



INTERMEDIATE EXAMINATION
MODEL ANSWER
PAPER - 5
BUSINESS LAWS AND ETHICS

SET 1
TERM – JUNE 2023

Time Allowed: 3 Hours

Full Marks: 100

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

Where considered necessary, suitable assumptions may be made and
clearly indicated in the answer.

Answer Question No. 1 and any five from Question No. 2, 3, 4, 5, 6, 7 and 8.

ANSWER:

SECTION - A

1. (a)

(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)
d	c	b	b	b	d	c	d	b	b	a	a

(b)

(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)
False	True	False	False	True	True	False

(c)

(i)	A negotiable instrument endorsed in blank is payable to the bearer .
(ii)	A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
(iii)	Employees' Provident fund is administered by EPF Act, 1952 .
(iv)	Preference share capital holders are not entitled dividend and any surplus in the winding up proceedings .
(v)	A share capital of the company includes Stock .
(vi)	Openness means that the holders of public office should act and take decisions in an open and transparent manner.



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SECTION - B

2. (a) Essential Elements of a valid contract

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 elements 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 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 consent shall be certain.
- The agreement is capable of being performed and it is not impossible of being performed.

Examples:

1. A proposes, by letter, to sell a house to B at a certain price. B accepts A's proposal by a letter sent by post.
The communication of the acceptance is complete, as against A when the letter is posted and as against B, when the letter is received by A.
2. R offers M his house for sale at Rs1 Crore on 5th July, 2022. M agrees to buy the same at the given time and price asked by R. Both R and M are 40 years old and are of sane mind.

This is a contract as per Section 10 of the Indian Contract Act, 1872.

(b) Distinction between Promissory Note and Bill of Exchange are given below

Sl No.	Promissory Note	Bill of Exchange
1	It is defined in Sec. 4 of NI Act, 1881	It is defined in Sec. 5 of the NI Act, 1881.
2	There are two parties: <ul style="list-style-type: none">• Maker.• Payee	There are three parties: <ul style="list-style-type: none">• Drawer.• Acceptor• Payee.



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3	It contains a Promise to pay.	It contains an order to pay.
4	No conditions shall be made in a promissory note.	A bill may be accepted conditionally.
5	The liability of a maker of the promissory note is primary and absolute.	The liability of the drawee of a bill of exchange is secondary and conditional.

3. (a) The term “caveat emptor” is a Latin word which means “let the buyer beware”. This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. The doctrine of caveat emptor is embodied in Section 16 of the Act which states that “subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale”. It is not the seller’s duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose.

Example 1: The principle was applied in the case of *Ward v. Hobbs*, (1878), where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer’s own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer’s duty to satisfy himself regarding the health of the pigs.

Example 2: Sharon went to buy a second-hand car. Aaron was the owner of the second-hand car which clearly had a door broken. Sharon did not say anything but after buying the car she complained against Aaron for selling her a car with a broken door. Aaron is not bound to compensate for the damage that the car had which was easily discoverable or seen by Sharon. Neither is Sharon eligible to revoke the contract of sale on the same grounds.

- (b) As per Partnership Act, 1932, Section 39 provides that the dissolution of partnership between all the partners of a firm is called the ‘dissolution of the firm’. Modes of Dissolution of a firm:

1. Dissolution without the order of the court or voluntary dissolution

- a) Dissolution by agreement [Section 40]



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Section 40 provides that a firm may be dissolved with the consent of all partners or in accordance with a contract between the parties.

b) **Compulsory dissolution [Section 41]**

It provides that a firm is dissolved by the -

- Adjudication of all the partners or of all the partners but one as insolvent; or
- Happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership. Where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not cause the dissolution of the firm in respect of its lawful adventures and undertakings.

c) **Dissolution on the happenings of certain contingencies [Section 42]**

It provides that subject to the contract between the partners, a firm is dissolved-

- if constituted for a fixed term, by the expiry of that term;
- if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- by the death of a partner; and
- by the adjudication of a partner as an insolvent.

d) **Dissolution by notice of partnership at will [Section 43]**

Section 43 provides that where the partnership is at will, the firm may be dissolved by any partner giving notice, in writing, to all the other partners, of his intention to dissolve the firm. The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, as from the date of the communication of then notice.

