

Paper 3 - Fundamentals of Laws and Ethics

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Full Marks :100

Time allowed: 3 hours

ANSWER

I. Choose the correct answer from the given four alternatives:

[10 × 1 = 10]

1. A contract consist of
 - (a) **Mutual promises or agreement enforceable by law**
 - (b) Agreement not enforceable by law
 - (c) Involuntary obligations
 - (d) None of the above

2. Who is liable for necessaries supplied to a minor?
 - (a) The guardian of the minor
 - (b) The minor
 - (c) **His property**
 - (d) None of the above

3. An auction sale is complete on the _____
 - (a) delivery of goods
 - (b) payment of price
 - (c) **fall of hammer**
 - (d) all of the above

4. Where the sale is not notified to be subject to a right to bid on behalf of seller, and the Auctioneer knowingly takes any bid from the Seller or any such person, the sale shall be treated as.....by the buyer.
 - (a) unlawful
 - (b) illegal
 - (c) **immoral**
 - (d) fraudulent

5. A bill of exchange contains a/an
 - (a) unconditional undertaking
 - (b) **unconditional order**
 - (c) conditional undertaking
 - (d) conditional order

6. Which of these is found in a partnership firm but not in a company?
 - (a) **Partners**
 - (b) Share capital
 - (c) Business
 - (d) Profit/Loss

Answer to MTP_Foundation_Syllabus 2012_Dec 2017_Set 1

7. Safety Committee is required to be set up by the occupier of a factory where--
 - (a) a hazardous process take place
 - (b) a hazardous substances are used
 - (c) hazardous substances are handled
 - (d) **either of these three**

8. The term factory used in the Payment of Wages Act, 1936 has the same meaning as in—
 - (a) Industrial Dispute Act
 - (b) The Company Act
 - (c) Equal Remuneration Act
 - (d) **Section 2(m) of the Factories Act,1948**

9. Who has power to add to schedule 1 to the Minimum Wages Act,1948
 - (a) State Government
 - (b) Central Government
 - (c) **Appropriate Government**
 - (d) Labor Commissioner

10. Business malpractice does not include:
 - (a) Black marketing
 - (b) Adulteration
 - (c) **Advertising**
 - (d) Duplication

II. Fill in the blanks:

[10 ×2 = 20]

1. Consideration must move at the desire of **Promisor**.
2. The study of Ethics is divided into **Four** operational areas
3. The study of ethics is a **Systematic** science.
4. An instrument incomplete in one way or other is called **Inchoate Instrument**
5. **Particular partnership** formed either to carry out a particular venture or for a fixed period.
6. To avoid overcrowding, there shall be posted in each workroom of a factory a notice specifying the **Maximum** number of workers who may be employed.
7. The act relating to payment of Wages is known as Payment of Wages Act, **1936**.
8. The responsibility for fixing minimum rates of wages lies with **Appropriate Government**.
9. The term wages under the Minimum wages Act, 1948 includes **Basic and Dearness allowance**.
10. Section **3** of the THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986 prohibit employment of child in certain process or occupations.

Answer to MTP_Foundation_Syllabus 2012_Dec 2017_Set 1

III. Match the following

[5 × 1 = 5]

	Column 'A'		Column 'B'
1.	Grace days	A	Maternity Benefit
2.	Condition	B	Three days
3.	ESI Act	C	Customs
4.	Morals	D	18 years
5.	Adult	E	Essential to the main purpose of the contract

Answer:

	Column 'A'		Column 'B'
1.	Grace days	B	Three days
2.	Condition	E	Essential to the main purpose of the contract
3.	ESI Act	A	Maternity Benefit
4.	Morals	C	Customs
5.	Adult	B	18 years

IV. State whether the following statement is True (or) False.

[10 × 1 = 10]

