

Paper 3 - Fundamentals of Laws and Ethics

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Full Marks :100

Time allowed: 3 hours

- I. Choose the correct answer from the given four alternatives: 10 x 1 = 10
1. Under Section 2(b) if the person to whom the proposal is made signifies his assent the proposal is said to have been _____.
(a) accepted
(b) agreed
(c) provisionally agreed
(d) tentatively accepted.
 2. Which of these are essential conditions of a valid contract _____?
(a) free consent
(b) competency of parties
(c) consideration
(d) all the three
 3. 'Delivery' within the meaning of section 2(1) of the Sale of Goods Act, 1930, can be _____.
(a) actual
(b) constructive
(c) symbolic
(d) either (a) or (b) or (c).
 4. A bill of exchange contains a/an _____.
(a) unconditional undertaking
(b) unconditional order
(c) conditional undertaking
(d) conditional order.
 5. For every district _____ shall be an Inspector for the Factories Act, 1948.
(a) District Judge
(b) District Magistrate
(c) District Collector
(d) District Inspector General
 6. The Payment of Wages Act, 1936, is based on the recommendation of _____.
(a) Sacchar Committee
(b) The Royal Committee on labor
(c) Ministry of Women & Child Development

(d) International Labor Organisation

7. The responsibility for fixing minimum rates of wages lies with _____.
 - (a) Appropriate Government
 - (b) Central Government
 - (c) Union parliament
 - (d) Labor commissioner

8. Dependants benefit is paid at the rate of _____ % of wages.
 - (a) 100
 - (b) 90
 - (c) 85
 - (d) 66

9. The period of work of a child labour can not spread over _____.
 - (a) more than 7 hours
 - (b) more than 5 hours
 - (c) more than 6 hours
 - (d) 4 hours

10. Business malpractice does not include _____.
 - (a) Black marketing
 - (b) Adulteration
 - (c) Advertising
 - (d) Duplication

Answer:

1. (a) accepted
2. (d) all the three
3. (d) either (a) or (b) or (c).
4. (b) unconditional order
5. (b) District Magistrate
6. (b) The Royal Committee on labor
7. (a) Appropriate Government
8. (b) 90
9. (c) more than 6 hours
10. (c) Advertising

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II. Fill in the blanks:

10 x 2 = 20

1. Every promise and every set of promises, forming the consideration for each other, is a _____.
2. X purchased 10 dozens of pencil sharpeners. The sharpeners were found to be blunt and not able to sharpen the pencils. This is a breach of _____ according to Sale of Goods Act.
3. An instrument incomplete in one way or other is called _____.
4. The document containing agreement between the partners is called _____.
5. The State Government may appoint qualified _____ to be "Certifying Surgeons" for the purpose of factories act.
6. The payment of wages is applicable to _____.
7. For the purpose of defining "manufacturing process" under the ESI Act, 1948, reference is made to _____.
8. Appropriate Government in relation to an establishment other than under the control of the Central Government or a railway administration or a major port or a mine or oilfield, is the _____.
9. Section _____ of the The Child Labour (Prohibition and Regulation) Act, 1986 prohibit employment of child in certain process or occupations.
10. 'It is difficult but not impossible to conduct strictly honest business' is famous quote by _____.

Answer:

1. Agreement
2. Condition as to Merchantability
3. Inchoate Instrument
4. Partnership Deed
5. Medical Practitioners
6. Whole of India
7. Factories Act, 1948
8. State Government
9. Section 3
10. Mahatma Gandhi

III. Match the following

5 x 1 = 5

	Column 'A'		Column 'B'
1.	Actual Breach of Contract	A	Corporate Ethics
2.	Sleeping Partner	B	Converting and order instrument into bearer one.
3.	Condition	C	Present Breach

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4.	Material Alteration	D	It is essential to the main purpose of the contract.
5.	Business Ethics	E	Dormant Partner

Answer:

