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

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

(c) True or False **[5 Marks]**

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

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

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

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

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

(d) Match and Pair **[5 Marks]**

	Column I		Column II
1	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) Arun, Barun and Gautam jointly borrowed ₹500,000 from Prashant. The whole amount was repaid to Prashant by Barun. Decide in the light of the Indian Contract Act, 1872 whether:

(a) Barun can recover the contribution from Arun and Gautam,

(b) Legal representatives of Arun are liable in case of death of Arun,

(c) **Barun can recover the contribution from the assets, in case Gautam becomes insolvent.**

(ii) When is presentment of an instrument not necessary under the Negotiable Instruments Act? [9+6 = 15]

Answer:

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

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

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

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

the of such presentment.

(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:

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

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

Answer:

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

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

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

(ii) Limit of deductions

Section 7(3) provides up to which limit of the wage, the deductions may be made from the wages of the employees. Notwithstanding anything contained in this Act the total amount of deductions which may be made in any wage-period from the wages of any employed person shall not exceed –

- in cases where such deductions are wholly or partly made for payments to co-operative societies - 75% of such wages and
- in any other case – 50

Where the total deductions authorized under sub-section (2) exceed seventy five per cent or as the case may be, fifty per cent of the wages the excess may be recovered in such manner as may be prescribed.

The procedure of imposition of fine is detailed as below:

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

(D) (i) 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:

(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.

(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 briefly about the benefits of a one person company
(ii) What do you understand by the term 'Red-Herring Prospectus' [8+7 = 15]

Answer:

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

- The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection available to companies.

- Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery. Earlier they were working as artisans and weavers on their own, so they did not have a legal entity of a company. But now the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure.

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

(ii) Red herring prospectus

The Explanation to Section 32 defines the term 'red herring prospectus' as a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Section 32 provides that a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of securities. The same shall be filed with the Registrar at least three day prior to the opening of the subscription list and the offer. It shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlight as variations in the prospectus.

At the time of closing of the offer the prospectus stating the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other detail as are not included in the red herring prospectus shall be filed with the Registrar and the SEBI.

(F) (i) 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:

(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 are 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.

(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) Pension Funds
(ii) Restrictions on the implied authority of the partner
(iii) Issue of Securities by a public company
(iv) Improving ethical behavior in business

Answer:

(i) Pension funds [Section 23]

(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds:

Provided that at least one of the pension funds shall be a Government company.

Explanation. — For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in Section 617 of the Companies Act, 1956.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

(ii) Restrictions on the implied authority of the partner

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

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

(iii) Issue of Securities by a public company

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

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

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

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

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

(iv) Improving ethical behavior in business

Understanding how people make ethical choices and what prompts a person to act unethically may reverse the current trend toward unethical behavior in business. Ethical decisions in an organization are influenced by three key factors: individual moral standards, the influence of managers and co-workers, and the opportunity to engage in misconduct. It is difficult for employees to determine what conduct is acceptable within a company if the firm does not have ethics policies and standards.

And without such policies and standards, employees may base decisions on how their peers and superiors behave. Professional codes of ethics are formalized rules and standards that describe what a company expects of its employees. Codes of ethics, policies on ethics, and ethics training programs advance ethical behavior because they prescribe which activities are acceptable and which are not, and they limit the opportunity for misconduct by providing punishments for violations of the rules and standards. The enforcement of such codes and policies through rewards and punishments increases the acceptance of ethical standards by employees.