

INTERMEDIATE EXAMINATION

GROUP - I

(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS

JUNE - 2018

Paper - 6: Laws and Ethics

Time Allowed: 3 Hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.

This question paper has two sections. A and B.

Both the sections are to be answered subject to instructions given against each.

Wherever necessary, candidates may make appropriate assumptions and clearly state them.

Section - A

Section A contains question No. 1. All parts of this question are compulsory.

1. Answer all the following questions:

(a) Choose the correct answer from the given alternatives (you may write only the Roman numeral and the alphabet chosen for your answer): 1x10=10

(i) The main feature of e-contract is

- (a) Cost and acceptability
- (b) Purity and clarity
- (c) Speed, accurate and reliable
- (d) Perfection and attractive

(ii) Which of the following is not an unpaid seller's right against the goods?

- (a) The right of retention
- (b) The right of stoppage in transit
- (c) The right of seeking claim for damage
- (d) The right of resale

(iii) Where the endorser does not want that the endorsee or any other holder to incur any expense on his account is called

- (a) Restrictive endorsement
- (b) Sans frais endorsement
- (c) Conditional endorsement
- (d) Unwanted endorsement

Suggested Answers_Syl2016_June2018_Paper 6

- (iv) The liability of the partners will continue for the acts done before the dissolution, even after the dissolution, until
- (a) Public notice is given of the dissolution
 - (b) Partners are getting the final payment
 - (c) Claim is demanded by the creditors
 - (d) The death of partners
- (v) Every employee shall be entitled to receive bonus from his employer in an accounting year if he has worked for not less than
- (a) Ten working days
 - (b) Twenty working days
 - (c) Thirty working days
 - (d) Forty working days
- (vi) Under Employee's State Insurance Act, 1948, the term of the office of the members of Medical Benefit Council shall be
- (a) 2 Years
 - (b) 4 Years
 - (c) 5 Years
 - (d) 10 Years
- (vii) Which one cannot be transacted through postal ballot?
- (a) Appointment of auditor
 - (b) Election of a Director
 - (c) Buy back of shares by a company
 - (d) Change in place of registered office outside the local limits of any city, town or village
- (viii) The appointment of an independent director shall be approved by the
- (a) Board meeting
 - (b) General meeting
 - (c) Registrar of Companies
 - (d) Central Government
- (ix) The sweat equity shares shall be locked in for a period of _____ years from the date of allotment.
- (a) One
 - (b) Two
 - (c) Three
 - (d) Four
- (x) The following is the disadvantage of business ethics:
- (a) Through increasing morale and trust business can increase their market share
 - (b) Publicity due to well and ethical performance
 - (c) Acceptance of products of the company by the public
 - (d) Diversity in achievements

Suggested Answers_Syl2016_June2018_Paper 6

(b) Match the statement in column 1 with the most appropriate statement in Column II:

1x5=5

	Column I		Column II
1.	Legal Representative of the contractor	(A)	Welfare measures taken in a factory.
2.	Where the seller makes a false representation and buyer relies on it.	(B)	Certificate of incorporation.
3.	Creches	(C)	Extract of the annual return of a company.
4.	MGT-9	(D)	Exception to the Doctrine of Caveat Emptor.
5.	Form No. INC-11	(E)	He who is not the Principal Employer.

(c) State whether the following statements are True or False (you may write only the Roman numeral and whether True or False without copying the statements into the answer books):

1x5=5

- (i) Gratuitous bailment continues even after the death of either of the bailor or bailee.
- (ii) A holder is not having right to duplicate of lost bill, before it is overdue.
- (iii) Fine may be recovered from the employed person by installments
- (iv) Share certificate is a negotiable instrument.
- (v) The businessmen who do not follow business ethics will have short term success, but they will fail in the long run.

(d) Fill in the blanks suitably (you may write only the Roman numeral and the content filling the blanks):

1x5=5

- (i) The liability of surety arises only when the principal debtor fails to pay the debt to the _____.
- (ii) Goods to be manufactured or produced or acquired by the seller after making of the contract of sale is called _____ good.
- (iii) If there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the _____.
- (iv) The time limit for registration of charge is _____ days from the date of creation of charge.
- (v) The ethical operation of a company is directly related to _____ in both short and long term.