1. C Present Breach
2. E Dormant Partner
3. D It is essential to the main purpose of the contract.
4. B Converting an order instrument into bearer one
5. A Corporate Ethics

IV. State whether the following statement is True (or) False.

10 x 1= 10

1. **Acceptance can precede an offer.**
2. **Trade mark, copy right, patents have been treated as goods as per various judgements.**
3. **When a bill is drawn, accepted, or endorsed for consideration it is a genuine bill.**
4. **A partner has right to prevent admission of new partners/expulsion of existing partners.**
5. **Drinking Water shall be situated within seven metres of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent.**
6. **No wage-period shall exceed thirty days.**
7. **Every inspector shall be deemed to be a public servant.**
8. **The subject Employees' insurance is included in list III at entry no. 24 Schedule 7 of Constitution of India.**
9. **The child employed in an establishment is entitled for a holiday of one whole day in each week.**
10. **Ethics also known as moral philosophy is a branch of philosophy that involves systematizing, defending and recommending concepts of right and wrong conduct.**

Answer:

1. False
2. True
3. True
4. True
5. False
6. False
7. True
8. False
9. True
10. True

V. Define any Five of the following:

5 x 3 = 15

1. Voidable Contract.

Answer:

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract. Sec. 2(i) of Indian Contract Act, 1872

2. Coercion

Answer:

The term coercion has been defined in section 15 of the Act as "Coercion" is the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

3. 'Delivery' under Sale of Goods Act, 1930.

Answer:

Delivery: [Sec. 2(2)] of Sale of Goods Act, 1930

Delivery means voluntary transfer of possession from one person to another.

4. Promissory Note

Answer:

Section 4 of the Negotiable Instruments act, 1881 defines "Promissory Note":

"A Promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument".

5. Child under Factories Act, 1948

Answer:

Child: [Sec. 2(c)] of Factories Act, 1948

"Child" means a person who has not completed his fifteenth year of age.

6. Competent Authority

Answer:

Competent Authority: [Sec. 2 (c) of Minimum Wages Act]

Competent authority means the authority appointed by the Appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;

7. Contribution under ESI Act

Answer:

Sec. 2(4) of ESI Act "Contribution" means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;

8. Minor Partner

Answer:

Partnership arises from contract and a minor is not competent to enter into contract. Therefore, strictly speaking, a minor cannot be a full-fledged partner. But with the consent of all the partners he can be admitted into partnership for benefits only. He is not personally liable to third parties for the debts of the firm. On attaining majority, if he continues as a partner, his liability will become unlimited with effect from the date of his original admission into the firm.

VI. Answer any four of the following questions.

4 x 10 = 40

1. Define Offer. Explain the rules relating to valid offer.

10

Answer:

Offer: Sec 2(a)

A proposal or offer is defined as, 'when one person signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.'

Legal Rules Regarding Offer:

An offer to be valid must comply with the following rules:

1. Offer may be expressed or implied:

An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.

2. Offer may be specific or general:

A **specific offer** is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer.

A **general offer** is an offer made to the public at large.

3. Offer must give rise to legal obligation:

An offer to be valid must create legal relationship between the parties. The very purpose of entering into an agreement is to make it enforceable at a Court of law.

4. Terms of an offer must be definite and certain:

The terms of an offer should not be vague or indefinite.

5. Offer must be distinguished from an invitation to offer:

An offer must be distinguished from an invitation to offer. The shopkeepers generally display their goods in showcases with price tags. The shopkeeper in such cases is not making an offer so that you can accept it. He is, on the other hand, inviting you to make an offer which he may or may not accept. Thus you cannot compel a shopkeeper to sell the goods displayed in the showcase at the marked price. However, if there is a specific law to sell goods at marked price then the seller will have to sell at marked price. For example, during National Emergency essential commodities like sugar etc. have to be sold at marked price.

6. Offer must be communicated:

An offer must be communicated to the person to whom it is made. A person can accept the offer only when he knows about it. If he does not know it, he cannot accept it.

