



**Paper 6- Laws and Ethics**

## Paper-6: - Laws and Ethics

Full Marks: 100

Time allowed:3 hours

### Section A

1. Answer all questions mentioned below.

[1 × 10 = 10]

#### Multiple choice question

- (i) The Breach of Contract may be
- (A) Actual
  - (B) Anticipatory
  - (C) None of the Above
  - (D) Either of the above
- (ii) Holder in due course means any person
- (A) Drawing the instrument
  - (B) Who for consideration become the possession of a promissory note:
  - (C) Named in the instrument to whom or to whom order the money is Directed to be paid
  - (D) None of the above
- (iii) A firm shall not contain any name-
- (A) King;
  - (B) Queen;
  - (C) Empire;
  - (D) All of the above.
- (iv) Find out the right of the unpaid seller from the following-
- (A) A lien on the goods for the price while he is possession of them;
  - (B) A right of resale as limited by the Act;
  - (C) In case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with possession of them.
  - (D) All the above
- (v) The accounts of LLP shall be audited if the turnover of LLP exceeds-
- (A) Rs 10,00,000
  - (B) Rs 20,00,000
  - (C) Rs 40,00,000
  - (D) Rs 1,00,00,000
- (vi) 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

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- (vii) An appeal shall lie to high Court from the order of ESI within \_\_\_\_ days from the date of order of the ESI court.
- (A) 30  
(B) 60  
(C) 90  
(D) None of the above
- (viii) The Central Government proposes the minimum rate of wages at
- (A) Rs 5,000  
(B) Rs 7,500  
(C) Rs 10,000  
(D) RS 15,000
- (ix) Minimum paid up equity capital for any Health Insurance company to register in India is :
- (A) Rs 100 Crore  
(B) Rs 200 Crore  
(C) Rs 300 Crore  
(D) Rs 500 Crore
- (x) Cost Records are to be maintained as per companies Act,2013
- (A) U/s 146 (1)  
(B) U/s 147(1)  
(C) U/s 148 (1)  
(D) None of the above

**Answer:**

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

**b) Match and Pair**

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

**Answer:**

1 (e)	2(a)	3(d)	4(c)	5(b)
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**c) State where the following statements are True or False:**

**[1 X 5 = 5]**

- (i) A company may appoint more than 15 directors after passing a resolution.

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- (ii) 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.
- (iii) No recovery shall be made of advances given before employment against the advance given for travelling expenses.
- (iv) The members of Indian Naval, Military or Air force is coming under the definition of 'employee under ESI Act.
- (v) The wage limit Rs 15,000/- is applicable for the contribution to the fund in respect of international workers.

**Answer:**

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

**(d) Fill in the blanks:**

**[1 X 5 = 5]**

- (i) 'Goods' under Sale of Goods Act is \_\_\_\_\_ property.
- (ii) Clearing house is managed by \_\_\_\_\_.
- (iii) Maximum no. of partners in banking is \_\_\_\_\_
- (iv) The gratuity is payable to an employee after he has rendered continuous service for not less than \_\_\_\_\_ years.
- (v) EPF Act is applicable to every establishment employing \_\_\_\_\_ or more persons.

**Answer:**

- (d) (i) Moveable
- (ii) Reserve Bank of India
- (iii) 50
- (iv) 5
- (v) 20

### Section B

**Answer any Five Question [16 X 5 =80]**

**2. (a)** What are the position of Minor's agreement and effect thereof? **[10]**

**(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 Rs 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 Rs5,000 from Mr.P .Can Mr.Q recover the amount under Indian Contract Act, 1872? **[5]**

**Answer:**

**2(a)** The position of Minor's agreement and effect thereof is as under:

1.An agreement with a minor is void ab-initio.

2.The law of estoppel 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.

**2(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 Rs 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?

[8].