Answer:

1. (a) (i) (c)
(ii) (c)
(iii) (b)

Suggested Answers_Syl2016_June2018_Paper 6

- (iv) (a)
- (v) (c)
- (vi) (b)
- (vii) (a)
- (viii) (b)
- (ix) (c)
- (x) (d)

(b)

	Column I		Column II
1.	Legal Representative of the contractor	(E)	He who is not the Principal Employer.
2.	Where the seller makes a false representation and buyer relies on it.	(D)	Exception to the Doctrine of Caveat Emptor.
3.	Creches	(A)	Welfare measures taken in a factory.
4.	MGT-9	(C)	Extract of the annual return of a company.
5.	Form No. INC-11	(B)	Certificate of incorporation.

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

- (d)
- (i) creditor
 - (ii) Future
 - (iii) Controlling Authority
 - (iv) 30
 - (v) Profitability

Section – B

Answer any five questions from question numbers 2 to 8

Each question carries 15 marks.

15×5 = 75

2. (a) Mr. X, a businessman has been fighting a long drawn litigation with Mr. Y, another businessman. To support his legal campaign Mr. X enlists the services of Mr. Z, a legal expert, stating that an amount of ₹ 10 lakhs would be paid, if Mr. Z does not take up the brief of Mr. Y. Mr. Z agrees, but at the end of the litigation Mr. X refuses to pay. Decide whether Mr. Z can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872.

Suggested Answers_Syl2016_June2018_Paper 6

(b) State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of the principal? 5+10=15

Answer:

2. (a) The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either illegal or void. Further Contract Act specifies that any agreements in restraint of trade, marriage, legal proceedings etc. are void agreements.

Thus Mr, Z cannot recover the amount of ₹ 10 lakhs promised by Mr. X because it is an illegal agreement and cannot be enforced by law.

(b) The general rule of the Indian Contracts Act, 1872 states that:

- (i) Only the principal can enforce and can be held liable on a contract entered into by an agent.
- (ii) The agent is not personally liable on a contract entered into by him on behalf of the principal.

The following are the exceptions to the above rule:

1. **Foreign Principal:** When agent acts for sale or purchase of goods for a principal resident abroad i.e., foreign principal.
2. **Personal liability by agreement:** Where it is expressly provided in the contract that the agent shall be personally liable.
3. **Undisclosed principal:** Where agent does not disclose the name/identity of the principal.
4. **Principal cannot be sued:** Where the principal is disclosed but cannot be sued, e.g., foreign sovereigns, ambassadors etc.
5. **Non-existence of Principal:** When the principal is not in existence at the time when the act was done, i.e., the agent acted for a non-existent principal.
6. **Agent's liability:** When the agent exceeds his authority or commits a breach of warranty of authority.
7. **Pretended Agent:** When he acts as a pretended agent.
8. **Mistake or Fraud:** When he receives or pays money by mistake or fraud.
9. **Agent sign an agreement without mentioning that he is an agent:** Where an agent signs a negotiable instrument without mentioning that he is signing as an agent.
10. **Trade or customs:** Where the usage of trade or custom makes an agent personally liable.

3. (a) M/s. Tea Enterprises agreed to supply 2,200 Kgs. of Tea to M/s. Gopal Enterprises at ₹ 1,200/- per Kg. by 30th April, 2018. On 1st March, 2018 M/s. Tea Enterprises informs Gopal Enterprises that they are not willing to supply the Tea as the price of Tea increased to ₹ 1,400/- per Kg. Examine the right of M/s. Gopal Enterprises.

Suggested Answers_Syl2016_June2018_Paper 6

(b) Anil draws a bill of exchange payable to himself on Sushil, who accepts the bill without consideration just to accommodate Anil. Anil transfers the bill to Ajay for good consideration.

State the rights of Anil and Ajay. Would your answer be different if Anil transferred the bill to Ajay after maturity? **8+7=15**

Answer:

- 3. (a)** In terms of the provisions of Section 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:

- (1) To have delivery of the goods as per contract. (Sec. 31 & 32);
- (2) To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;
- (3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57);
- (4) To sue the seller for specific performance;
- (5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59);
- (6) To sue the seller the damages for anticipatory breach of contract (Sec 60)

In the instant case M/s. Gopal Enterprises can exercise any of his rights discussed above.