7. Communication of Special Terms:

Special terms of a contract must be communicated. Generally, such cases arise in respect of general offers, like tickets or receipts for depositing luggage at the Railway Station or receipts for clothes given for dry cleaning etc. The rule in these cases is that parties are not bound unless conditions printed are properly communicated. The special terms must be brought to the customer's notice either

(a) by drawing his attention to them specifically or

(b) by inferring that a man of ordinary prudence could find them by exercising ordinary prudence.

8. Offer must be made with a view to obtaining the consent of the other party to do or to abstain from doing the act:

The offer must be made with an intention to get the consent of the other party to do or to abstain from doing the act and not simply with a view to making known the intention of making an offer. Sometimes a person declares that he has the intention to do something and this does not amount to an offer. Such a declaration only means that the offer will be made or invited in future.

9. Offer should not impose an unnecessary obligation to communicate non acceptance:

Thus an offeror cannot say that if acceptance is not communicated by Sunday next, the offer would be considered as accepted.

2. "Nemo dat qui non habet" – State the exceptions to it.

10

Answer:

Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the

goods than the seller had, unless the owner of the goods is by conduct precluded from denying the seller's authority to sell.

Generally the owner alone can transfer property in goods "*Nemo dat qui habet*" means that no one can give what he himself does not have. It means a non owner cannot make valid transfer of property in goods. If the title of the seller is defective, the buyer's title will also be subject to same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to protect the real owner of the goods. Accordingly the Act provides the **following exceptions** to this doctrine which seeks to protect the interest of bonafide buyers.

Sale by mercantile agent (Sec. 27)

Where a mercantile agent is with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same, provided that the buyer's act is in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

Sale by one of joint owners (Sec. 28)

If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are sanctioned.

Sale by person in possession under voidable contract (Sec. 29)

When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or Section 19A of the Indian Contract Act, 1872, but the contract has not rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Seller or buyer in possession after sale (Sec. 30)

Explanation (a): Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Explanation (b): Where a person, having bought or agreed to buy goods, obtains with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person

receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods sell have effect as if such lien or right did not exist.

Sale by estoppel (Sec. 27)

Where the owner by his conduct or omission, leads the buyer to believe that the seller has authority to sell, he is stopped from denying the fact afterwards. The buyer thus gets a better title than the seller.

Sale by a finder of goods:

Under section 169 of the Contract Act, if a finder of lost goods could not reasonably find the true owner or the true owner refuses to pay the lawful charges of the finder of lost goods, the finder of lost goods can sell the goods when the goods are perishable in nature or when the lawful charges of the finder of lost goods amounts to 2/3rd of its value.

Sale by official receiver or assignee:

In case of insolvency of any individual his official receiver or liquidator of a company can sell the goods and buyer thereof gets good title to it.

Execution of Sale

Under order 21 of the Civil procedure Code officer of court may sell goods and convey good title to the buyer inspite of the fact they are not the true owner of the goods.

3. (a) Define Cheque. Explain the essential features of cheque.

6

Answer:

Section 6 of the Negotiable Instruments act, 1881 defines "Cheque":

"A cheque is a bill of exchange drawn upon a specified banker and payable on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form".

A cheque in the electronic form means "cheque which contains the exact mirror image of a proper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature and asymmetric crypto system.

A truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

'Clearing house' means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India [Sec. 6 as substituted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002].

A cheque is a species of a bill of exchange; but it has the following two additional qualifications:

1. It is always drawn on a specified banker, and
2. It is always payable on demand.

Parties:

There are three parties to bill of exchange:

1. The drawer.
2. The drawee.
3. The payee.

Essential features of a Cheque:

1. A cheque must be an order in writing.
2. It must contain an unconditional order.
3. A cheque must be signed by the maker.
4. The amount must be specifically mentioned in figures and words.
5. A cheque may be drawn payable to order or bearer. There are two kinds of cheques prevailing now a days. They are:
 - a. it may be a bearer or order cheque; and
 - b. it may be a self cheque.
6. The cheque must contain the date.
7. Payee to be certain.

