

Paper 6- LAWS AND ETHICS

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Full Marks : 100

Time allowed: 3 hours

Part-I

Answer Question Number 1. All parts of this question are compulsory

1. Answer the following questions

(a) Multiple choice questions: [10x1=10]

- (i) **The breach of contract may be –**
 - (a) Actual
 - (b) Anticipatory
 - (c) **Either of the above**
 - (d) None of the above
- (ii) **Which one of the following is a bill of exchange?**
 - (a) A banker's draft
 - (b) A demand draft
 - (c) An order issued by a district board engineer on government treasure for payment to or order of certain person
 - (d) **All of the above**
- (iii) **A compromise or arrangement may be proposed –**
 - (a) Between a LLP and its partners
 - (b) Between a LLP and its creditors
 - (c) **Either (a) or (b)**
 - (d) None of the above
- (iv) **An independent director appointment shall be approved by the –**
 - (a) Board meeting
 - (b) **General meeting**
 - (c) Registrar of companies
 - (d) Central government
- (v) **Which one the following not a method of voting?**
 - (a) Voting by show of hands
 - (b) Voting through electric means
 - (c) Voting by poll
 - (d) **None of the above**
- (vi) **The authority may refuse to entrain an application for the claim –**
 - (a) That the applicant is not entitled to present the application
 - (b) That the applicant is barred by limitation
 - (c) That the applicant shows no sufficient cause for making a direction
 - (d) **Any of the above.**

(vii) In which case no minimum wages can be fixed?

- (a) Dispute is pending before the tribunal
- (b) Dispute is pending before any authority under any other law for the time being in force
- (c) An award in operation
- (d) Any one of the above three

(viii) Definition of "Salary" or "wages" may included_____.

- (a) Commission
- (b) Dearness allowance
- (c) Retrenchment compensation
- (d) Value of any house accommodation

(ix) The Employees' pension scheme provides for

- (a) Superannuation pension
- (b) Orphanage pension
- (c) Both (a) or (b)
- (d) None of (a) or (b)

(x) Which does not amount to retirement?

- (a) Retrenchment
- (b) Resignation
- (c) Dismissal
- (d) Superannuation

(b) Match the following:

[5×1=5]

	Column 'A'		Column 'B'
1.	Coercion	A	Prosecution
2.	Goods	B	Scorekeeping
3.	Management accounting	C	Movable property
4.	Agreement of wagers	D	Void
5.	Agreement to sale	E	An executor contract

Answer: 1(b)

	Column 'A'		Column 'B'
1.	Coercion	A	Prosecution.
2.	Goods	C	Movable property.
3.	Management accounting.	B	Scorekeeping.
4.	Agreement of wagers.	D	Void.
5.	Agreement to sale.	E	An executor contract.

(c) Fill in the blanks:

[5×1=5]

- (i) The information memorandum shall be deemed to be_____.
- (ii) _____ is the administered authority for the pension fund.
- (iii) A share capital of the company includes_____

- (iv) Continuous improvement or _____ is a popular theme.
- (v) Draft cannot be drawn on _____.

Answer: 1(c)

- (i) Prospectus
- (ii) Central board
- (iii) Stock
- (iv) Kaizen
- (v) Private individual

(d) State whether the following statements are true or false: [5×1=5]

- (i) Gratuity is a lump sum amount payable by the company on consideration of the past service rendered by the employee.
- (ii) Bonus shares shall be issued under Companies Act by capitalizing reserves created by revaluation of assets.
- (iii) A demand for poll may be withdrawn at any time by the persons who made the demand.
- (iv) An outgoing partner may, carrying on a business, use the firm name.
- (v) The termination of the authority of an agent causes the termination of the authority of all sub agent appointed by him.