(b) Section 43 of the Negotiable Instrument Act, 1881 states the following:-

- (i) Liability of parties if there is no consideration - A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.
- (ii) Rights of holder for consideration - but if any such party has transferred the instrument to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.
- (iii) No right of accommodating party to recover from accommodating party - No party for whose accommodation a negotiable instrument has been made, drawn, accepted, endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

In the given case, Anil is not entitled to sue Sushil, since there is no consideration between Anil and Sushil and hence there is no obligation to pay.

Again Ajay is entitled to sue Anil and Sushil, since Ajay is a holder for consideration. Ajay

Suggested Answers_Syl2016_June2018_Paper 6

is entitled to sue the transferor for consideration and every other party prior to him.

According to Sec 59, in the case of accommodation bills, a defect in the title of the transferor does not affect the title of the holder acquiring after maturity. Hence, even if Ajay has acquired the bill for consideration after maturity, he is entitled to sue.

4. (a) Critically examine the duties of certified surgeon under the Factories Act, 1948.

(b) Enumerate the Central Record Keeping Agency under Pension Fund Regulatory and Development Act 2013? 8+7=15

Answer:

4. (a) Section 10 under Factories Act, 1948 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. The duties of certified surgeons are as follows-

- the examination and certification of young persons;
- the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;
- the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where -
 - ✓ cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
 - ✓ by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
 - ✓ young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

(b) Section 21 of Pension Fund Regulatory and Development Act, 2013 deals with Central Record keeping Agency

(1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central record keeping agency:

Provided that the Authority may, in public interest, appoint more than one central record keeping agency.

(2) The central record keeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

Suggested Answers_Syl2016_June2018_Paper 6

(3) All the assets and properties owned, leased or developed by the central record keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central record keeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central record keeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

5. (a) Discuss the procedure for conversion of private company into One Person Company.

(b) What are the procedures of sending notice through electronic mode under the Companies Act, 2013?

7+8=15

Answer:

5. (a) Conversion of private company into a OPC

Rule 7 provides the procedure for conversion of private company into OPC. Rule 7(1) provides that a private company other than Section 8 company, having paid up share capital of ₹ 50 lakh or less and average annual turnover during the relevant period is ₹ 2 crores or less may convert itself into OPC by passing a special resolution in the general meeting. Before passing such resolution the company shall obtain 'No Objection Certificate' in writing from the members and creditors. The OPC shall file copy of the resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT-14.

The company shall file an application in Form No. INC-6 for its conversion into OPC along with fees. The following documents are to be attached:

- the directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital of the company is ₹ 50 lakhs or less or average annual turnover is less than ₹ 2 crores, as the case may be;
- the list of members and creditors;
- the latest Audited Balance sheet and the Profit and Loss Account;
- the copy of No objection letter of secured creditors.

On being satisfied and complied with the requirements the Registrar shall issue the certificate.

Suggested Answers_Syl2016_June2018_Paper 6

(b) The procedure of sending notice through electronic mode under the Companies Act, 2013 is discussed as detailed below:

- A notice may be sent through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice;
- The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
- The subject shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled;
- The attachment shall in a PDF or in a non editable format together with a link or instructions for recipient for downloading relevant version of the software;
- The company should ensure that it uses a system which produces confirmation of the total number of recipients emailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained or on behalf of the company as 'proof of sending';
- The company is not responsible for the failure in transmission beyond its control;
- If a member fails to provide or update relevant email address to the company or to the depository participant, the company shall not be in default for not delivering notice via email;
- The company may send email through in house facility or its registrar and transfer agent or authorize any third party agency providing bulk email facility;
- The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government.

6. (a) Discuss the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director.

(b) "Directors are agents of the company." — Discuss.

10+5=15

Answer:

6. (a) Section 164 of the Companies Act, 2013 details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if -
- (i) he is of unsound mind and stands so declared by a competent court;
 - (ii) he is an undischarged insolvent;
 - (iii) he has applied to be adjudicated as an insolvent and his application is pending;
 - (iv) he has been convicted by a Court of any offence, whether involving moral

Suggested Answers_Syl2016_June2018_Paper 6

- turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the Sentence;
- (v) if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;
 - (vi) an order disqualifying him for appointment as a director has been passed by the Court Or Tribunal and the Order is in force;
 - (vii) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;
 - (viii) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or
 - (ix) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications.

The disqualifications in (iv), (v), (vi) and (viii) shall not take effect -

- for 30 days from the date of conviction or order of disqualification;
- where an appeal or petition is preferred within 30 days against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of;
- where any further appeal or petition is preferred against order or sentence within 7 days until such further appeal or petition is disposed of.