3. (b) Explain the procedure for registration of Partnership firm.

4

Answer:

Procedure for Registration of Partnership - [Sec. 58 and 59]:

Time	Registration may be effected at any time during the continuance of Partnership.
Application	Registrar of Firms in the area in which the place of business or principal place of business of the Firm is situated / proposed to be situated.
Form & Fees	Statement in the prescribed form and accompanied by the prescribed fees.
Contents	<ul style="list-style-type: none">• Firm Name,• Place of business or principal place of business,• Names of any other places where the Firm carries on business,• Date when each Partner joined the Firm,• Names in full and permanent address of the Partners,• Duration of the Firm, if any. <p>Note: Names that are undesirable, like use of Crown, Emperor, Empress, Royal, King, Queen, Empire, Imperial, etc. in the opinion of the Registrar</p>

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	will not be permitted. Also, use of words that indicate sanction, patronage or approval of the Government shall not be allowed unless specially consented to in writing by the Government.
Signing & Verification	By all the Partners, or their agents specially authorised in this behalf. Each person signing shall verify in the prescribed manner.
Registration by Registrar	<ul style="list-style-type: none">• If the provisions of Sec. 58 are duly complied with, the Registrar upon satisfaction of the same shall record an entry of statement (application) in the Register of Firms.• He shall also file the Statement and issue a Certificate of Registration.

4. (a) Define factory according to Factories Act, 1948.

3

Answer:

Factory: [Sec. 2(m)]

“Factory” means any premises including the precincts thereof –

- (i) Where on ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Where on twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place;

4. (b) Explain the duties of Inspector according to Minimum Wages Act, 1948.

7

Answer:

Inspectors (Section 19)

- (1) The appropriate government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their functions.
- (2) An Inspector may—
 - (a) Enter at all reasonable hours any premises for the purpose of examining any register, record of wages or notices required to be kept and require the production thereof for inspection;

- (b) Examine any person whom he finds is an employee
 - (c) Require any person giving out-work and any out-workers, to give any information, with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;
 - (d) Seize or take copies of such register, record of wages or notices or portions thereof
 - (e) Exercise such other powers as may be prescribed.
- (3) Every Inspector shall be deemed to be a public servant
- (4) Any person required to produce any document or thing or to give any information by an Inspector under sub-section (2) shall be deemed to be legally bound to do so.

5. (a) Explain the provisions relating to fines under the Payment of Wages Act, 1936. 6

Answer:

Fines: (Sec 8)

- (1) 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 State Government or of the prescribed authority may have specified by notice under sub-section (2).
- (2) 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.
- (3) 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.
- (4) 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.
- (5) No fine shall be imposed on any employed person who is under the age of fifteen years.
- (6) No fine imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.
- (7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations 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 realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

5. (b) Explain the objectives of Child Labor (Prohibition and Regulation) Act, 1986. 4

Answer:

Objectives:

The basic objective of the Child labour (Prohibition & Regulation) Act, 1986 is:

- a) to prohibit the engagement of children in certain employments and
- b) to regulate the conditions of work or children in certain other employments.

6. Explain the differences between Ethics and Morals. 10

Answer:

Ethics vs Morals:

	Ethics	Morals
1.	Root word in Greek is 'ethikos' which means 'Character'.	Root word in Greek is 'mos' which means 'custom'.
2.	Deals with right and wrong conduct.	Deals with principles of right and wrong.
3.	Deals with individual character.	Deals with customs set by groups.
4.	Character is personal attribute.	Customs are determined by groups or some authority like religion or culture.
5.	Ethics is the response of an individual to a specific situation. E.g. whether in that situation, it is ethical to state the truth.	Morals are general principles, e.g. "You should speak truth."