

# **Paper 6 – Laws and Ethics**

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Full Marks: 100

Time allowed: 3 hours

**Section – A**

1. Answer all questions. [25 marks]

(a) Multiple Choice Questions [10 Marks]

- (i) The breach of contract may be-
- (a) Actual;
  - (b) Anticipatory;
  - (c) None of the above;
  - (d) **Either of (a) and (b)**
- (ii) Which one of the following is not the feature of 'agreement to sale'?
- (a) It is an executor contract;
  - (b) **Sales takes place for existing and specific goods;**
  - (c) The seller can sue for damages only in case of breach by the buyer;
  - (d) It gives a right to the buyer against the seller to sue for damages.
- (iii) Which one of the following is not the element of draft?
- (a) It cannot be drawn on private individual;
  - (b) It cannot be countermanded easily;
  - (c) **It is open to the person to stop payment;**
  - (d) The bank undertakes the liability which it is bound to discharge in whose favor the draft is issued;
- (iv) Who may negotiate?
- (a) Drawer;
  - (b) Payee;
  - (c) All of the joint makers;
  - (d) **Any of (a) to (c).**
- (v) The Information Memorandum shall be deemed to be a \_\_\_\_\_.
- (a) **Prospectus**
  - (b) Articles
  - (c) Memorandum
  - (d) None of the above.
- (vi) The Regional Director shall communicate the confirmation of shifting of registered office within \_\_\_\_\_ days of receipt of the application.
- (a) 15
  - (b) **30**
  - (c) 45

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- (d) 90
- (vii) The private placement shall be made, not more than \_\_\_\_\_ persons in aggregate in a financial year.
- (a) 50  
(b) 100  
(c) **200**  
(d) 400
- (viii) If the shareholders not less than \_\_\_\_ of the issued shares of class did not consent to the variation or vote in favor of the special resolution for the variation, such shareholders may apply to the Tribunal to have the variation cancelled.
- (a) **10%**  
(b) 15%  
(c) 25%  
(d) None of the above
- (ix) The company shall not issue sweat equity shares for more than \_\_\_\_\_ of the existing paid up share capital in a year.
- (a) 10%  
(b) **15%**  
(c) 25%  
(d) None of the above
- (x) Meta ethics deal with the nature of \_\_\_\_.
- (a) External influences  
(b) **Moral Judgement**  
(c) Material Facts  
(d) All of the above

### (b) Fill in the Blanks

[5 Marks]

- (i) No company shall issue any debenture carrying any **Voting Rights**.
- (ii) The wage period shall not exceed **One Month**.
- (iii) A warranty is a stipulation **Collateral** to the main purpose of the contract.
- (iv) The maximum age limit of Managing Director is **Seventy** years.
- (v) The gratuity is payable to an employee after he has rendered continuous service for not less than **Five** years.

### (c) True or False

[5 Marks]

- (i) Cheque is a bill of exchange.  
**True**
- (ii) LLP is a separate legal entity.  
**True**

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(iii) Gratuity is a lump sum payable on consideration of the past services rendered by the employee.

**True**

(iv) A dismissed employee, reinstated with back wages is entitled to bonus.

**True**

(v) Additional director shall hold office upto the date of next AGM.

**True**

**(d) Match and Pair**

**[5 Marks]**

	<b>Column I</b>		<b>Column II</b>
<b>1</b>	Designated Partner	<b>A</b>	Quorum for meetings
<b>2</b>	Business Ethics	<b>B</b>	Claim for necessities supplied to person incapable of contracting,
<b>3</b>	Negotiation	<b>C</b>	Stop malpractices
<b>4</b>	Section 68 of Contract Act	<b>D</b>	At least two
<b>5</b>	Section 103 of Companies Act, 2013	<b>E</b>	Transfer

**Answer:**

	<b>Column I</b>		<b>Column II</b>
<b>1</b>	Designated Partner	<b>D</b>	At least two
<b>2</b>	Business Ethics	<b>C</b>	Stop malpractices
<b>3</b>	Negotiation	<b>E</b>	Transfer
<b>4</b>	Section 68 of Contract Act	<b>B</b>	Claim for necessities supplied to person incapable of contracting.
<b>5</b>	Section 103 of Companies Act, 2013	<b>A</b>	Quorum for meetings

### **Section – B**

**2. Answer any 5 questions:**

**[5×15 = 75]**

**(A) (i) What is an offer and what are the points to be taken into account for a valid offer?**

**(ii) Mr. B (a broker) by the order of Mr. A purchases 10 Drums of oil for A from Mr. C. Afterwards Mr. A refuses to receive oil. Mr. C sues. Mr. B defends but failed. Mr. B has to pay cost, damages and incurs expense. Can B recover any amount from A?**

**[10+5 = 15]**

**Answer:**

- (i) The term 'proposal' is otherwise called as 'offer'. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for promise, act or forbearance. Section 2(a) of the Act defines 'proposal' or offer 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 or offer. The person making the proposal is called as 'offeror' or proposer' and the person the proposal is made is called as 'offeree'.