**(b)** What are difference between Promissory Note and Cheque?

[7]

**Answer:**

**3[a]** Rights of outgoing partners

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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 or 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) Difference between Promissory Note and Cheque

	Promissory Note	Cheque
1.	It is defined in Sec. 4 of NI Act, 1881.	It is defined in Sec. 6 of the NI Act, 1881.
2.	here are two parties: • Maker. • Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety".	here are three parties: • Drawer. • Drawee. • Payee.
3.	Promissory note contains a promise to pay the sum with interest or without interest at a later date.	A cheque is payable immediately on demand without any days of grace
4.	Promissory note is not crossed	Cheque can be crossed
5.	No protection is available to the payee of note	Statutory protection is given to the drawee banker. (Sec. 128)
6.	A promissory note cannot be self drawn.	A cheque can be self drawn or bearer cheque.
7.	No criminal liability shall be imposed on the maker.	Criminal Liability may be imposed on drawee for the dishonour of cheques in certain circumstances.
8.	Stamp is necessary.	Stamp is not necessary.
9.	Limitation: 3 years	Limitation: 6 months

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

**[8]**

(b) Explain the provisions relating to exemption given to the employer from the liability in

certain cases from payment of gratuity.

[7]

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.
- to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

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 factory.

**(b)** Exemption of employer from liability in certain cases

Section 10 provides that where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court-

- that he has used due diligence to enforce the execution of this Act, and
- that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;

In seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor. If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer

**5(a)** Discuss the procedure for Conversion from private limited company into LLP

[9]

**(b)** What are the prohibitions of buy back spelt out in Section 70 of the Act?

[6]

**Answer:** Conversion from private limited company into LLP



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) Prohibition of buy back in certain circumstances**

Section 70 provides that no company shall directly or indirectly purchase its own shares or other specified securities-

- through any subsidiary company including its own subsidiary companies;
- through any investment company or group of investment companies; or
- if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company. The buy back is not prohibited if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

**6(a)** Enumerate the provisions relating to provisions relating to Restrictions on powers of Board **[8]**

**(b)** Describe the term 'Independent Director' as per companies Act,2013 **[7]**

**Answer:6(a)** Section 180: 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, free reserves



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and securities premium, 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, free reserves and securities premium share specify the total amount up to which the money may be borrowed by Board.

The title of buyer or other person who buys or takes on lease any property, investment or undertaking in good faith cannot be affected and also in case if in the ordinary business of the company comprises such selling or leasing.

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

The debt incurred by the company exceeding the paid up capital, free reserves and securities premium is not valid and effectual, unless the lender proves that the loan was advanced in good faith and also having no knowledge that limit imposed had been exceeded

**[b]** 'independent director' is defined under Section 149(6) of the Act as a director other than a Managing Director or a whole time director or a nominee director-

- who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- he shall not be a promoter of the company or its holding, subsidiary or associate company;
- he shall not be related to the promoters or directors in the company, its holding, subsidiary or associate company; he shall not have any pecuniary relationship other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- neither he or any of 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)** 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? [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;

**7(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.

Employee's 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 any three of the following ::**

**3X5=15**

**(a) E contract**

**(b) Director Identification Number**

**(c) Advantages of Business ethics**

**(d) Cleanliness of factory**

**Answer:**

**8(a)** Electronic contracts are paperless contracts and are in electronic form. It is the change of technology and legal requirements lead the contract to be in electronic form. E-contract is a contract modeled, specified, executed and deployed by a software system. They are conceptually very similar to traditional commercial contracts. E-contract also requires the basic elements of a 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 be 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;
- There must be certainty and possibility of performance.

**8(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 form 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 incompleteness 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 Rs 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 Rs1/- lakh.

### **(c) Advantages of business ethics**

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;
- Overall growth of the society;
- Makes change management easy;
- Value integration with quality, strategy and pende;

### **(d )Cleanliness of factory:**

Section 11 of the Act provides 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; 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 revarnish should be carried out once in every five years, if washable then once in every period of six months;
- where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in e very period of 14 months by such method as may be prescribed.
- 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; The dates on which such processes are carried out shall be entered in the prescribed register.