2. Dissolution by the court [Section 44]

Section 44 prescribes the grounds on which the Court may direct dissolution of a firm in a suit as discussed below if the:

- Partner has become of unsound mind;
- Partner has become permanently incapable of performing his duties as partner;
- Partner is guilty of conduct which is likely to affect prejudicially the carrying on of business, regarding being had to the nature of business;



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- Partner will fully or persistently commits breach of agreements relating to-
Management of the affairs of the firm or the conduct of its business; or
Conduct of its business; or
Otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
- Partner has in any way-
Transferred the whole of his interest in the firm to a third party; or
Has allowed his share to be charged; or
Has allowed it to be sold in the recovery of the arrears of land revenue; or
Of any dues recoverable as arrears of land revenue due by the partner;
The business of the firm cannot be carried on save at a loss; or
On any other ground which renders it just and equitable that the firm should be dissolved.

4. (a) The ESI Act extends to whole of India. This Act applies to-
- in the first instance applicable to all factories, including factories belonging to the Government, other than season factories;
 - the appropriate Government may, in consultation with the corporation and where the appropriate Government is a State Government, with the approval of Central Government, after giving one month's notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act to any of them, to any other establishment or classes of establishments, industrial, commercial, agricultural or otherwise;
 - a factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.

In 'Employees' State Insurance Corporation V. Premal' – 2009 LLR 282 (Ker HC) it was held that ESI scheme will be applicable to establishment preparing sweets with the aid of LPG.

In 'Kuriacose V. Employees' State Insurance Corporation' – (1988) 2 CLR 301 (Ker) it was held that once the Act has become applicable to a factory or an establishment, its application will be continuous.



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- (b) Time limit for payment of wages Section 17 of the Code of Wages, 2019-
1. The employer shall pay or cause to be paid wages to the employees, engaged on:
 - a) daily basis, at the end of the shift;
 - b) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;
 - c) fortnightly basis, before the end of the second day after the end of the fortnight;
 - d) monthly basis, before the expiry of the seventh day of the succeeding month.
 2. Where an employee has been:
 - a) removed or dismissed from service; or
 - b) retrenched or has resigned from service, or became unemployed due to closure of the establishment, the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.
 3. Notwithstanding anything contained in sub-section (1) or sub-section (2), the appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.
 4. Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force.
5. (a) Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. These provisions are: -
1. **Alteration by special resolution:** Company may alter the provisions of its memorandum with the approval of the members by a special resolution.
 2. **Name Change of the company:** Any change in the name of a company shall be effected only with the approval of Central Government in writing. However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word “Private”, consequent on the conversion of any one class of companies to another class.
 3. **Entry in register of companies:** On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new



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name and the change in the name shall be complete and effective only on the issue of such a certificate

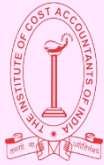
4. **Change in the registered office:** The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.
5. **Disposal of the application of change of place of the registered office:** The Central Government shall dispose of the application of change of place of the registered office within a period of sixty days. Before passing of order, the Central Government may satisfy itself that-
 - The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
 - that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations, or adequate security has been provided for such discharge.
6. **Filing with Registrar:** A company shall, in relation to any alteration of its memorandum, file with the Registrar—
 - the special resolution passed by the company under sub-section (1) of Section 13;
 - the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.
7. **Filing of the certified copy of the order with the registrar of the states:** Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.
8. **Issue of fresh certificate of incorporation:** The Registrar of the State where the registered office is being shifted to, shall issue afresh certificate of incorporation indicating the alteration.
9. **Change in the object of the company:** A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and—
 - the details, in respect to of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company



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- is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;
- he dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
10. **Registrar to certify the registration on the alteration of the objects:** The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.
11. **Alteration to be registered:** No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.
12. **Only member have a right to participate in the divisible profits of the company:** Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.
- (b) Section 26 of the Act provides the matters to be stated in a prospectus. Every prospectus issued by or on behalf of a public company shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government: Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.
- Section 27 of the Act provides that a company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued except subject to the approval of or except subject to an authority given by the company in general meeting by way of special resolution through the postal ballot. The notice of the proposed special resolution, according to Rule 7(1), shall contain the following particulars:
- the original purpose or object of the issue;
 - the total money raised the money utilized for the objects of the company stated in the prospectus;
 - the extent of achievement of proposed objects;



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- the unutilized amount of the money so raised through prospectus;
 - the particulars of the proposed variation in terms of contracts referred to in the prospectus or objects for which prospectus was issued;
 - the reason and justification for seeking variation;
 - the proposed time limit within which the proposed varied objects would be achieved;
 - the clause-wise details as specified in Rule 3(3) as was required with respect to the originally proposed objects of the issue;
 - the risk factors pertaining to the new objects; and
 - the other relevant information which is necessary for the members to take an informed decision on the proposed resolution.
6. (a) If the articles of association provided for retirement of all directors in the annual general meeting, then all the directors are liable to directors. According to sec 152(6) of the Companies Act, 2013, 2/3rd of the total number of directors is liable to retire by rotation and those directors are called as retiring directors. Out of the retiring directors (2/3rd of total number of directors) 1/3rd of directors is liable to vacate the office. The directors who were in the office for the longer period, is liable to retire first. However, if the two or more directors have been appointed on the same day then directors will retire based on the mutual understanding between them and when mutual understanding is not available then they retire based on draw by lots. Section 152(6) provides that unless the articles provides otherwise for the retirement of all directors at every annual general meeting, not less the two-third (2/3rd) of the total number of directors (excluding independent directors, whether appointed under this act or under any other law) of a public company shall:
1. be persons whose period of office is liable to determination by retirement of directors by rotation; and
 2. have as otherwise expressly provided in this Act, be appointed by the company in general meeting. The remaining directors (i.e. non-rotational/non-retiring/permanent directors) in the case of public company shall be appointed as per provisions contained in the articles of the company. Where a director retires by rotation at the annual general meeting of a company,
- (b) Section 68(2) of Companies Act 2013 provides that a company shall purchase is own shares or other specified securities if-
- the buy-back is authorized by its articles;



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- a special resolution has been passed at a general meeting of the company authorizing the buy back. This shall not apply to a case where-
 - the buy-back is, 10% or less of the total paid up equity capital and free reserves of the company; and
 - such buy-back has been authorized by the Board by means of a resolution passed at its meeting.
- the buy-back is 25% or less of the aggregate of paid-up capital and free reserves of the company.
- In respect of the buy-back of equity shares in any financial year, the reference to 25% shall be construed with respect to its total paid-up equity capital in that financial year.
- the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid up capital and free reserves. The Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies
- all the shares or other specified securities for buy-back are fully paid up;
- the buy-back of shares or other specified securities in a listed company is done in accordance with the regulations made by SEBI; and
- the buy-back in respect of shares or other specified securities of a unlisted company is to be in accordance with the rules as may be prescribed.

Example: Both the Companies Act and SEBI guidelines made provisions for companies to buy back their own shares. Indian regulations require companies to cancel the shares that it buys back unlike in some other countries where it's allowed to keep those shares alive on its own balance sheet. The concept of share buybacks is also common in India. Several companies announce buybacks in order to improve shareholder value. For example, in Oct-2022, Bajaj Auto announced a share buyback of about 64 lakh number shares from the public.

Let's say company ABC has ₹ 20,00,000 in cash and 1,00,000 shares in issue, trading at a price of ₹ 10 per share. If ABC buys back 150,000 shares, using ₹ 1,50,000 in cash, it's left with 8,50,000 shares in circulation and ₹ 18,50,000 in cash.

7. (a) Section 7 of the Payment of Gratuity Act prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.



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Mode of Payment

Rule 9 provides that the gratuity payable under the Act shall be paid in cash or, if so desired by the payee, in Demand Draft or bank Cheque to the eligible employee, nominee or legal heir, as the case may be. In case the eligible employee, nominee or legal heir, as the case may be, so desires and the amount of gratuity payable is less than one thousand rupees, payment may be made by postal money order after deducting the postal money order commission there for from the amount payable. Intimation about the details of payment shall also be given by the employer to the controlling authority of the area.

In the case of nominee, or an heir, who is minor, the controlling authority shall invest the gratuity amount deposited with him for the benefit of such minor in term deposit with the State Bank of India or any of its subsidiaries or any Nationalized Bank.

Example: The right of receiving the gratuity by the employee is the statutory right. Once it is eligible to receive the gratuity the employee is entitled to receive the same unless otherwise restricted by the provisions of law. The court in ‘KSRTC, Bangalore V. Deputy Labour commissioner and the Appellate Authority, Bangalore and others’ – 2014 (2) TMI 629 – KARNATAKA HIGH COURT held that right to gratuity is a statutory right and cannot be withheld under any circumstances but for the exception enumerated in Section 4(6) of the Act.

(b) The Institute has promulgated the following standards of ethical conduct for practitioners-

- maintain at all times independence of thought and action;
- not to express an opinion on cost / financial reports or statements without first assessing her or his relationship with her or his client to determine whether such Member might expect her or his opinion to be considered independent, objective and unbiased by one who has knowledge of all the facts; and
- when preparing cost / financial reports or statements or expressing an opinion on cost / financial reports or statements, disclose all material facts known to such Member in order not to make such cost / financial reports or statements misleading, acquire sufficient information to warrant an expression of opinion and report all material misstatements or departures from generally accepted accounting principles.
- not to disclose or use any confidential information concerning the affairs of such Member’s employer or client unless acting in the course of his or her



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duties or except when such information is required to be disclosed in the course of any defense of himself or herself or any associate or employee in any lawsuit or other legal proceeding or against alleged professional misconduct by order of lawful authority or any committee of the Society in the proper exercise of their duties but only to the extent necessary for such purpose;

- inform his or her employer or client of any business connections or interests of which such Member's employer or client would reasonably expect to be informed;
- not, in the course of exercising his or her duties on behalf of such Member's employer or client, hold, receive, bargain for or acquire any fee, remuneration or benefit without such employer's or client's knowledge and consent; and
- take all reasonable steps, in arranging any engagement as a consultant, to establish a clear understanding of the scope and objectives of the work before it is commenced and will furnish the client with an estimate of cost, preferably before the engagement is commenced, but in any event as soon as possible thereafter.
- conduct himself or herself toward other Members with courtesy and good faith;
- not to accept any engagement to review the work of another Member for the same employer except with the knowledge of that Member, or except where the connection of that Member with the work has been terminated, unless the Member reviews the work of others as a normal part of his or her responsibilities;
- not to attempt to gain an advantage over other Members by paying or accepting a commission in securing management accounting work;
- not to act maliciously or in any other way which may adversely reflect on the public or professional reputation or business of another Member;
- at all times maintain the standards of competence expressed by the Institute from time to time;
- undertake only such work as he or she is competent to perform by virtue of his or her training and experience and will, where it would be in the best interests of an employer or client, engage, or advise the employer or client to engage, other specialists;

8. (a) There are many ways in which disputes can be resolved and grievances redressed. Whenever there is a lawful agreement between parties that bind both of them with



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certain duties and obligations, in cases they get breached, a dispute resolution body, either a court or a tribunal can be approached. However, the law has also provided for resolving disputes through mechanisms that do not involve courts or litigations. These methods may include arbitration, mediation, conciliation, negotiation and others. Dispute resolution can be categorized into two broad heads, such as, adjudicative processes and consensual processes. In adjudicative processes, a judge or an arbitrator decides the case and determines the rights and obligations of the parties. Whereas in consensual processes, parties themselves attempt to reach an agreement with or without the help of a third party mediator. Provisions of dispute resolution clauses are imperative in trade and commerce, especially in treaties and contracts. Without these provisions protecting one's rights in property or contract becomes difficult.

The most common form of judicial dispute resolution is litigation. Litigation is initiated when one party files suit against another. The proceedings are very formal and are governed by rules, such as rules of evidence and procedure, which are established by the legislature. Outcomes are decided by impartial judges, based on the factual questions of the case and the applicable law. The verdict of the court is binding; however, both parties have the right to appeal the judgment to a higher court. Methods of dispute resolution that do not involve litigation through courts generally are classified under alternative dispute resolution (ADR) methods. ADR generally depends on agreement by the parties to use ADR processes, either before or after a dispute has arisen. ADR has experienced steadily increasing acceptance and utilization because of a perception of greater flexibility and speedy resolution of disputes, among other perceived advantages. Alternative Dispute Resolution is a term used to describe several different modes of resolving legal disputes other than filing law suits and get timely justice. To solve the problem of delayed justice ADR Mechanism has been developed in response thereof. Its methods can help the parties to resolve their disputes at their own terms expeditiously. Alternative dispute redressal techniques can be employed in several categories of disputes, especially civil, commercial, industrial and family disputes. The term "Alternative Disputes Resolution" takes in its fold, various modes of settlement including, Lok Adalats, arbitration conciliation and Mediation It was suggested by the Law Commission of India that the Court may require attendance of any party to the suit or proceedings to appear in person with a view to arriving at an amicable settlement of dispute between the parties and make attempts to settle the dispute between the parties amicably.



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(b) Section 5 of LLP Act 2008 provides that any individual or body corporate may be a partner in a LLP.

An individual shall not be capable of becoming a partner of LLP, if-

- he has been found to be of unsound mind by a Court of competent jurisdiction and the findings is
- in force.
- he is undischarged insolvent; or
- he has applied to be adjudicated as an insolvent and his application is pending.

So, Mr. X cannot continue as a partner because he is undischarged insolvent.

As per act he is not capable or eligible a partner of LLP,