The following points are to be taken into account for a valid offer-

- The offer must be in clear, definite, complete and final terms. It should not be vague in terms;
- The offer must be communicated to the offeree. The offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the offer;
- The communication may be in writing or oral;
- The communication may be in expressed terms or in implied terms;
- The offer may be general or specific – if an offer is made to a specific person it is called specific offer. Such offer can be accepted by such specific person; if an offer is made to the world at large, it is a general offer. It can be accepted by any member of the general public by fulfilling the condition laid down in the offer;
- Communication of offer is complete when it comes to the knowledge of the person to whom it is made.

An offer which has been communicated properly continues as such until it lapses or revoked by the offeror or rejected or accepted by the offeree.

- (ii) In this case 'A' is liable to 'B' for such damages, costs and expenses because the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the Authorities conferred upon him. 'B' acted on the instruction of 'A'. Hence 'A' should indemnify 'B' for such damages, costs and expenses.

**(B) (i) State the circumstances where under an agent is personally liable to a third party for the acts during the course of agency?**

- (ii) K the owner of a Fiat car wants to sell his car. For this purpose he hands over the car to M, a mercantile agent for sale at a price not less than ₹100, 000. The agent sells the car for ₹75, 000 to B, who buys the car in good faith and without notice of any fraud. M misappropriated the money also. K sues B to recover the car. Decide given reasons whether K would succeed.**

**[9+6 = 15]**

**Answer:**

- (i) Under the following circumstances an agent is personally liable.
- i) When he represents that he has authority to act on behalf of his principal, but who

does not actually possess such authority or who has exceeded that authority and the alleged employer does not ratify his acts. Any loss sustained by a third party by the acts of such a person (agent) and who relies upon the representation is to be made good by such an agent.

- ii) Where a contract is entered into by a person apparently in the character of agent, but in reality on his own account, he is not entitled to required performance of it.
  - iii) Where the contract expressly provides for the personal liability of the agent.
  - iv) When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
  - v) Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.
  - vi) Where the agent works for a foreign principal.
  - vii) Where a Government Servant enters into a contract on behalf of the Union of India in disregard of Article 299 (1) of the Constitution of India, in such a case the suit against the agent can be instituted by the third party only and not by the principal (Chatturbhuj v. Moheshwar).
  - viii) Where according to the usage of trade in certain kinds of business, agents are personally liable.
  - ix) Where his authority is coupled with interest, he can be sued only to the extent of his interest in the subject matter.
- (ii) The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied :
- (a) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
  - (b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
  - (c) The buyer should act in good faith.
  - (d) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, M, the agent, was in the possession of the car with K's consent for the purpose of sale. B, the buyer, therefore obtained a good title to the car. Hence, K in this case, cannot recover the car from B. A similar decision, in analogous circumstances, was taken in *Folkes v. King*.

- (C) (i) Describe the term, 'Manufacturing Process' as per Factories Act, 1948 and also cite an example.**
- (ii) How is overtime Wages fixed as per Minimum Wages Act, 1948. [8+7 = 15]**

**Answer:**

- (i) Section 2(k) defines the expression 'manufacturing process' as 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.

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.

- (ii) Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages -

- in case of employment in agriculture - one and a half times the ordinary rate of wages;
- in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made.

Section 14(2) provides that this Act shall not prejudice the operation of the provisions of Section 59 of the Factories Act in any case where those provisions are applicable.

In 'Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum

rate of wages under the Act. It does not apply to those getting better wages under other statutory rules.

**(D) (i) State the features of Section 8 Companies.**

**(ii) Write a note on 'Small Company'.**

**[9+6 = 15]**

**Answer:**

**(i)** Section 8 Companies, as per Companies Act, 2013 are companies formed with Charitable objects. Their features are as follows:

- has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits, if any, or other income in promoting its objects; and
- intends to prohibit the payment of any dividend to its members;
- the company registered under this Section shall enjoy all the privileges and be subject to all the obligations of the limited company;
- a firm may be a member of the company registered under this section;
- a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government.
- a company registered under this section may convert itself into a company of any other kind only after complying with such conditions as may be prescribed.