Answer: 1(d)

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

Section - B

Answer any five from the following. Each question carries 15 marks (5×15=75)

- 2. (a) Define fraud under India Contract Act. Does silence amount to fraud discuss. [8]**
- (b) Describe the essential features of a valid contract. [7]**

Answer: 2(a)

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- (i) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
- (ii) The active concealment of a fact by one having knowledge or belief of the fact;
- (iii) A promise made without any intention of performing it;
- (iv) Any other act fitted to deceive;
- (v) Any such act or omission as the law specially declares to be fraudulent.

Does silence amount to fraud:

At times one of the parties to a contract makes silence to some of the facts relating to the subject matter of contract. The matter on which silence is maintained by party may

be material fact. Does this amount to passive fraud under the Indian Contract Act or not depends upon various factors?

Explanation to Section 17 of the Indian Contract Act provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of case are such that having regard to them, it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

Thus, we can say that there is exception to the rule that mere silence does not amount to silence. These two exceptions are provided in explanation to section 17 and these are as under.

(i) When there is a duty to speak.

(ii) Where silence is equivalent to speech.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

- (a) Where there is change in circumstances- A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly, this must be communicated to other party otherwise it amounts to fraud.
- (b) When there is half-truth- Even when a person is not bound to disclose a fact, he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

Answer: 2(b)

Section 10 provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not otherwise expressly declared to be void.

The following are the requirements for a valid contract-

- There shall be an offer or proposal by one party and acceptance of the proposal by the other party which results in an agreement;
- There shall be an intention to create legal relations or an intent to legal consequences;
- The agreement shall be supported by lawful consideration;
- The parties to the contract shall be competent to contract;
- There shall be free consent between the parties to the contract;
- The object and consideration of the contract shall be legal and the same shall not be opposed to public policy;
- The terms of the contract shall be certain;
- The agreement is capable of being performed i.e., it is not impossible of being performed.

3. (a) State the procedure to form a partnership as per Partnership Act. [8]

(b) Differentiate between bill of exchange & cheque. [7]

Answer: 3(a)

The first step is to decide the number of partners of a firm. The law provides for minimum 2 number of partners. The upper limit is 10 in case of banking business and 20 in respect of other business.

- First decide to who are the partners of the firm, considering the limit envisaged in the Act;

- The name of the partnership firm is selected subject to the provisions of the partnership Act;
- Select the business to be done by the partnership and object of the business;
- Decide the capital to be brought by each and every partner
- Prepare the agreement deed of the firm – the deed is the vital and most significant document. The deed shall contain all aspects of the partnership firm. This documents prescribes the „a to z” of the partnership firm to be formed;
- The agreement should invariably in writing and signed by all partners;
- The provisions contained in the agreement are binding all partner
- The partnership firm is to be registered. According to the Act the partnership firm may be registered or may not be registered. Unregistered firms have no legal protection and therefore registration of partnership firm is to be preferred.
- Open bank account in the name of the partnership firm;
- In the present scenario obtaining PAN is necessary and get the PAN from the Income Tax Authority;
- Acquire all mandatory licences from the respective authorities for the conduct of the business;
- Registration with required tax authorities i.e., direct tax as well as indirect tax such as central excise, service tax, VAT etc.,
- The Registration certificate is the conclusive evidence of the formation of the partnership firm.

Answer: 3(b)

Bill of Exchange		Cheque	
1.	It is defined in Sec. 5 of NI Act, 1881.	1.	It is defined in Sec. 6 of the NI Act, 1881.
2.	There are three parties: <ul style="list-style-type: none"> • Drawer • Drawee • Payee 	2.	There are three parties: <ul style="list-style-type: none"> • Drawer • Drawee • Payee
3.	Bills of exchange are not crossed.	3.	Cheques may be crossed.
4.	Generally three days of grace are given for the payment in case of a bill of exchange. However, this convenience is not allowed in case of bill of exchange payable on demand.	4.	Immediate payment is required in case of cheque. No grace days are allowed.
5.	Anybody including banker may be drawee in case of bill of exchange.	5.	The drawee is always a banker.
6.	It must be accepted before the acceptor can be made liable upon it.	6.	It requires immediate payment. It does not require acceptance of the maker. Thus the question of acceptance does not arise in case of cheque.
7.	Where a Bill of Exchange is not paid and not honoured, a notice of dishonour should be sent to the drawer to charge him.	7.	Where a cheque is dishonoured, Notice of Dishonour is not strictly necessary. The banker can return the cheque with the memo "Refer to Drawer" which is a sufficient notice.
8.	Statutory protection is not available.	8.	Sec. 85 of the N.I Act, 1881 affords protection to bankers.

