

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. : (c)
2. : (b)
3. : (c)
4. : (c)
5. : (d)
6. : (d)
7. : (c)
8. : (a)
9. : (b)
10. : (d)

II. Fill in the blanks: [10 × 2 = 20]

1. 1st September, 1872
2. Void
3. Condition as to wholesomeness
4. Open Cheque
5. Sleeping
6. 9 (nine)
7. 14 years
8. 1.75%
9. Not more than 10
10. Ethike

III. Match the following [5 × 1 = 5]

1. C
2. E
3. A
4. D
5. B

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

1. False
2. False
3. True

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4. True
5. False
6. True
7. True
8. False
9. True
10. True

V. Define any Five of the following:

[5 × 3 = 15]

1. Void Contract:

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. Void contract is a valid contract at the beginning but subsequently becomes void when it ceases to be enforceable.

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

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

3. Bill of Exchange:

A bill of exchange is an instrument in writing containing an unconditional order signed by maker directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument. – Sec. 5 of the Negotiable Instruments Act, 1881.

4. Adolescent:

According to sec. 2(b) of the Factories Act, 1948, 'Adolescent' means "a person who has completed his fifteenth years of age but has not completed his eighteenth year".

5. 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". – Sec. 2(d) of Indian Contract Act, 1872.

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

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

7. Value-free Ethics:

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

and obligations. The only successful relationship that exists in business is that of a vendor and a customer.

8. Appropriate Government:

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

VI. Answer any four of the following questions.

[4 × 10 = 40]

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

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

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

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

Essential elements of a valid contract: -

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

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

(i) Offer and Acceptance/Agreement:

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

(ii) Intention to create legal relationship:

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

(iii) Lawful consideration:

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

(iv) Capacity of Parties:

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

(a) Major

(b) Of sound mind

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

(v) Legality of object: -

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

(vi) Free consent: -

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

(vii) Certainty of terms: -

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

(viii) Possibility of performance: -

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

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

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

(x) Legal Formalities: -

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

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

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Sale	Agreement to sell
(1) Sale is an executed contract. Property in the goods passes from seller to buyer	(1) It is an executor contract transfer of property in goods is to take place at a future date subject to fulfillment of certain conditions.
(2) If goods are destroyed the loss will be borne by the buyer even though they may be in the possession of the seller.	(2) The loss will be borne by the seller even through the goods may be in possession of the buyer.
(3) A sale gives right to the buyer to enjoy	(3) The buyer can sue the seller for

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(iii) The holder in due course can sue on the instrument in his own name and for this purpose notice of transfer need not be given. What is a holder in due course will be discussed in the subsequent subject sections.

(iv) A negotiable instrument is subject to certain presumptions which are discussed as under.

- (a) Date
- (b) Consideration
- (c) Time of acceptance
- (d) Time of transfer
- (e) Order of endorsement
- (f) Holder in due course
- (g) Instrument was duly stamped

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

(1) No suit to enforce a right arising from a contract or conferred by this act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the register of firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any court by on or behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

(3) The provisions of sub- sections (1) and (2) shall apply also to claim of set – off or other proceeding to enforce a right arising from contract, but shall not affect –

- a) The enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or
- b) The powers of an official assignee, receiver or court under the Presidency Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920 to realise the property of an insolvent partner.

4. (a) Explain the provisions relating to drinking water according to the Factories Act, 1948.

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(b) Who is responsible for Payment of Wages according to Payment of Wages Act, 1936.

5

(a) Provisions relating to Drinking water: [Sec. 18]

(1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "drinking water" in a language understood by a minority of the workers employed in the factory, and no such point shall be situated within six meters of any washing place, urinal, latrine, spittoon, open drain carrying sullage or

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effluent or any other source of contamination unless a shorter distance is approved in writing by the chief inspection.

(3) In every factory where in more than 250 workers are ordinary employed, provisions shall be made for cooling drinking water during hot weather.

(4) In respect of all factories or any class or description of factories the State Government may make rules for securing compliance with the provisions of sub- sections (1), (2) and (3).

(c) Responsibility for payment of wages: (Sec. 3)

Every employer shall be responsible for the payment of all wages required to be paid under this act to person employed by him. Provided that in case of persons employed:

- (a) In factories if a person has been named as the manager of the factory.
- (b) In industrial or other establishments if there is a person responsible to the employer for the supervision and control of the industrial or other establishments.
- (c) Upon railway if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned.
- (d) In the case of contractor a person designated by such contractor who is directly under his charge.
- (e) In any other case a person designated by the employer as a person responsible for company with the provision of the Act.

The person so named the person so responsible to the employer or the person so nominated as the case may be shall also be responsible for such payment.

5. (a) Explain the procedure for fixing and revising minimum wages. 5

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

(a) The responsibility of fixing minimum wages lies with Appropriate Government.

The appropriate government shall in the manner here in after provided –

(a) Fix the minimum rates of wages payable to employees employed in an employment specified in Part I and Part II of the Schedule and in an employment added to either Part by notification under Sec. 27

Provided that the Appropriate Government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole state or part thereof.

(b) Review at such intervals as it may think fit such intervals not exceeding five years the minimum rates of wages so fixed and revise the minimum rates is necessary.

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from

reviewing the minimum rates after the expiry of the said period of five years and revising them if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

(b) 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. Explain about the seven principles of public life.

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Seven principles of public life: -

(1) Selflessness: -

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves; their family or their friends.

(2) Integrity: -

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

(3) Objectivity: -

In carrying out public business including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

(4) Accountability: -

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

(5) Openness: -

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Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

(6) Honesty: -

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(7) Leadership: -

Holders of public office should promote and support these principles by sound leadership and prove to be an example in whatever they perform.