1. An agreement not enforceable by law is said to be voidable.
False
2. An offer must be expressed.
False
3. Sickness Benefit in the form of cash compensation at the rate of 70 per cent of wages is payable to insured workers as per ESI Act.
True
4. No wage-period shall exceed one month.
True
5. Effective arrangements may or may not be made in every factory for the treatment of wastes and effluents.
False
6. An 'adolescent' means a person who has completed his 15th year of age but has not completed his 18th year.
True
7. Customs are determined by groups or some authority like religion or culture.
True
8. Section 13 of the Negotiable Instruments Act, provides that a negotiable Instrument include promissory note, bill of exchange and cheque, only payable to bearer.
False

9. The 'price' in a contract of sale means the money consideration for sale of goods.

True

10. Every partner is an implied agent of the other partners and of the firm.

True

V. Define any Five of the following:

[5 × 3 = 15]

1. Principle of mutual agency, in partnership:

- Partnership business can be carried on by all the partners or by any of them acting on behalf of the others.
- In other words, every partner is an implied agent of the other partners and of the firm.
- Each partner is liable for acts performed by other partners on behalf of the firm.
- The use of the words 'carried on by all or any of them acting for all' in Sec 4 clearly emphasizes the agency relationship.
- The partners are agent for each other and principals for themselves. Their relationship is governed by the law of agency. The partners are largely regulated by the "Law of Principal and Agent".

2. Consideration:

When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;.

3. Void Contract:

A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. Void agreement and void contract are different. Void agreement is void ab-initio but void contract is a valid contract at the beginning but subsequently becomes void when it ceases to be enforceable.

4. Sale and agreement to sale:

1. A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part owner and another.
2. A contract of sale may be absolute or conditional.
3. Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

4. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

5. Partner by Estoppel:

Partner by Estoppel is one, who, by words (spoken or written) or conduct represents himself or knowingly permits him to be represented as a Partner in the Firm. He is liable to anyone who gives credit to the Firm on the faith of such representation that he is a Partner. His liability exists even if he does not know that such a representation has reached the person so giving credit, i.e. he is estopped from denying that he was represented as a Partner.

6. Provision for drinking water:

- (a) In every factory effective arrangements shall be made to provide a sufficient supply of wholesome drinking water and shall be legibly marked "drinking water"
- (b) Shall be situated within six metres of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent
- (c) Wherein more than two hundred and fifty workers are ordinarily employed provisions shall be made for cooling drinking water during hot weather.

7. Application of Payment of Wages Act 1936 to Scheduled Employments:

- (a) The appropriate Government may, by notification in the Official Gazette direct that all or any of the provisions of the said Act shall with such modifications, if any, as may be specified in the notification apply to wages payable to employees in such scheduled employments as may be specified in the notification.
- (b) Where all or any of the provisions of the said Act are applied to wages payable to employees in any scheduled employment the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of enforcement of the provisions so applied within the local limits of his jurisdiction.

8. Ethics as a Principle:

Social evolution has developed definite principles of civic behaviour, which have attained the status of principles. By principle, we understand that something proceeds and depends on it for its cause. For instance, when one kicks a football, force is the principle that propels it into motion and the ball remains in motion till the force lasts. In other words, the physical world functions strictly according to the laws of physics. It is expected that people also submit their behaviour, both in thoughts and in actions, to these principles. An action is valid as long as it reflects the principle, just as the speed of the moving ball depends on the force it receives.

All moral actions are directed towards their object, the good, which is the principle of all happiness. This is not only the sole purpose of our existence but our co-existence with others as well. We cannot be happy alone; we can only be happy together. The universal idea of the good is applied to individual instances. Individuals are good in their own

particular way, and are good in so far as they share the essence of goodness. The universal good is a pure or general idea. It is formed through a process of abstraction of the essence from individuals or particulars.

VI. Answer any four of the following questions.

[4 × 10 = 40]

1. "No Consideration No Contract" – State the exceptions to it.