**(ii)** "Small company" means a company, other than a public company,—

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

**(E) (i) Discuss the procedure for alteration of Memorandum of Association.**

**(ii) State the reports that are to be set out in the prospectus.**

**[12+3 = 15]**

**Answer:**

**(i) Procedure of alteration of memorandum:**

Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that -



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", on the conversion of any one class of companies to another class. The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.
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 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 there gistered office within a period of sixty days Before passing of order, Central Government may satisfy itself that -
  - The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
  - 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);
  - 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 is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;
- The 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.

**(ii) Reports to be set out in the prospectus**

Rule 4 provides that the following reports shall be set out with the prospectus as detailed below:

- The reports by the auditors with respect to profits and losses and assets and liabilities;
- The reports relating to profit and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the issue of the prospectus;

The reports made by the auditors in respect of the business of the company.

**(F) (i) State the importance of ethics on human life and benefits of following principles of business ethics.**

**(ii) Write e note on 'Point of Presence' of Central Record-keeping agency, as per PFRDA Act, 2013. [10+5 = 15]**

**Answer:**

**(i) Importance of ethics on Human life**

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 numbers 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.

The following are the **advantages for following the principles of business ethics-**

- It offers a company a competitive advantage;
- Goodwill of the firm hikes depending on its responds towards its ethical issues;
- Productivity through rigid, firm and sincere workers as well as other business chain members;
- Through increasing morale and trust business can increase their market share;
- Publicity due to well and ethical performance;
- Acceptance of products of the company by the public;

- (ii) If "Point of presence" means an intermediary registered with the Authority under sub-section (3) of Section 27 as a point of presence and capable of electronic connectivity with the central recordkeeping agency for the purposes of receiving and transmitting funds and instructions and pay out of funds;

Rules of Point of Presence as per Section 22 of PFRDA Act, 2013 would be:

- (1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a point of presence for the purpose of receiving contributions and instructions, transmitting them to the Trustee Bank or the central recordkeeping agency, as the case may be, and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard.
- (2) A point of presence shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

**(G) Write a note on: (Any Three)**

**[5 × 3 = 15]**

- (i) Medical Benefit Council**
- (ii) Conditions of formation of OPC**
- (iii) Crossing**
- (iv) Recognition of ethical issues in business**

**Answer:**

**(i) Medical Benefit Council**

Section 10 of ESI Act provides for the constitution of Medical Benefit Council consisting of-

- the Director General of ESI, ex-officio – Chairman;
- the Director General, Health Services, ex-officio – Co-Chairman;
- the Medical Commissioner of the Corporation – ex-officio;
- one member each representing each state other than Union territories;
- three members representing employers;
- three members representing employees;
- three members representing the medical profession; among them one shall be a woman.

**Term of office**

The term of the office of the members of Medical Benefit Council (last three categories) shall be four years from the date on which the appointment is notified.

**Duties of Medical Benefit Council**

Section 22 provides the duties of the Medical Benefit Council as to-

- advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;
- have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with the medical treatment and attendance; and
- perform such other duties in connection with the medical treatment and attendance as may be specified in the regulations.

**(ii) Conditions of formation of OPC**

One Person Company ('OPC' for short) is defined under Section 2(62) of the Act which has only one person as a member. Section 3 of the Act indicates that OPC is a private limited company.

**Conditions**

The following are the conditions in formation of a OPC:

- No person shall be eligible to incorporate more than a OPC or become nominee in more than such company;
- Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 182 days;
- No minor shall become member or nominee of OPC or can hold share with beneficial interest;
- Such company cannot be incorporated or converted into Section 8 company;

- Such company cannot carry out Non Banking Financial investment activities including investment activities in securities of anybody corporate;
- No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit of paid up share capital is increased beyond ₹50 lakh or its average annual turnover during the relevant period exceeds ₹2 crore rupees.

### **(iii) Crossing**

Section 123 provides that where a cheque bears across its face an addition of the words 'and company' or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words 'not negotiable' that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Section 124 provides that where a cheque bears across its face an addition of the name of a banker, either with or without the words 'not negotiable' that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Section 125 provides that where a cheque is not crossed, the holder may cross it generally or specially.

- Where a cheque is crossed generally, the holder may cross it specially;
- Where a cheque is crossed generally or specially, the holder may add the word 'not negotiable';
- Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

### **(iv) Recognition of ethical issues in business**

Learning to recognize ethical issues is the most important step in understanding business ethics. An ethical issue is an identifiable problem, situation, or opportunity that requires person to choose from among several actions that may be evaluated as right or wrong, ethical or unethical. In business, such a choice often involves weighing monetary profit against what a person considers appropriate conduct. The best way to judge the ethics of a decision is to look at a situation from a customer's or competitor's viewpoint.

Many business issues may seem straightforward and easy to resolve, but in reality, a person often needs several years of experience in business to understand what is acceptable or ethical. Ethics are also related to the culture in which a business operates.