9.	Civil Liability in case of dishonour of bill of exchange.	9.	Criminal liability in case of dishonour of a cheque/bouncing of a cheque and is liable to be prosecuted under Sec. 138 of the N.I. Act, 1881.
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4. (a) What are the Powers that can be exercised by an Inspector under Factories Act? [7]

(b) Define the term 'Immediate Employer' and Employee' under ESI Act. [8]

Answer: 4(a)

Section 8 provides that the State Government may appoint such persons as possess the prescribed qualification to be Inspectors for the purpose of this Act and may assign to them such local limits as it may think fit. Section 9 prescribes the powers of the Inspector as detailed below-

- ❖ to enter into any place which is used, or which he has reason to believe is used as a factory;
- ❖ make examination of the premises, plant, machinery, article or substance;
- ❖ inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not and take on the spot statements of any person which he may consider necessary for such inquiry;
- ❖ require the production of any document relating to factory;
- ❖ seize or take copies of any register, record or other documents of any portion thereof as he may consider necessary;
- ❖ to take possession of any article or substance or part thereof and detain it for so long as is necessary for such examination;
- ❖ to exercise such other powers as may be prescribed.

Answer: 4(b)

Immediate employer

Section 2(13) defines the terms „immediate employer“ in relation to employees employed by or through him, as a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent on hire to the principal employer and includes a contractor.

Employee

Section 2(9) defines the term „employee“ as any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and-

- who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
- who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of

the factory or establishment; or

- whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the productions of, the factory or establishment or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time but does not include-
- any member of the Indian naval, military or air forces; or
- any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government provided that an employee whose wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

5. (a) Write notes on Debentures. Who may not be appointed as debenture trustee? [8]

(b) Describe the procedure to be followed for conversion of private company into OPC [7]

Answer: 5. (a)

DEBENTURES

Section 2(30) of the Act defines the term 'debentures' as including debenture, stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of a company or not. Section 44 provides that the debentures shall be the movable property transferable in the manner provided in the articles of the company.

Section 71 (1) of the Act provides that a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. The issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

Section 71(2) provides that no company shall issue any debentures carrying any voting rights.

Who may not be appointed as debenture trustee?

Rule 18 (2) (C) provides that a person shall not be appointed as a debenture trustee, if he-

- beneficially holds shares in the company
- is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
- is beneficially entitled to moneys which are to be paid by the company other than as remuneration payable to the debenture trustee;
- is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or ₹50 lakh or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

- is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Answer: 5(b)

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.

6. (a) State the Duties of Directors. [8]

(b) When the office of a Director shall become vacant? [7]

Answer: 6.(a)

Duties of a Director

Section 166 of the Act prescribes the duties of a director under the provisions of this Act as detailed below:

- A director of a company shall act in accordance with the articles of the company;
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment;
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;

- A director of a company shall not assign his office and any assignment so made shall be void;

If a director of the company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Answer: 6(b)

Vacation of office of a director

Section 167 provides that the office of a Director shall become vacant in case-

(a) he incurs any of the disqualifications specified in Section 164; Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.

(b) he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board;

(c) he acts in contravention of the provisions of Section 184 relating to entering into contractor arrangements in which he is directly or indirectly interested.

(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of Section 184;

(e) he becomes disqualified by an order of a Court or Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months.

and (f)-

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

(g) he is removed in pursuance of the provisions of the Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

(i) he breaches the limits of maximum directorship allowed.

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to the above.