10

The general rule is *ex-nudopacto non oritur action* i.e. an agreement made without consideration is void. For example if A promises to pay B ` 1000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in section 25 itself. As per section 25, an agreement made without consideration is not void in the following circumstances:

- (i) Promise made on account of natural love and affection. [Sec. 25(1)]
- (ii) Promise to compensate for voluntary services. [Sec. 25(2)]
- (iii) Promise made to pay a time barred debt. [Sec. 25(3)]
- (iv) Completed Gifts [Explanation 1 to Sec. 25]
- (v) Creation of agency [Sec. 185]
- (vi) Contract of Guarantee [Sec. 127]
- (vii) Remission [Sec. 63]

(i) Promise made out of natural love and affection:

An agreement made without consideration is valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. Thus, an agreement without consideration will be valid provided.

- (a) It is expressed in writing.
- (b) It is registered under the law.
- (c) It is made on account of natural love and affection.
- (d) It is between parties standing in near relation to each other.

(ii) Promise to compensate for voluntary services:

Voluntary service means service done without any request. An agreement made without consideration is valid if it is a promise to compensate a person who has already voluntarily done something for the promisor. To apply this rule the following essentials must exist.

- (a) The service should have been done voluntarily.
- (b) The service should have been done for the promisor.
- (c) The promisor must have been in existence at the time when the service was done.
- (d) The intention of promisor must have been to compensate the promisee.
- (e) The service rendered must also be legal.

(iii) Promise to pay time-barred debt:

A promise by a debtor to pay a time-barred debt is also enforceable. But the promise must be in writing. It must be signed by the promisor or his authorised agent. The promise may be to pay the whole or part of the debt.

(iv) Creation of Agency:

According to Section 185 of the Contract Act, no consideration is necessary to create an agency. Thus when a person is appointed as an agent, his appointment is valid even if there is no consideration.

(v) Completed Gifts:

Gifts once made cannot be recovered on the ground of absence of consideration. Absence of consideration will not affect the validity of any gift already made. Thus if a person gives certain properties as gift to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground there was no consideration.

(vi) Contract of guarantee:

Under section 127, no consideration is needed for a contract of guarantee. In other words, contract of guarantee needs no consideration.

(vii) Remission:

Remission means lesser performance of the contract than what is actually to be performed.

2. Definition and classification of Goods under the Sale of Goods Act, 1930. [4+6]

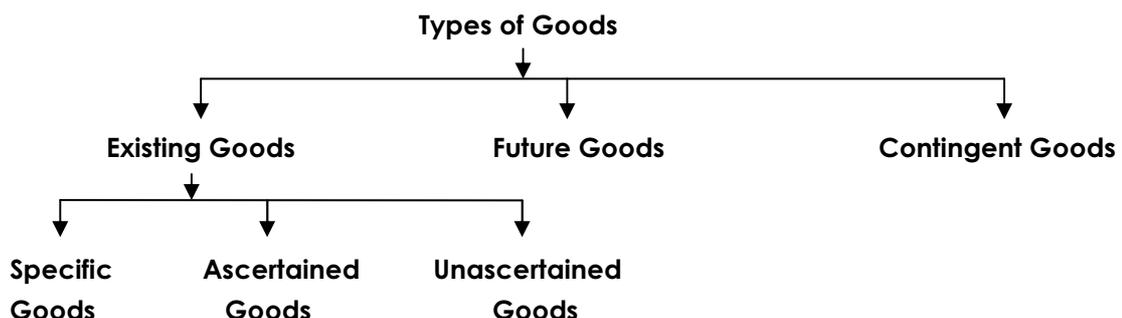
According to Section 2(7), "Goods means every kind of moveable property other than actionable claims and money; and includes stock and shares; growing crops, grass, trees and things attached to or forming part of the land which are agreed to be severed it before sale or under contract of sale".

Example: Where the trees were sold so that they were to be cut out and separated from land and taken away by the buyer. The contract was for sale of trees as moveable goods.

Types of Goods:

Goods which form the subject-matter of a contract of sale may be divided into three types namely:

1. Existing goods.
2. Future goods.
3. Contingent goods.



1. Existing goods:

Goods owned and possessed by the seller at the time of the making of the contract of sale are called existing goods. Sometimes the seller may be in possession but may not be the owner of the goods. **Example:** Mercantile Agent.

The existing goods can be further classified as under:

- (a) Specific goods.
- (b) Ascertained goods.
- (c) Unascertained goods.

(a) Specific goods:

“Specific goods” are those goods which are identified and agreed upon at the time of contract of sale is made. It is essential that the goods are identified and separated from the other goods.

Example: In the case of sale of one table out of 25 tables, goods shall be specific if the table is selected before the contract of sale is made.

(b) Ascertained goods:

Ascertained goods are identified after the contract of sale as per the terms decided.

(c) Unascertained goods:

When the goods are not separately identified or ascertained at the time of making a contract of sale, are known as unascertained goods. When the buyer does not select the goods for him from a lot of goods, but are defined or indicated only by description, we call them unascertained goods.

Example: Sale of 25 chairs for an office out of a lot of 200 such chairs of the same design and quality, the goods are *unascertained* till 25 particular chairs are selected. When the required 25 chairs are selected out of the lot, the goods are said to be *ascertained goods* for the contract of sale.

2. Future Goods:

It means goods to be manufactured or produced or acquired by the seller after making of the contract of sale. A contract to sell oil not yet pressed from seeds in his possession is a contract for the sale of future goods.

Example: X agrees to sell to Y all the apples which will be produced in his garden next year. This is an agreement for the sale of future goods.

3. Contingent Goods:

These are a type of future goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. Goods which might be expected to come into existence, as

- (a) goods to arrive
- (b) future crops
- (c) the eggs.

Such contracts give no right of action if the contingency does not happen.

3. (a) The different types of Negotiable Instruments.

8

1. Bearer and order instruments

A negotiable instrument is said to be payable to bearer when

- (i) It is expressed to be so payable
- (ii) Only or last endorsement is a blank endorsement.

A negotiable instrument is said to be payable to order when

- (i) It is expressed to be so payable
- (ii) Expressed to be payable to a particular person with restricting its transferability.

2. Inland and foreign instruments

A bill, promissory note or cheque if both drawn and payable in India or drawn on a person resident in India is said to be an inland bill.

A bill which is not an inland bill is deemed to be a foreign bill. Foreign bill must be protested for dishonor if such protest is required by the law of the place where it was drawn, this is not case with Inland bills where protest for nonpayment is optional as per section 104 of the Act.

3. Demand and time instruments

An instrument is payable on demand when it is expressed to be so payable or when no time is specified on it. A cheque is always payable on demand.

A note or bill if payable after a specified period or happening of a specified event which is certain, it is a time instrument. If a promissory note or bill of exchange bears the expression "at sight" and "on presentation" means on demand (Section 21). The words "on demand" are usually found in a promissory note, where the words "at sight" are found in a bill of exchange.

4. Genuine, accommodation and fictitious bill

When a bill is drawn, accepted, or endorsed for consideration it is a genuine bill. When it is drawn, accepted, or endorsed without consideration it is accommodation bill. When drawer or payee or both are fictitious the bill is called fictitious bill. If both drawer and payee of a bill are fictitious person, the acceptor is liable to a holder in due course, if the holder in due course can show that the signature of the supposed drawer and that of first payee are in the same handwriting.

5. Clean and documentary bill

When no documents relating to goods are annexed to the bill, it is clean bill. When documents of title or other documents relating to goods are attached, it is documentary bill.

6. Ambiguous instrument

When an instrument due to faulty drafting may be interpreted either as bill or note, it is an ambiguous instrument. It is for holder to decide how he wants the bill to be treated.

Ambiguity may also arise when the amount is stated differently in words and figures. In such case the amount stated in words will be taken into account.

7. Inchoate instrument

An instrument incomplete in some respect is known as inchoate instrument. When a person signs and delivers to another a blank or incomplete stamped paper, he authorizes the other person to make or complete upon it a negotiable instrument for any amount not exceeding the amount covered by the stamp. The effect of such signing is that the person signing the instrument is liable upon such instrument in the capacity in which he signed it to holder in due course of the instrument.

8. Escrow Instrument

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 Escrow instrument. The liability to pay in case of an Escrow instrument does not arise if the conditions agreed upon are not fulfilled or the purpose for which the instrument was delivered is not achieved.

(b) Partner by estoppel

2

Partner by Estoppel is one, who, by words (spoken or written) or conduct represents himself or knowingly permits him to be represented as a Partner in the Firm. He is liable to anyone who gives credit to the Firm on the faith of such representation that he is a Partner. His liability exists even if he does not know that such a representation has reached the person so giving credit, i.e. he is estopped from denying that he was represented as a Partner.

4. (a) Provisions relating to provisions relating to time of payment of wages according to the Payment of Wages Act, 1948

6

Time of Payment of Wages (Section 5)

- (1) The wages of every person employed upon or in—
 - (a) Any railway, factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,
 - (b) Any other railway, factory or industrial or other establishment shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable.
- (2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.
- (3) The Appropriate Government may, by general or special order, exempt to such extent and subject to such conditions as may be specified in the order the person responsible for the payment of wages to persons employed.

(4) All payments of wages shall be made on a working day.

(b) Facilities for sitting arrangement as per Section 44 of Factories Act, 1948 **4**

- (1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.
- (2) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.
- (3) The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.

5. (a) "Family" as per the Employees State Insurance Act, 1948. **5**

Family means all or any of the following relatives of an insured person, namely –

- (1) A spouse;
- (2) A minor legitimate or adopted child dependent upon the insured person;
- (3) A child who is wholly dependent on the earnings of the insured person and who is-
 - (a) Receiving education, till he or she attains the age of twenty-one years,
 - (b) An unmarried daughter;
- (4) A child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;
- (5) Dependent parents; whose income from all source does not exceed such income as may be prescribed by the Central Government.
- (6) In case of the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependent upon the earnings of the insured person.

(b) Write about the hours and period of work of children according to Child Labor (Prohibition and Regulation) Act, 1986. **5**

Hours and period of work: (Sec. 7)

- (1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

- (2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
- (3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
- (4) No child shall be permitted or required to work between 7 p. m. to 8 a.m.
- (5) No child shall be required or permitted to work overtime.
- (6) No child shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

6. Concept of value free ethics and also state the relationship between ethics and law. [6+4]

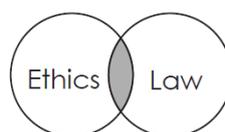
Concept of Value-free Ethics

The concept of 'value-free' business ethics appears to be quite appealing to businessmen. It as though it may be pursued devoid of all rules within a social vacuum. The concept of value-free ethics found application in economics in a rather ironical fashion. Ludwig von Mises, known as the father of the Austrian School of Economics, proposed the pure theory of economics, stating that economic concepts are a priori, that is, they are not dependent on experience, but are purely virtual concepts. The concept of choice, for instance, is a pure concept. It is immaterial whether one chooses water or wine, but the concept in itself is free of such particular elements. Hence, choice is value-free (*wertfrei*). Applied to ethics, it would mean that we should be able to study the principles of this discipline, such as goodness, truth, justice, honour, etc. in their pure form.

It is obvious that such value-free ethics, when understood in the right sense, leads us to study meta-ethics or the fundamental principles of ethics as a pure science. However, if we are to apply an ethical standard to such a study, it would be called a pure study of values, not value-free ethics.

Ethics and Law - The Interface

Law is essentially an institutionalisation or codification of ethics into specific social rules, regulations and prescriptions. Perhaps the best way of visualizing ethics and law is in terms of two intersecting domains as depicted in the following figure:



Thus, in one sense, business ethics can be said to begin where law ends. Business ethics is primarily concerned with those issues not completely covered by law, or where there is no definite consensus on whether something is right or wrong. Hence, it is often remarked, that business ethics is about the "grey areas" of business where values are in conflict.