(b) The company can act only through Directors, and so the relationship between the company and the Director is that of Principal and Agent. Contract entered into by a person as a Director of a company, will be binding on the Company. However, Directors are not Agents of Members of the company.

Directors have personal liability. They would be personally liable under the following circumstances:

- Director acts in his own name,
- Director enters into an agreement/ contract which does not state clearly as to whether the Director signing in his personal capacity or in his representative capacity as an Agent of the Company.

Rights of the Company:

- Contract executed by the Director in excess of his authority, is binding on the Company. However, the Company may claim damages from the Director for breach of implied warranty of authority.
- When Directors act properly on behalf of the Company, they do not incur personal liability; they do not exceed their powers.

Suggested Answers_Syl2016_June2018_Paper 6

7. (a) What are the areas in business ethics? Write a note of the same.

(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? 10+5=15

Answer:

7. (a) Areas in business ethics

- Corporate Social Responsibility;
- Fiduciary responsibility to stake holders;
- Industrial espionage.

Ethical behavior and corporate social responsibility can bring significant benefits to a business.

For example, they may:

- attract customers to the firm's products, which means boosting sales and profits
- make employees want to stay with the business, reduce labour turnover and therefore increase productivity
- attract more employees wanting to work for the business, reduce recruitment costs and enable the company to get the most talented employees
- attract investors and keep the company's share price high, thereby protecting the business from takeover.

Knowing that the company, they deal with, has stated their morals and made a promise to work in an ethical and responsible manner allows investors' peace of mind that their money is being used in a way that arranges with their own moral standing. When working for a company with strong business ethics, employees are comfortable in the knowledge that they are not by their own action allowing unethical practices to continue. Customers are at ease buying products or services from a company they know to source their materials and labor in an ethical and responsible way.

A company which sets out to work within its own ethical guidelines is also less at risk of being fined for poor behavior, and less likely to find themselves in breach of one of a large number of laws concerning required behavior. Reputation is one of a company's most important assets, and one of the most difficult to rebuild should not be lost. Maintaining the promises it has made is crucial to maintaining that reputation. Businesses not following any kind of ethical code or carrying out their social responsibility leads to wider consequences. Unethical behavior may damage a firm's reputation and make it less appealing to stakeholders. This means that profits could fall as a result. The natural world can be affected by a lack of business ethics. For example, a business which does not show care for where it disposes its waste products, or fails to take a long-term view when

Suggested Answers_Syl2016_June2018_Paper 6

buying up land for development, is damaging the world in which every human being lives, and damaging the future prospects of all companies.

(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.

Employees 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 on any three of the following terms:

5×3=15

(a) Undue Influence

(b) Alteration of Share Capital

(c) Consumer movement and Ethics

(d) Manufacturing process under the Factories Act, 1948.

Answer:

8. (a) Undue Influence

Under Section 16 of the Indian Contract Act defines undue influence as under:

- (i) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
- (ii) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—
 - (a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
 - (b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (iii) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

(b) Alteration of share capital

Section 61 provides that a limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting-

- increase its authorized share capital by such amount as it thinks expedient;
- consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
- convert all or any of its fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination;
- sub division of shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation shall not be deemed to reduction of share capital.

(c) Consumer movement

Business ethics is gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous business by their false propaganda and false claims, unfair trade practices. Today, the consumers are aware of their rights and well informed as well as well organized. Now they are more organized and hence cannot be cheated easily. They take actions against those businessmen who indulge in bad business practices. They boycott poor quality, harmful, high priced and counterfeit goods. Therefore, the only way to survive in business is to be honest and fair. Consumer forum and consumer associations are more active and vocal now.

(d) Manufacturing process

Under Section 2(k) of Factories Act 1948 define 'manufacturing process' as under any process for-

- making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- pumping oil, water, sewage or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage.

Suggested Answers_Syl2016_June2018_Paper 6

In 'M/s Qazi Noorul Hasan Hamid Hussain Petrol Pump V. Deputy Director, Employees' State Insurance Corporation' - 2003 LLR 476 it was held that the definition 'manufacturing process' does not depend upon and is not correlated with any end product being manufactured out of a manufacturing process. It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport, delivery or disposal. It cannot be restricted an activity which may result into manufacturing something or production of a commercially different article. The 'manufacturing process' cannot be interpreted in a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.