7. (a) Describe seven principles of public life. [8]

(b) Define the term 'Banking company & 'Employer' under payment of bonus act, 1965. [7]

Answer: 7.(a)

The seven principles of public life as amended up to and as on 2015 are as follows-

- **Selflessness** – Holders of public office should act solely in terms of the public interest.
- **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.

- **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **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.
- **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.
- **Honesty** - Holders of public office should be truthful
- **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.

Answer: 7(b)

Section 2(8) defines the term „banking company” as a banking company as defined in Section 5 of the Banking Companies Act, 1949 and includes-

- State bank of India and any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;
- Any corresponding new bank as specified in the I Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- Any corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;
- Any co-operative bank as defined in Section 2(bii) of the Reserve Bank of India Act; and
- Any other banking institution which may be notified in this behalf by the Central Government.

Employer

Section 2(14) defines the term „employer” including-

- in respect of factory –
 - the owner or occupier of the factory including the agent of such owner or occupier;
 - the legal representative of a deceased owner or occupier and
 - the manager of the factory;
- in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

8. **Any Three Question answer:**

[5×3]= 15

(a) **Importance of Ethics.**

(b) **Revocation of license under Section 8(6) of companies Act.**

(c) **E- Contract**

(d) **What is Establishment under payment of Bonus Act 1965.**

Answer:

- 8.(a)** Ethics is a requirement for human life. It is our means of deciding a course of action. Without it, our actions would be random and aimless. There would be no way to work towards a goal because there would be no way to pick between a limitless number of goals. Even with an ethical standard, we may be unable to pursue our goals with the possibility of success. To the degree which a rational ethical standard is taken, we are able to correctly organize our goals and actions to accomplish our most important values. Any flaw in our ethics will reduce our ability to be successful in our endeavors.

A proper foundation of ethics requires a standard of value to which all goals and actions can be compared to. This standard is our own lives, and the happiness which makes them livable. This is our ultimate standard of value, the goal in which an ethical man must always aim. It is arrived at by an examination of man's nature, and recognizing his peculiar needs. A system of ethics must further consist of not only emergency situations, but the day to day choices we make constantly. It must include our relations to others, and recognize their importance not only to our physical survival, but to our well-being and happiness. It must recognize that our lives are an end in themselves, and that sacrifice is not only not necessary, but destructive.

- 8.(b)** Section 8(6) provides that the Central Government may, by order, revoke the license granted to the company registered under this section-

- if the company contravenes any of the requirements of this section; or
- any of the conditions subject to which a licence is issued; or
- the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest.

The Central Government shall direct the company to convert its status and change its name to add the words „Limited" or „Private Limited" to its name. No such order will not be passed without giving opportunity to the company of being heard. A copy of such order shall be given to the Registrar. The Registrar shall, without prejudice to any action taken, on application, in the prescribed form, register the company accordingly.

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

- An offer is to be made;
- Offer is to be accepted;
- There shall be a lawful consideration;
- There shall be an intention to create legal relations;
- The parties must be competent to contract;
- There must be free and genuine consent;
- The object of the contract must be lawful;
- There must be certainty and possibility of performance.

The main feature of this type of contract is speed, accurate and reliable. The parties to the contract have to obtain digital signature from the competent authority and they have to affix the digital signature instead of manual signing. The Information Technology Act, 2000 regulates such e-contracts.

In this type of contract the web site of the offer or acts as a display to the world at large. E-mails are used to negotiate and agree on contract terms and to send and agree to the final contract. An email contract is enforceable if the requirements of the contract are fulfilled. Electronically signed contracts cannot be denied because they are in electronic form and delivered electronically.

8.(d) The term „establishment“ is of two types – establishment in private sector and establishment in public sector.

The term „establishment in private sector“ is defined under Section 2(15) of the Act as any establishment other than an establishment in public sector.

The term „establishment in public sector“ is defined as an establishment owned controlled or managed by-

- A Government company;
- A corporation in which not less than 40% of its capital is held, either singly or taken together by the Government or Reserve Bank of India or a Corporation owned by the Government or the Reserve Bank of India.

Section 3 provides that where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment.