meeting.

The copy of the representation need not be sent out and read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter. The Tribunal may order

at company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of the director may be filled by the appointment of another director in his place at the meeting at which he is removed. For this purpose special notice of the intended appointment has been given. The new director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. If the vacancy is not filled it may be filled as casual vacancy in accordance with the provisions of the Act.

The removed director shall not be reappointed as director by the Board of Directors. He shall not be eligible any compensation or damage payable for his removal as director, as per the terms of contract or terms of his appointment as director or of any other appointment terminating with that as director or as derogating from any power to remove a director under other provisions of the Act.

(E) (i) Discuss the procedure for alteration of Memorandum of Association.

(ii) State the reports that are to be set out in the prospectus.

[12+3 = 15]

Answer:

(E)(i) Procedure of alteration of memorandum:

Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that -

1. Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution.
2. 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 shall be 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. The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.
3. Entry in register of companies: On any change in the name of a 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
4. 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.

5. 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 there gistered office within a period of sixty days Before passing of order, Central Government may satisfy itself that -
 - The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
 - the sufficient provision has been made by the company either for the due discharge of all its
 - debts and obligations, or
 - adequate security has been provided for such discharge.
6. Filing with Registrar: A company shall, in relation to any alteration of its memorandum, file with the Registrar -
 - the special resolution passed by the company under sub-section (1);
 - the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.
7. 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 States within such time and in such manner as may be prescribed, who shall register the same.
8. 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 indicating the alteration.
9. Change in the object of the company: A company, which has raised money from public through prospectus and still has any unutilised 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—
 - The details, in respect to of such resolution shall also be published in the newspapers (one in
 - English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;
 - 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 Securities and Exchange Board.
10. 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.
11. 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.

12. 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 a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

(E)(ii) Reports to be set out in the prospectus

Rule 4 provides that the following reports shall be set out with the prospectus as detailed below:

- The reports by the auditors with respect to profits and losses and assets and liabilities;
- The reports relating to profit and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the issue of the prospectus;
- The reports made by the auditors in respect of the business of the company.

(F) (i) Discuss about the seven principles of public life in details.

(ii) Narrate the circumstances which disqualify an employee to receive bonus.

[10+5 = 15]

Answer:

- (F)(i)** The Seven Principles of Public Life were set out by Lord Nolan for the first time in the year 1995. These principles of public life will apply to any one who works as a public office holder, including elected and appointed to public office either locally or nationally. These principles apply to civil service, local government, the police, the Courts and probation of services, non departmental public bodies, health, education, social care services. These principles also apply to other sector that delivers public services.

The British Government appointed a committee called as Committee on Standards in Public Life to advise the Prime Minister on ethical standards of public life. The Committee was established in October 1994. The term of reference to the committee is –

- to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities; and
- to make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.

The Committee submitted its first report in the year 1995 containing the seven principles of public life. The said principles have been amended over year. The seven principles of public life as amended up to and as on 2015 are as follows-

- (i) **Selflessness** – Holders of public office should act solely in terms of the public interest.

- (ii) **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.
- (iii) **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- (iv) **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.
- (v) **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.
- (vi) **Honesty** - Holders of public office should be truthful
- (vii) **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.

(F)(ii) Disqualification for receiving bonus

Section 9 provides that an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

In 'Pandian Roadways Corporation Limited Madurai V. Presiding Officer, Labor Court'- 1977 LLR 83 (Mad HC) the High Court held that the right of the management to forfeit bonus on the ground that the workman was dismissed from service for misconduct, would be only with reference to the accounting year in which the said Act of misconduct was committed and not with reference to any year or years preceding or succeeding the accounting in question.

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

[5 × 3 = 15]

- (i) **Medical Benefit Council**
- (ii) **Conditions of formation of OPC**
- (iii) **Crossing**
- (iv) **Recognition of ethical issues in business**

Answer:

(G)(i) Medical Benefit Council

Section 10 of ESI Act provides for the constitution of Medical Benefit Council consisting of-

- the Director General of ESI, ex-officio – Chairman;
- the Director General, Health Services, ex-officio – Co-Chairman;

- the Medical Commissioner of the Corporation – ex-officio;
- one member each representing each state other than Union territories;
- three members representing employers;
- three members representing employees;
- three members representing the medical profession; among them one shall be a woman.

Term of office

The term of the office of the members of Medical Benefit Council (last three categories) shall be four years from the date on which the appointment is notified.

Duties of Medical Benefit Council

Section 22 provides the duties of the Medical Benefit Council as to-

- advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;
- have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with the medical treatment and attendance; and
- perform such other duties in connection with the medical treatment and attendance as may be specified in the regulations.

(G)(ii) Conditions of formation of OPC

One Person Company ('OPC' for short) is defined under Section 2(62) of the Act which has only one person as a member. Section 3 of the Act indicates that OPC is a private limited company.

Conditions

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 anybody 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.

(G)(iii) Crossing

Section 123 provides that where a cheque bears across its face an addition of the words 'and company' or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words 'not negotiable' that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Section 124 provides that where a cheque bears across its face an addition of the name of a banker, either with or without the words 'not negotiable' that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Section 125 provides that where a cheque is not crossed, the holder may cross it generally or specially.

- Where a cheque is crossed generally, the holder may cross it specially;
- Where a cheque is crossed generally or specially, the holder may add the word 'not negotiable';
- Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

(G)(iv) Recognition of ethical issues in business

Learning to recognize ethical issues is the most important step in understanding business ethics. An ethical issue is an identifiable problem, situation, or opportunity that requires person to choose from among several actions that may be evaluated as right or wrong, ethical or unethical. In business, such a choice often involves weighing monetary profit against what a person considers appropriate conduct. The best way to judge the ethics of a decision is to look at a situation from a customer's or competitor's viewpoint.

Many business issues may seem straightforward and easy to resolve, but in reality, a person often needs several years of experience in business to understand what is acceptable or ethical. Ethics are also related to the culture in which a business operates.